

# Seattle Minimum Wage Enforcement Audit

**December 16, 2019**

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**Seattle Office of City Auditor**

# Seattle Minimum Wage Enforcement Audit

## Report Highlights

### Background

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The objective of this audit was to assess the effectiveness of the Seattle Office of Labor Standards' (OLS) enforcement of the Minimum Wage Ordinance and, when relevant, other labor standards ordinances. Seattle's labor standards ordinances apply to employees working within city limits regardless of their immigration status or location of the employer.

Studies have shown that certain industries are more susceptible to violations of minimum wage and other labor standards laws. These industries tend to hire non-unionized low-wage workers, and unresolved violations can have significant impacts on the welfare of these employees. Demographic populations most likely to occupy low-wage jobs and experience workplace violations include female workers, workers of color, immigrant and refugee workers, non-English speakers, LGBTQ+ workers, workers with disabilities, and youth workers. From a race and social justice perspective, it is essential that OLS is efficient and effective in its enforcement of the City's labor standards laws.

### What We Found

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OLS has established itself as a national leader on local labor standards enforcement and outreach. Since becoming an independent office from the Seattle Office for Civil Rights (SOCR) in 2017, OLS has experienced significant and rapid growth, not only in the number of labor standards laws it enforces but also in its outreach efforts, staffing, and budget. Since 2017, OLS has adopted strategies to reduce its investigation backlog and has applied several labor standards experts' recommended enforcement practices. It has also implemented enforcement-related recommendations from our [2014 Paid Sick and Safe Time Ordinance Enforcement Audit](#). However, OLS' rapid growth has also created some challenges. To address these challenges and to adopt practices recommended by labor standards experts, OLS has begun to implement a strategic enforcement approach. Strategic enforcement is an approach that helps agencies leverage limited resources to achieve broad enforcement priorities.



### WHY WE DID THIS AUDIT

This audit was conducted in response to City Council Resolution 31524, which called for a review of formal complaints about non-compliance with the Minimum Wage Ordinance.

### HOW WE DID THIS AUDIT

To accomplish the audit's objectives, we:

- Reviewed records of employers with multiple alleged or confirmed violations.
- Analyzed OLS closed case and financial remedies and civil penalties data.
- Benchmarked Seattle's enforcement measures with other jurisdictions.
- Reviewed reports on recommended enforcement practices from subject area experts.
- Conducted interviews with officials from OLS, the City Attorney's Office, a worker advocacy organization, and other jurisdictions, including Los Angeles, San Francisco, and New York.
- Reviewed OLS' contracts with outreach providers.

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We found the Office of Labor Standards' strategic enforcement efforts could be strengthened by:

- Improving the tracking and analyzing of inquiry and investigation data to assist in prioritizing enforcement areas,
- Increasing the use of enforcement tools by strengthening City labor standard ordinances and OLS policies and practices to assess additional civil penalties and fines to the City for repeat violators and uncooperative employers who delay their response to records requests,
- Reporting of additional performance metrics, including the assessment of civil penalties and fines to the City, completed directed investigations, and days to investigate and close cases,
- Working with outreach contract providers with close ties to workers to develop industry specific and legal expertise to assist OLS' enforcement efforts,
- Clarifying its enforcement processes on its website and providing this information and inquiry form in multiple languages, and
- Developing a comprehensive outreach strategy and increasing its oversight of outreach contract providers.

## Recommendations

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We make 14 recommendations to strengthen the Office of Labor Standard's strategic enforcement efforts:

- Seven recommendations are aimed at enhancing enforcement.
- Three recommendations are aimed at improving the use of enforcement tools to increase the recovery rate of civil penalties and fines that go to the City of Seattle, while continuing to assess employer penalties (i.e., employee remedies) that are paid to employees.
- Four recommendations are designed to increase the effectiveness of OLS' outreach efforts and improve the accountability of OLS' outreach contract providers.

## Department Response

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In their formal, written response to our report, the Office of Labor Standards agreed in full or in part with 12 audit recommendations and disagreed with two recommendations. One recommendation that OLS disagreed with calls for OLS to seek further guidance from the City Council on its enforcement approach to assessing civil penalties and fines that would go to the City. The second recommendation OLS disagreed with requests that OLS examine the merits of contracting for outreach with a prime contractor who then subcontracts with other contractors versus its current practice of contracting with multiple service providers who also subcontract with other organizations. We address their responses to our recommendations in Appendix A.

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## INTRODUCTION

### Audit Overview

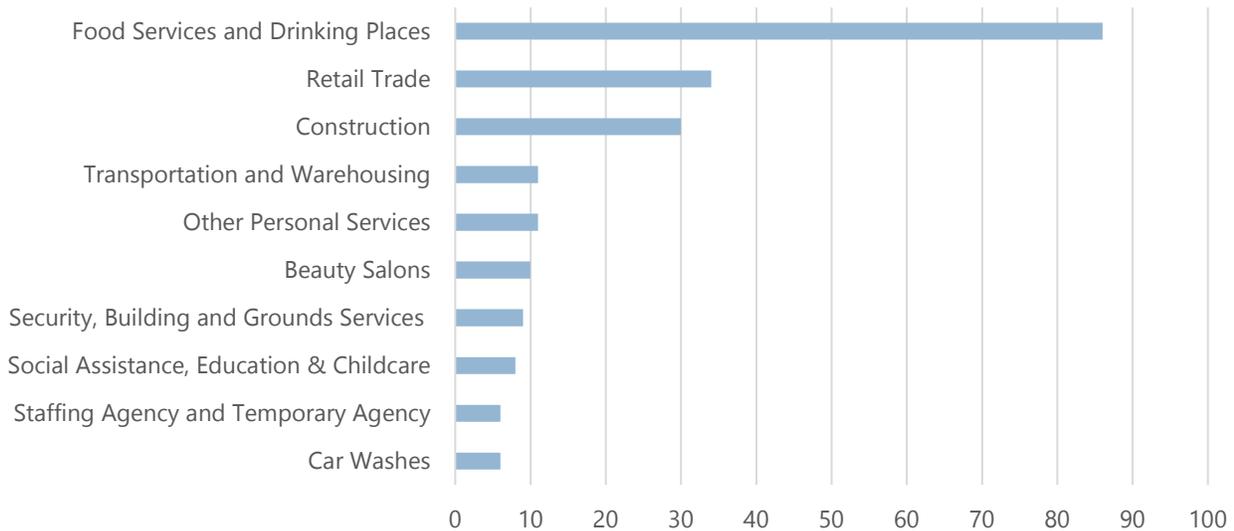
The objective of this audit was to assess the Seattle Office of Labor Standards' (OLS) enforcement of the Seattle Minimum Wage Ordinance and, when relevant, the enforcement of other City of Seattle (City) labor standards laws. We conducted this audit in response to Resolution 31524, which requested a review of formal complaints of potential Minimum Wage Ordinance violations to help determine the frequency of non-compliance with the ordinance. However, OLS does not solely rely on employee complaints of alleged violations to determine which employers to investigate and does not track the number of worker complaints. Instead it tracks the number of investigations initiated by OLS and inquiries, which can range from a simple request for information such as OLS' address, to a conversation an OLS employee has with a worker about a possible violation that leads to the initiation of an OLS investigation. It also tracks the outcomes of investigations and inquiries, which we examined in this audit. In 2018, OLS resolved 194 investigations. Of those, nearly 80 percent were resolved through determinations that violations had occurred or that resulted in settlements.

When Resolution 31524 was approved in 2014, OLS was a division of the Seattle Office for Civil Rights and its enforcement efforts consisted of investigations of specific employee complaints. Since then, OLS has updated its enforcement approach to include conducting companywide investigations, OLS Director-initiated investigations, and directed investigations that OLS initiates in high risk industries (i.e., investigations that are not initiated due to an employee complaint). In addition, OLS often expands investigations to include other possible violations not identified in the original complaint. While OLS does not track employee complaints, it tracks the number of inquiries it receives and how OLS resolved those inquiries. In 2018, OLS received 1,097 inquiries.

To learn more about non-compliance among Seattle's employers, we identified the industries where OLS conducted investigations of alleged violations by employers that resulted in settlements or determinations of violations. Exhibit 1 shows for 2017 and 2018 the top 10 industries with the most closed (i.e., completed) investigations that resulted in settlements or determinations of violations. In 2017 and 2018, OLS closed approximately 327 investigations. The investigations in Exhibit 1 could have involved more than one employee and may have resulted from companywide investigations. Not included in Exhibit 1 are investigation closures

resulting from dismissals.<sup>1</sup> In 2017 and 2018, 42 investigations ended in dismissals, with the largest number (11) being in food services and drinking places (i.e., establishments where alcoholic or non-alcoholic beverages are sold).

**Exhibit 1: Top Ten Industries with OLS Investigation Closures that Resulted in Settlements or Violations in 2017 and 2018**



Source: Office of Labor Standards, 2019, graphic by Office of City Auditor

**Why Labor Standards Enforcement is Important**

Studies have shown that employers in certain industries are more susceptible to violating minimum wage and other labor standards laws. These industries tend to hire non-unionized low-wage workers and unresolved violations can have significant impacts on the welfare of these employees. Populations most likely to occupy low-wage jobs and experience workplace violations include female workers, workers of color, immigrant and refugee workers, non-English speakers, LGBTQ+ workers, workers with disabilities, and youth workers. From a race and social justice perspective, it is essential that OLS is efficient and effective in its enforcement of the City’s labor standards laws.

**Office of Labor Standards Background**

In 2015, the Office of Labor Standards (OLS) was created as a division in the Seattle Office for Civil Rights (SOCR) but became independent from SOCR in 2017. Since 2015, the City’s labor standards laws’ enforcement efforts have been led by three different directors.

Also, since 2015, OLS has experienced rapid growth in the number of labor standards laws it enforces, as shown in Exhibit 2 below, as well

<sup>1</sup> Dismissals occur when OLS does not have jurisdiction where the alleged violation occurred, when the alleged violation occurred outside the statute of limitations, or the complainant withdrew the allegation or failed to cooperate with the investigation.

as in its budget and staffing. From 2016 to 2017, OLS experienced a 198 percent increase in budget, from about \$1.93 million to \$5.7 million, and a 150 percent increase in number of its staff, from 9 to 23 FTEs. OLS’ 2019 budget is about \$6.6 million.

**Exhibit 2: Seattle Labor Standards Laws**

Labor Standard Ordinance*	Effective Date
Paid Sick and Safe Time	September 1, 2012
Fair Chance Employment	November 1, 2013
Minimum Wage Ordinance	April 1, 2015
Wage Theft Ordinance	April 1, 2015
Hotel Employee Health and Safety Initiative (Invalidated by Washington State Court of Appeals on December 24, 2018.)	November 30, 2016
Secure Scheduling Ordinance	July 1, 2017
Domestic Workers Ordinance	July 1, 2019

\*The City passed several labor standards ordinances in 2019 that take effect in 2020.

Along with the rapid growth in number of Seattle labor standards laws, OLS accumulated a significant backlog of cases. In 2018, OLS worked to reduce the size of its backlog. Specifically, OLS reported that in 2018, it resolved the following backlog of cases:

- All 35 investigations that remained opened from 2015 were resolved,
- 53 of 68 investigations opened in 2016 were resolved, and
- 65 of 101 investigations opened in 2017 were resolved.

In total, OLS closed 194 investigations in 2018, including 35 that were opened in 2015.

**OLS Enforcement Effort Strengths**

Over the past four years, OLS has established itself as a national leader in local labor standards enforcement and outreach, and it has adopted several labor standards experts’ recommended enforcement practices. OLS has also implemented the enforcement-related recommendations in our [2014 Paid Sick and Safe Time \(PSST\) Ordinance Enforcement Audit](#). These recommendations and other improvements include:

- limiting the use of advisory letters and compliance letters,
- requiring evidence of compliance from employers,
- conducting follow-up and monitoring agreements,
- performing OLS Director-initiated investigations and companywide investigations,

- expanding investigations to include additional possible violations,
- providing workload data and posting cases on the OLS website to improve transparency,
- facilitating private right of action,
- working to stop the renewal of business licenses of businesses that fail to comply with Director's Orders, and
- starting to implement a strategic enforcement approach.

In 2018, OLS assessed over \$2 million in financial remedies to be paid by employers to employees, which was more than the City had assessed employers since 2014.

### **Opportunities to Strengthen OLS' Strategic Enforcement Efforts**

As we describe in the following section, strategic enforcement is an approach that helps agencies leverage limited resources to achieve their enforcement priorities.

Beginning in December 2016 and continuing into 2018 with its new director, OLS identified its enforcement priorities for accepting new cases. To equitably serve low income workers, people of color, and immigrant and refugee communities, while also helping minority-owned businesses to comply with Seattle's labor standards laws, OLS used criteria to establish its priorities, including 1) placing a higher priority on cases involving employees who make less than \$42,500 annually (\$43,715 in 2019) and when the alleged amount of pay an employee is seeking is equal to or more than a workweek of pay, 2) the employee's current employment status, and 3) whether the case involves an allegation of retaliation.

We recommend OLS continue its implementation of strategic enforcement, and we identified several areas in which OLS could make improvements to realize the benefits of this strategy. We make 14 recommendations related to eight elements of strategic enforcement. In their formal, written response to our report, OLS stated that they agreed in full or in part with 12 audit recommendations and disagreed with two recommendations.

## How Seattle's Office of Labor Standards Compares to its Peers Based on 2018 Seattle Data and 2017/2018 Fiscal Year Data\* for Los Angeles and San Francisco

We benchmarked Seattle's Office of Labor Standards (OLS) against Los Angeles' Office of Wage Standards (OWS) and San Francisco's Office of Labor Standards Enforcement (OLSE) in key areas of labor standards enforcement. The average days to investigate and close Paid Sick Leave/Paid Sick and Safe Time (PSST) and Minimum Wage complaints for cases closed in 2018 was significantly higher in Seattle. In 2018, the total amount of remedies for employees and civil penalties and fines paid to the City was less than what OLS' counterparts in Los Angeles and San Francisco assessed for minimum wage and paid sick time violations. Also, Seattle spends a significantly larger percentage of its budget on its contracts for outreach compared to its peers.

### Exhibit 3: Benchmarking Results Based on 2018 for OLS and 2017/2018 FY Data for OWS and OLSE\*

Benchmark	Seattle OLS	Los Angeles OWS	San Francisco OLSE
Average Days to Investigate and Close Paid Sick Leave (PSL) and Minimum Wage (MW) Cases	542	103	320
Number of PSST (PSL) and MW Investigations Closed	115	89	46
Number of Businesses with Paid Employees (2012 data)	21,283**	89,209	26,525
Number of Employees between ages 16-64 (2017 US Census data)	530,316	2,776,855	641,622
Number of Investigators for PSST (PSL) and MW	6 FTEs***	11 FTEs	5 FTEs
Total Office Budget	\$5,698,000	\$2,559,154	\$5,563,136
Outreach Contracting Budget	\$2,330,000	\$497,766	\$660,000
Outreach Contractor Budget as a % of Total Office Budget	41%	19%	12%
Civil Penalties and Fines Assessed for PSL and MW to the City	\$24,250	\$33,998	\$21,001
Total Remedies and Penalties Assessed for PSL and MW	\$771,516	\$1,187,948	\$1,773,128

\* For some benchmarks other year's data was used as noted.

\*\*Seattle Finance and Administrative Services Department reported that in 2018 there were approximately 53,000 non-sole proprietor businesses in Seattle.

\*\*\*This number is an estimate based on the number of Minimum Wage and Paid Sick and Safe Time Cases OLS closed in 2018.

## ELEMENTS OF STRATEGIC ENFORCEMENT

### **OLS' Enforcement and Outreach Efforts can be Enhanced by Implementing Key Elements of Strategic Enforcement**

As enforcement agencies struggle to address labor standard violations with limited resources, labor standards enforcement experts recommend that agencies adopt a strategic enforcement approach.

Strategic enforcement means an agency is selective in how it uses its resources, so it can direct its efforts to where the problems are largest, where workers are least likely to exercise their rights, and where the agency can affect industry-wide compliance. Key elements of a strategic enforcement approach are provided to the right.

We found eight areas in which OLS could improve its enforcement and outreach efforts to strengthen its strategic enforcement approach.

#### KEY ELEMENTS OF STRATEGIC ENFORCEMENT

1. Identifying enforcement priorities
2. Conducting proactive investigations
3. Using all enforcement tools
4. Resolutions that promote ongoing compliance
5. Building a culture of planning, evaluation, and review
6. Partnerships with community stakeholders and other agencies
7. Improving strategic communications
8. Developing a strategic outreach plan

Source: Janice Fine, 7.2.18

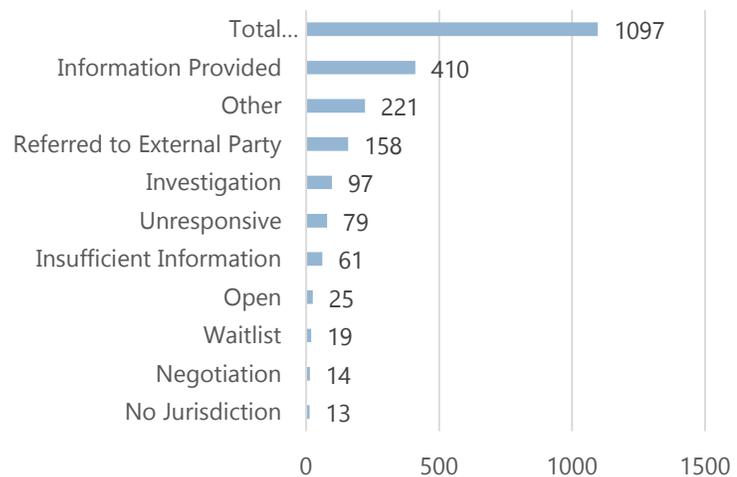
## 1. Identifying Enforcement Priorities

### Improved Tracking by OLS of Worker Inquiries Could Help Inform its Enforcement Priorities

OLS could collect more information during worker inquiries to help inform its strategic enforcement efforts. Currently, OLS classifies a large percentage of inquiries as “other,” and does not collect demographic information about the individuals making inquiries, even when inquiries result in investigations. OLS could also collect more information about inquiries that don’t lead to investigations.

At our request, OLS provided information on the number of inquiries and the outcomes of those inquiries for 2018 (see Exhibit 4).

#### Exhibit 4: 2018 Office of Labor Standards Worker Inquiries



Source: Office of Labor Standards, 2019, graphic by Office of City Auditor

As Exhibit 4 shows, more than 20 percent of 2018 inquiries were categorized by OLS staff as “other.” OLS explained that the “other” category consists of resolved inquiries in which the OLS staff member did not select a specific inquiry outcome. Therefore, it is unknown if the “other” inquiries stemmed from an alleged violation, why the inquiry was closed, or how the inquiry was resolved. If the “other” inquiries stemmed from alleged violations, that would be beneficial for OLS to understand as it strategizes where to focus its enforcement efforts.

Exhibit 4 also shows that in 2018, of the 1097 inquiries made, 97 (about 9 percent) resulted in investigations. All the categories tracked by OLS, except for “information provided” and possibly a subset of “other,” could have been inquiries stemming from an alleged violation, but OLS does not track whether these inquiries were in fact based on alleged violations.

For inquiries to better inform OLS enforcement and outreach efforts, OLS should eliminate or minimize the use of the “other” category for tracking inquiries, and gather additional information on all inquiries, such as worker demographics and the worker’s employment industry.

## Recommendation 1

**The Office of Labor Standards should minimize or eliminate the use of the “other” category and collect demographic and industry information during worker inquiries to ensure it has the information needed to inform its strategic enforcement and outreach efforts.**

## 2. Conducting Proactive Investigations

### **OLS Should Develop a Directed Investigations Plan**

Resolution 31662 directed OLS to implement directed investigations. Directed investigations are OLS initiated investigations rather than investigations initiated in response to an employee complaint. Although OLS has stated that it has implemented directed investigations, nearly half of the directed investigations in 2017 have been used for the enforcement of one labor standard ordinance - Fair Chance Employment.

In our [2014 Paid Sick and Safe Time Ordinance Enforcement Audit](#), we recommended that SOCR (the City’s labor standards enforcement agency in 2014) augment its complaint-based approach to addressing employer non-compliance with a proactive enforcement approach. The audit recognized that the potential number of employees affected by an employer’s non-compliance could be significant and that many employees who work for noncompliant employers might be reluctant to raise a complaint for fear of retaliation. Accordingly, the audit emphasized the value of conducting some investigations that did not stem from an employee complaint.

In 2016, the City Council expressed its support of proactive investigations by adopting Resolution 31662. City Councilmembers recognized that there are industry sectors where noncompliance is more likely to occur and that vulnerable workers may be unlikely to complain about potential violations. For these reasons, Councilmembers requested that OLS 1) develop and implement a directed investigations approach to enforcement, 2) develop a plan to implement directed investigations, and 3) report on its progress in developing this plan.

OLS shared with us two of the three 2016 quarterly reports to the City Council in response to the resolution’s reporting requirements. While the reports addressed the items in the resolution, they did not indicate that OLS had sufficiently implemented a directed investigations plan or strategy.

Resolution 31662 called for 10 percent of OLS’ 2017 investigations to be directed investigations. OLS conducted slightly over 10 percent of its new investigations in 2017 as directed investigations but did not develop the plan requested in the resolution and implemented directed investigations primarily in one enforcement area. As shown in Exhibit 5 below, between 2017 and 2018, OLS conducted 16 directed investigations, involving 11 employers.

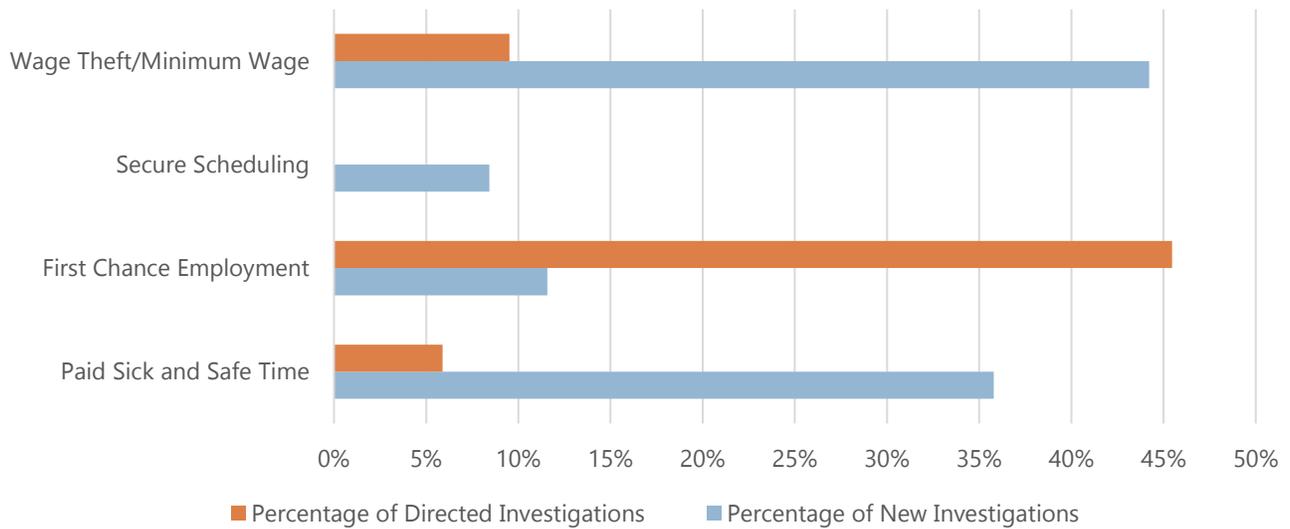
**Exhibit 5: OLS Directed Investigations 2017-2018**

Year	# of Directed Investigations	Ordinances Involved
2017	11 (7 employers)	Fair Chance Employment (5 employers) Minimum Wage, Wage Theft, and PSST (2 employers)
2018	5 (4 employers)	Fair Chance Employment (1 employer) Wage Theft (1 employer) Paid Sick and Safe Time and Wage Theft (1 employer) Minimum Wage (1 employer)

Source: Office of Labor Standards

In 2017, nearly half of the directed investigations were of employers for potential Fair Chance Employment (FCE) violations, while FCE represented about 12 percent of new OLS investigations that year. As shown in Exhibit 6 below, in 2017, 6 of 76 (8 percent) new Minimum Wage (MW), Wage Theft (WT), and Paid Sick and Safe Time (PSST) investigations were directed investigations. These 76 cases represented 80 percent of all new investigations. None of the 2017 directed investigations were for the Secure Scheduling (SS) Ordinance.

**Exhibit 6: OLS 2017 Percentage of Directed Investigations and Percentage of New Investigations by Ordinance**



Source: Office of Labor Standards, 2019, graphic by Office of City Auditor

In 2018, OLS conducted fewer directed investigations than in 2017, with five directed investigations involving four employers. Approximately four percent of all investigations OLS conducted in 2018 were directed investigations that involved alleged violations of paid sick and safe time, minimum wage, and wage theft.

In addition to creating a directed investigations plan that would include focusing directed investigations on all the City’s labor standards ordinances, especially on those ordinances where there are large numbers of investigations from worker complaints, OLS should analyze and report on the effectiveness of its directed investigation enforcement efforts. Currently, OLS’ [dashboard](#), which provides information on OLS investigations, does not provide information on directed investigations. Highlighting the results of directed investigations can serve to deter non-compliance, increase compliance, and ensure OLS is conducting directed investigations for the ordinances with high risk industries where employees may be reluctant to complain about how they are treated by employers.

**Recommendation 2**

**The Office of Labor Standards (OLS) should develop a directed investigations implementation plan for the labor standards ordinances it enforces and document the effectiveness and results of its directed enforcement efforts in its OLS dashboard.**

### 3. Using All Enforcement Tools

#### **OLS is Not Assessing a Significant Amount of Civil Penalties and Fines that Would Go to the City**

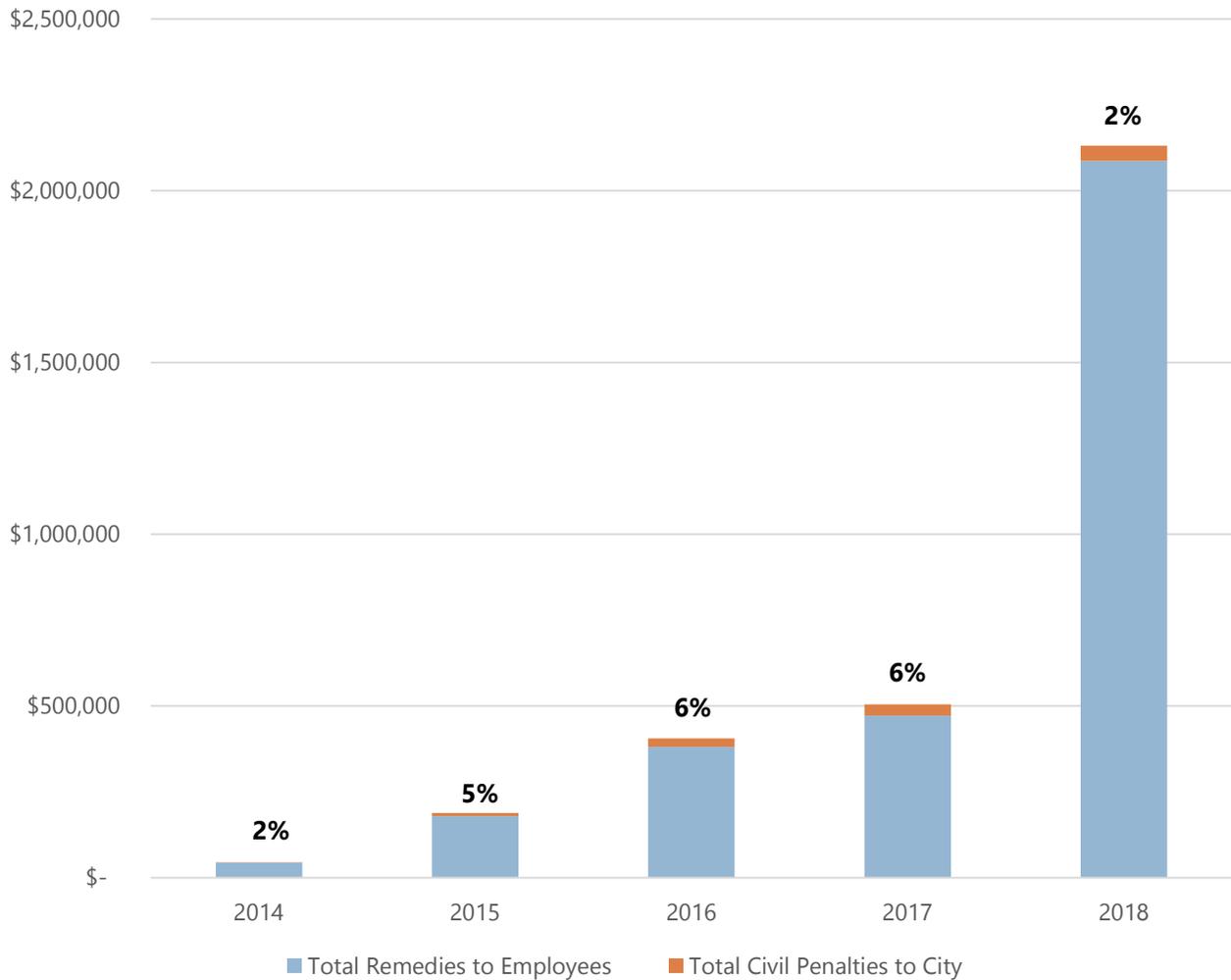
We found several reasons why OLS does not routinely assess civil penalties and fines on businesses, which are paid to the City, even when there is evidence of non-compliance with the City's labor standards laws, including:

- Lowering civil penalties and fines that would go to the City is a bargaining tool OLS uses to get employers to pay more remedies to their employees,
- Businesses that cooperate with OLS and pay employee remedies early can be exempted from being assessed civil penalties and fines that would go to the City, and
- To persuade businesses to enter into settlements in which they do not admit violating the law so that the City can avoid the costs of further legal action.

Labor standards experts agree that labor standards enforcement agencies should use all the enforcement tools at their disposal to ensure long-term compliance. These tools can include increasing financial remedies paid to employees and the civil penalties paid to the enforcement agencies. The City Council approved, through its labor standards ordinances, that when violations of the law occurred, remedies could be paid by employers to employees and the City could levy and collect civil penalties and fines paid to the City on employers.

In 2018, OLS assessed more remedies on employers to pay to employees than the City had assessed since 2014. As shown in Exhibit 7, during that same period, it assessed a significantly smaller amount of civil penalties and fines on employers that would go to the City.

**Exhibit 7: Assessed Financial Remedies to Employees, and Assessed Civil Penalties and Fines to the City as a Percentage of Total Assessments 2014-2018**



Year	Total to Workers	Total to the City	Total Assessed
2014	\$44,545	\$875	\$45,420
2015	\$179,836	\$8,975	\$188,811
2016	\$380,838	\$24,945	\$405,783
2017	\$472,355	\$31,970	\$504,325
2018	\$2,086,938	\$43,688	\$2,130,626

Source: Office of Labor Standards, graphic created by OCA

**OLS Negotiates Fewer Civil Penalties in Exchange for Additional Remedies to Employees**

In 2015, the City Council passed Ordinance 124960, known as the Harmonization Ordinance, which prescribed and standardized additional remedies and civil penalties and fines that would go to the City for the enforcement of its labor standards laws.<sup>2</sup> The Council passed the ordinance in recognition of the important role employee remedies and civil penalties play in deterring future violations and ensuring compliance by employers. Specifically, the ordinance allowed OLS to assess remedies that would go to the City on employers found to have violated the law to recover reasonable costs incurred in enforcing its labor standards ordinances. Our review of OLS records and case files indicated that OLS has not assessed remedies that would go to the City to cover the costs of enforcement on employers.

According to OLS officials, it is OLS' unwritten policy to negotiate with employers, during the settlement agreement process, to have employers agree to pay employees what was potentially due from the employers to the City in civil penalties and fines. The rationale for this policy is that the civil penalties and fines that would go to the City are relatively small amounts, but they could provide major financial benefits to employees. According to OLS, between August 2016 and February 2019, there were 40 cases for which OLS negotiated a total of \$163,000 in civil penalties and fines to be awarded to employees as remedies instead of as civil penalties and fines to the City.

San Francisco also prioritizes getting employees remedies and may use the prospect of seeking civil penalties to be paid by employers to the city for the cost of investigations in its negotiations with employers to obtain additional remedies for employees. In 2018, San Francisco assessed approximately \$3,000 less in civil penalties to the city than Seattle. (see Exhibit 3 on page 5 above). According to San Francisco labor standards enforcement officials, their priority is to get the workers the money employers owe them. Another labor standards enforcement agency that prioritizes remedies to workers over civil penalties to the enforcement agency is New York State's Department of Labor (DOL). According to a DOL official, enforcement agencies may settle for lower civil penalties because this can decrease the time it takes to get remedy money into the hands of an employee, which could be the difference between the employee paying rent and being homeless.

Seattle's labor standards ordinances provide OLS discretion in applying penalties to employers. However, OLS' use of this discretion to impose a relatively low amount of civil penalties and fines that would go to the City, approximately \$44,000 in 2018, may conflict

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<sup>2</sup> These laws included: Paid Sick and Safe Time (SMC 14.16), Fair Chance Employment (SMC 14.17), Minimum Wage (SMC 14.19) and Wage Theft (SMC 19.20) ordinances.

with the ordinances' intent that OLS use civil penalties and fines to provide stronger incentives for employers to comply with applicable labor standards laws and that it imposes the costs of enforcement on violators. OLS' practice is also counter to the recommendations of some labor standards experts that enforcement agencies use all of their available enforcement tools, such as civil penalties, to ensure compliance.

OLS should seek clarification from the City Council regarding the legislative intent of the City's labor standards laws for assessing civil penalties and fines that would go to the City to violators of those laws. The merits of OLS' current approach of emphasizing assessing employers for remedies that are paid to employees while deemphasizing civil penalties and fines that would go to the City is a policy discussion OLS should initiate with the City Council.

### Recommendation 3

**The Office of Labor Standards (OLS) should seek clarification from the City Council to determine whether OLS' policy of emphasizing assessing employers for remedies that are paid to employees while deemphasizing civil penalties and fines that would go to the City is consistent with the intent of the City's labor standards laws.**

#### **OLS Waives Civil Penalties in Favor of Timely Remedies to Employees**

Seattle's labor standards laws allow, but do not require, the City to waive civil penalties and fines on employers if their payments of remedies owed to employees are timely. This is different from Los Angeles and San Francisco's laws that allow penalties to continue to accumulate until the date immediately preceding the date that the wages are paid in full to employees. In Seattle, the OLS Director may waive the total amount of civil penalties and fines due to the City if the employer pays within 10 days. If the employer pays in 15 days, the Director may waive half of the civil penalties and fines. However, if the employer pays after 15 days, the OLS Director cannot waive any civil penalties or fines.

#### **High Threshold for Violations Reduces the City's Ability to Impose Civil Penalties**

We found other reasons why civil penalties and fines paid to the City are minimal. We reviewed the records of 35 employers with cases opened in 2013 and closed through first quarter 2018 involving multiple allegations and evidence of non-compliance. We found that only six employers were assessed civil penalties and fines to the City. Our review of closed case records, case files on employers with multiple allegations of violations, and records of financial remedies assessed, also revealed the following:

- Due to remedy provisions in the City's initial labor standards laws (e.g., Paid Sick and Safe Time), settlements could involve no financial remedy to be paid to employees or civil penalties

and fines to the City, even if there was evidence of prior noncompliance.

- OLS does not always take prior violation history into account as much as Los Angeles and San Francisco when assessing penalties. Therefore, repeat violators may not be treated as harshly as repeat violators in these two jurisdictions.
- Because of the City's historical practices of settling cases without requiring admission of a violation, more recent settlements involving employers with previously settled cases were treated as first time offenses and lower civil penalties may have been assessed.
- The City's labor standard laws set a high threshold for a violation to be considered a second violation because they can involve higher civil penalties than first time violations. For example:
  - If the subsequent violation occurs in a different location within the same business, and the violation is with the same law, it is considered a second violation. However, if the initial and subsequent violations were for different laws, then they are both first violations in each location for the same business. Also, if the businesses are part of a franchise and the franchises have different owners, subsequent violations are considered first violations.
  - Complaints that were resolved with advisory letters or compliance letters (i.e., a non-adversarial letter to an employee informing them of the alleged violation and how to comply) were not considered violations. Therefore, subsequent violations are not considered second violations, even if the law that was violated was the same law that was addressed in the advisory/compliance letter.
  - When a new labor standards ordinance is put into place, sometimes there is a grace period before penalties are imposed. Noncompliance that occurs during the grace period are not considered "first" violations.

### **Other Enforcement Tools at OLS' Disposal Not Being Used**

A tool available to OLS to increase employer cooperation and compliance is to require bonds from employers that it is investigating, at the initiation of the investigation. As of December 2018, OLS has not used this tool. The inability or unwillingness of OLS or the City to use all tools available to it can, in some cases, limit OLS enforcement and compliance efforts and lengthen the time of investigations.

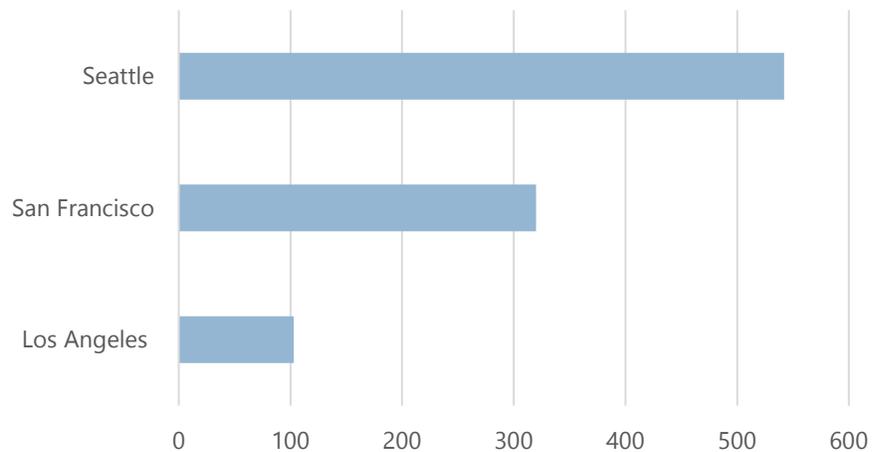
**Recommendation 4**

**The Office of Labor Standards should work with the City Attorney's Office to facilitate the use of a greater range of the enforcement tools available to the City of Seattle, to increase the City's assessment of civil penalties to the City.**

**OLS Could Use Enforcement Tools to Help Reduce the Number of Days to Resolve Investigations**

OLS officials stated that they have worked to reduce the average number of days it takes to resolve investigations but that getting employers to respond to document requests is an issue. OLS' investigations of minimum wage and paid sick leave/paid sick and safe time (PSST) cases closed in 2018 took significantly longer to resolve and close than those of Los Angeles' Office of Wage Standards (OWS) or San Francisco's Office Labor Standards Enforcement (OLSE). As Exhibit 8 shows, in 2018, OLS data showed that it took an average of 542 days to investigate and close paid sick and safe time and minimum wage cases, compared to San Francisco's 320 days, and Los Angeles' 103 days. According to OLS, because investigators aggressively worked to reduce the backlog of cases from as far back as 2015, the 2018 average is higher than other years. In 2017, the average days to investigate and close cases was 375 days. OLS recently reported that for minimum wage and paid sick and safe time cases that were opened and closed between January 1, 2018 through June 30, 2019 the average days of investigations was 194 days for minimum wage and 186 days for paid sick and safe time cases, slightly above OLS' goal to close investigations within 180 days. However, one-third of the total minimum wage cases and one-fourth of PSST cases opened in 2018 remain open as of July 2019.

**Exhibit 8: 2018 Average Days to Investigate and Close Paid Sick Time and Minimum Wage Cases**



Source: Office of Labor Standards, Office of Labor Standards Enforcement, and Office of Wage Standards, graphic by Office of City Auditor

In Seattle, when employers don't cooperate in providing records for OLS investigations, this could lead to an OLS Director's Order that employers pay employees what OLS believe is owed to them. In addition, OLS may impose a \$1,000 penalty to uncooperative employers as follows:

*A respondent who willfully hinders, prevents, impedes, or interferes with the Director or Hearing Examiner in the performance of their duties under this Chapter 14.19 shall be subject to a civil penalty of not less than \$1,000 and not more than \$5,000. SMC 14.19.080 E.*

According to Seattle Labor Standard Rule (SHRR 140-115), if an employer fails to respond to a notice of investigation, or request for information within ten days, or fails to maintain and provide records that establish compliance with the relevant ordinance(s), and the respondent has been served pursuant to SHRR 140-045, the Director may enter a Default Determination and Order that the respondent has violated the ordinance(s) as alleged. To date, OLS has not issued such a determination and order although OLS has stated that some respondents' untimely response is an issue.

In Los Angeles and San Francisco, employers tend to cooperate with investigations because penalties can accumulate for each employee and each day the employer is not in compliance, including the time during investigations that the agency deems the employer is not in compliance. Therefore, employers have an incentive to provide documentation and comply quickly. In comparison, in Seattle, OLS can impose a civil penalty of \$1,000 but not more than \$5,000 for hindering, preventing, impeding, or interfering with an investigation.

## Recommendation 5

**The Office of Labor Standards (OLS) and the City Attorney's Office should work together to propose to the City Council changes to the City's labor standards laws that would help encourage employers to cooperate with OLS by allowing for the daily and per employee accumulation of penalties while employers remain out of compliance with the City's labor standard laws.**

## 4. Resolutions That Promote Ongoing Compliance

### **The City Should Eliminate the Use of Confidential Agreements**

One important element of strategic enforcement is ensuring that resolutions with employers promote broad compliance in the community. One method that agencies can use to achieve this is to communicate and be transparent about their enforcement activities and assessments of remedies and penalties for violations.

[A 2014 report from the National Employment Law Project \(NELP\)](#)<sup>3</sup> recommended that the City increase the transparency of its completed investigations. Seattle's OLS currently posts summaries of closed investigations on its website, and these can serve as deterrents to potential violators. We encourage OLS to continue this practice.

Another step the City can take to promote ongoing compliance is eliminating confidential agreements with violators. In 2017, a local news outlet reported that the City negotiated a confidential settlement with an employer for noncompliance of labor standards laws. Because confidentiality agreements may not be enforceable under the current Washington State Public Disclosure Act, it would be prudent not to use them.

The practice of allowing confidential agreements is not consistent with labor standards experts' recommendation to make settlements public so they can serve as a deterrent to potential violators. To promote broad compliance, the City needs to eliminate confidential agreements. In San Francisco, an Office of Labor Standards Enforcement (OLSE) official stated that all settlements are public documents and they do not negotiate confidential agreements.

## Recommendation 6

**The City should refrain from negotiating confidential settlements with employers and should make it clear to employers that such agreements are unenforceable.**

## 5. Building a Culture of Planning, Evaluation, and Review

### **OLS Should Use Planning, Evaluation and Review to Support its Strategic Enforcement Efforts**

Since its inception in 2015, OLS has been assigned a growing list of labor standards laws to enforce and received an increase in its budget, staffing, and contract funding for outreach with community-based organizations. With expanded responsibilities and resources, OLS needs a plan to ensure resources and organizational focus are properly aligned with priorities. OLS also needs to ensure budget decisions, including how much is allocated to enforcement efforts versus outreach efforts, are supported with planning and analysis to help OLS achieve their desired results.

As our benchmarking revealed, OLS is an outlier in some indicators compared to its peers (see Exhibit 3). One area, where OLS is an outlier is in how it assigns investigations. Both Los Angeles and San

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<sup>3</sup> <https://s27147.pcdn.co/wp-content/uploads/2015/01/Delivering-15-Community-Centered-Wage-and-Hour-Enforcement-Seattle.pdf>

San Francisco have organizational divisions and dedicated staff that only enforce Paid Sick and Safe Time (PSST) and Minimum Wage laws, while OLS investigators must work on the enforcement and investigations of all of Seattle's labor enforcement laws. This could prevent OLS from focusing on laws where it can have the greatest impact. OLS should examine which staffing strategy would be more effective; having some investigators who focus on PSST, Minimum Wage and Wage Theft or having all its investigators available to work on all labor standards laws.

OLS is also an outlier compared to its peers in the significantly smaller percentage of resources it spends on enforcement relative to outreach. The 2014 NELP report on Seattle's minimum wage enforcement recommended that the City increase its outreach resources. At that time, Seattle did not have a significant outreach budget. The NELP report noted San Francisco's community contracts totaled nearly \$500,000 and implied that Seattle's outreach contract budget could be increased to at least that amount. Since that time, OLS's outreach budget has grown to over 50 percent (i.e., \$3 million) of the office's budget of \$5.7 million in 2018. The budget for outreach contract providers has grown significantly from about \$300,000 in 2015 to \$2.3 million in 2018.

The growth in the budget for contractors to provide outreach was not based on an analysis of outreach needs or based on what other jurisdictions spend. Seattle outspends San Francisco and Los Angeles on outreach by over \$1 million per year. The rapid growth of the contractor outreach budget may be impacting OLS' ability to provide adequate oversight and accountability over those contracts. We discuss this further in the outreach section of this report starting on page 23.

OLS and City Council staff explained to us that the decision on how much funding to allocate for outreach with community organizations in 2017 and 2018 was the result of City Council budget actions. Without adequate analysis and planning to ensure its budget allocations and decisions are aligned with its priorities, OLS is at risk of minimizing the effectiveness of its strategic enforcement efforts.

## Recommendation 7

**The Office of Labor Standards (OLS) should devise a proposal to incorporate strategic planning, evaluation and review as an ongoing function of OLS management and should conduct the following assessments with a report to the City Council by September 2020.**

- **An assessment of alternative staffing strategies to improve the efficiency and effectiveness of its investigations, and**

- An assessment of the appropriate level of enforcement versus outreach resources needed to implement strategic enforcement and achieve desired outcomes.

## 6. Partnerships with Community Stakeholders and Other Agencies

### **OLS Can Increase Partnerships to Enhance Its Enforcement Efforts**

Increasing partnerships with City departments and external stakeholders to obtain their help with enforcement efforts is a key element of strategic enforcement. Currently, OLS contracts with community organizations for outreach but not enforcement (see Appendix C for a list of Seattle’s outreach contractors). Although several of the contract outreach providers organizations are representative of Seattle’s racial and ethnic diversity, some contract providers may not have the industry-specific knowledge or legal expertise necessary to assist OLS with its enforcement efforts. However, because of the outreach contract providers’ close ties with workers, it would be worthwhile to develop contractors’ capacity to gain industry specific knowledge or legal expertise to assist in enforcement efforts.

Labor standards experts concur that partnerships with other government agencies, stakeholders, including worker organizations with industry-specific expertise, and community organizations with close ties to workers, can enhance enforcement efforts. They argue that involving these entities in identifying noncompliance and subsequent case preparation, witness interviews, or co-enforcement can free up resources to direct its resources to industries with higher rates of noncompliance.

The 2014 NELP report on Seattle’s minimum wage enforcement recommended that the City have community organizations do outreach, case preparation, witness interviews, initial negotiation and triage to free up City staff to prepare and file solid cases.

### **OLS Could Build Industry Specific Expertise among its Contractors**

Several labor standards experts also recognize the growing number of complex relationships between employers and employees resulting from businesses that are outsourcing, fix-term contracting, and using temporary staffing to cut costs and limit their liability. Understanding these relationships can be key to effective and efficient enforcement of labor standard laws and enforcement agencies need to work with other government agencies and organizations familiar with industry specific structures to assist in the enforcement of labor standards laws.

OLS has built relationships with community organizations that have strong ties to workers and uses them to provide outreach to Seattle's most vulnerable workers. However, OLS could help these organizations gain more industry-specific expertise and develop the organizations' abilities to assist OLS in its enforcement efforts. For example, Los Angeles contracts with organizations with expertise in the garment industry, car wash sector, and warehouse workers. These organizations provide Los Angeles investigators with training in those sectors, so the investigators can be more efficient in their investigations.

We reviewed the organizations that Los Angeles and San Francisco contract with and found that Los Angeles has several industry-specific contractors and San Francisco contracts with several organizations that address legal issues (see Appendix C for a list of Los Angeles' and San Francisco's outreach contractors).

### Recommendation 8

**As part of its Comprehensive Outreach Plan, the Office of Labor Standards (OLS) should develop a long-term strategy to develop the capacities of worker and community organizations it contracts with to 1) increase OLS' understanding of industries at high risk of labor standard violations, and 2) to assist OLS in its enforcement efforts, including identifying violations, subsequent case preparation, and witness interviews.**

### **OLS Could Work with Additional City Departments and External Government Agencies on Enforcement**

An enforcement agency's work with other government entities is key to effective enforcement. While OLS works with the City's Department of Finance and Administrative Services (FAS) to stop the renewal of business licenses of businesses that do not comply with OLS Director's Orders, the City labor standards laws could be changed to allow other City departments to cooperate with OLS's enforcement efforts. For example, OLS could request that the Seattle Department of Construction and Inspections delay issuing building permits to non-complying businesses. San Francisco's labor standards laws require all city agencies and departments to cooperate with the revocation or suspension of any registration certificates, permits, or licenses held or requested by the employer until labor standards violations are remedied. In addition, San Francisco's Office of Labor Standards Enforcement (OLSE) works with its Health Department to identify potential labor standard violations when they investigate health violations.

According to OLS, it contacted Public Health – Seattle & King County several years ago about working cooperatively on labor standards issues, but they did not reach agreement about this. It makes sense for OLS to coordinate with Public Health because in 2017 and 2018 OLS investigations resulted in more settlements and violations in the

food services and drinking places industries than any other industry. According to a Public Health official, the results of its food safety inspections are publicly available. OLS may be able to use this information to identify high risk businesses.

#### Recommendation 9

**The City should direct all City departments to cooperate in the enforcement of labor standards laws. The City should work with Public Health – Seattle and King County officials or use food safety inspection data to identify employers who potentially may be violating labor standards laws.**

## 7. Improving Strategic Communications

### **OLS' Website Could be Improved to Provide Clearer Information about its Enforcement Processes and to Report on Key Performance Indicators**

We reviewed OLS' website and found it could be improved to clarify the information it provides on OLS' enforcement process and approaches, including its efforts to move towards strategic enforcement and directed investigations. In addition, the process described on the website to file a complaint or submit an inquiry to OLS about a potential violation is confusing. During our audit, we found the OLS website had links to a Seattle Office for Civil Rights complaint form rather than the OLS inquiry form. We also found that the OLS inquiry form was provided only in English. Because the population most affected by the City's labor standards efforts has a significant number of limited English speakers, it is important that the complaint or inquiry process and related forms be clear and available in multiple languages.

We reviewed the websites for Los Angeles and San Francisco and found that Los Angeles allows labor standards complaints to be filed online through a form that is available in over 100 languages. San Francisco's labor standards complaint form is available in four languages (English, Spanish, Chinese and Tagalog). We believe that for race and social justice purposes, OLS should provide its inquiry form and information on its enforcement complaint process, enforcement strategies, and approaches in multiple languages.

OLS can also improve its website by providing more information about performance indicators. Specifically, OLS' website should provide information on the civil penalties and fines it assessed going to the City and the number of directed investigations it closed. Also, as of 2018, OLS' performance dash board no longer includes the average number of days to resolve investigations. These data points can inform the public about OLS' performance, keep OLS accountable, and assist OLS in its strategic enforcement efforts.

#### Recommendation 10

**The Office of Labor Standards (OLS) should improve its website to clarify its enforcement processes, and report on key performance indicators, such as the amount of civil penalties to**

the City assessed. It should also report the number and results of directed investigations, and the average number of days to resolve investigations. This information and the OLS complaint/inquiry form should be provided in multiple languages.

## 8. Instituting Strategic Outreach

### OLS' Outreach Efforts Would Benefit from Comprehensive Planning

At OLS, outreach services to employees and employers are provided by OLS staff and through OLS' contracts with community organizations. OLS' Community and Business Liaisons provide oversight and management of those contracts. As shown in Exhibit 9, we estimated that OLS spent over \$3 million in 2018 on both its internal and external outreach, which represented over half of OLS' total budget of about \$6 million.

**Exhibit 9: Estimated 2018 OLS Outreach Budget**

Outreach Function	Estimated Budget
Outreach Contracts	\$2,330,000
Internal Outreach Staff – Primary	\$315,000
Internal Outreach Staff - Secondary	\$315,000
Other Outreach Expenses	\$94,000
<b>Total</b>	<b>\$3,054,000</b>

Sources: Office of Labor Standards, Seattle Open Data, and The Tacoma News Tribune

OLS' large outreach budget and the number of contract providers used to conduct employer and employee outreach requires planning and oversight to maximize the OLS outreach program's effectiveness and accountability. With the increase in the number of labor standard laws and OLS' outreach budget came additional responsibilities and challenges for OLS staff.

OLS does not have a comprehensive outreach plan that coordinates the extensive amount of outreach work performed by OLS and its outreach contract providers, and among the multiple contract providers themselves. Such a plan should detail how OLS coordinates, manages, and oversees its outreach contract providers. The plan should also include ways to build contractors' capacity to gain industry-specific expertise and assist OLS in its enforcement efforts (as described in Recommendation 8).

In the following sections we examine OLS' outreach efforts and make recommendations to increase the effectiveness of the work performed by OLS' internal and external outreach providers. The issues identified in our report can be best addressed by a thorough review of OLS' outreach efforts and documented in a comprehensive outreach plan.

## Recommendation 11

**The Office of Labor Standards (OLS) should create a comprehensive outreach plan that directs and coordinates the work of OLS' internal and external outreach functions with the goal of improving organizational efficiencies, oversight, and performance, and the coordination between OLS and its external contract outreach providers, as well among the outreach providers.**

### **OLS Should Examine the Effectiveness of Contracting for Outreach Services Directly with Multiple Service Providers**

We compared Seattle's outreach staff to that of Los Angeles and San Francisco and found that the number of internal outreach staff in Seattle is comparable with the number of internal outreach staff in Los Angeles, and that San Francisco has no dedicated internal outreach staff. San Francisco relies on its compliance (enforcement staff) officers to provide outreach services such as technical assistance and responding to inquiries, and it also relies on other city offices such as its Business Office and Office of Workforce and Economic Development to answer basic inquiries from employers.

Another difference between Seattle and San Francisco has to do with the number of contracts each office manages. While Seattle contracts with eight main contractors for worker outreach and five contractors for outreach to businesses, San Francisco only contracts with one organization that subcontracts with six organizations. Los Angeles contracts with providers listed on a pre-qualified consultant list.

According to OLS, its decision to contract with multiple organizations was based on a Race Equity Toolkit (RET) analysis, which determined the number of contractors. However, OLS could not provide us with documentation of the RET analysis. OLS did provide us with some information about the importance of contracting with community service organizations for outreach that have ties with worker populations.

We do not question the need for contractors to conduct outreach. However, an analysis is needed to determine whether contracting with multiple organizations through a prime contractor or contracting directly with several providers would be more efficient and effective. While OLS' outreach contractors meet as a group and with OLS to discuss issues, there is minimum coordination in terms of

which businesses contractors will visit. We reviewed several invoices prepared by contractors and found one contractor that complained about businesses getting “outreach fatigue” due to the large number of organizations outreaching to the same businesses. In our review of several invoices, the specific locations of the outreach were not provided; instead, general locations or neighborhoods were listed, which makes it difficult for OLS to ensure coordination between contract providers.

One of the advantages of having a prime contractor who then contracts with subcontractors is that the prime contractor can facilitate and coordinate the work of subcontractors, which reduces the number of contracts internal staff directly manage. Such an arrangement would allow OLS to provide greater coordination between internal and external outreach efforts and enhanced oversight of its contractor and subcontractors.

## Recommendation 12

**The Office of Labor Standards (OLS) should conduct an analysis of the merits of contracting with a prime contractor who then subcontracts with other contractors versus contracting directly with multiple contractors. This analysis should consider racial equity implications, and OLS’ ability to oversee multiple contractors and hold them accountable. The results of this analysis should be submitted to the City Council.**

## **OLS’ Management of Outreach Contractors Could be Improved**

OLS contracts with external community organizations to provide outreach to both employees and employers. We call this external outreach because the outreach is provided on a contractual basis by organizations external to the City of Seattle. OLS contracts with community organizations to provide education and technical assistance to Seattle’s workers about their labor standards rights through OLS’ Community Outreach Education Fund (COEF). These organizations focus on reaching out to low wage working communities that are vulnerable to experiencing and have disproportionately experienced workplace violations.

In addition, to improve compliance with labor standards law, OLS contracts with community organizations to provide training and technical assistance to employers, especially those not typically served by traditional outreach methods (i.e., businesses owned by low-income and historically disenfranchised communities), through the Business Outreach Education Fund (BOEF).

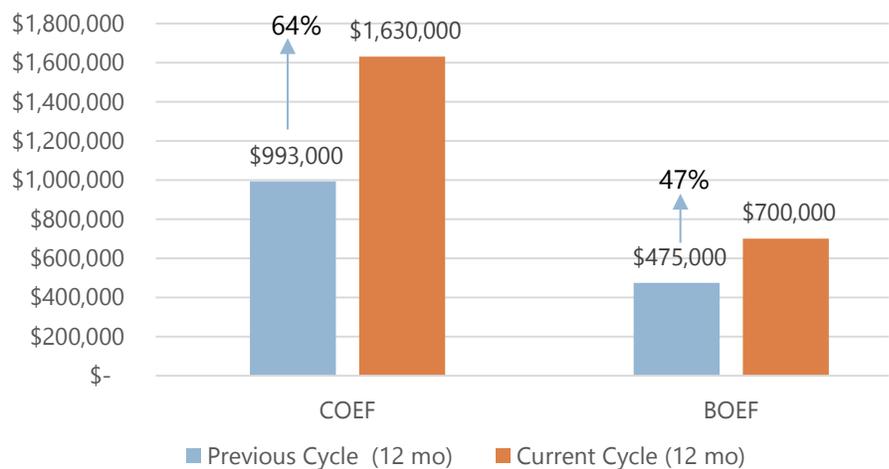
Previously, the timing of the COEF and BOEF contract cycles did not align and were not based on the calendar year. The COEF’s most current completed contract cycle was for two years and started in March of 2017 and ran through March 2019. The BOEF’s cycle started in March of 2018 and runs through March 2020. From 2016 to 2017,

the COEF budget increased from about \$1 million in 2016 to about \$1.63 million for the contract year, representing a 64 percent increase from the previous funding cycle. The BOEF contract cycle for 2018/2019 also experienced a significant increase of about 47 percent from the previous contract cycle.

As Exhibit 10 shows, in a 12-month period of the current contract cycles for COEF and BOEF, which are 24 months, the total contracted amount for outreach was over \$2.3 million. This was a 64 percent increase from the previous contract cycle for COEF and a 47 percent increase for BOEF.

With the extension of the 2019 COEF’s contracts, the COEF contracts now align with the calendar year. OLS is working on also aligning the BOEF contracts.

**Exhibit 10: Amount and Percentage Change of OLS Outreach Contracts from Previous to Current Contract Cycles**



Source: Office of Labor Standards, Graphic by Office of City Auditor

OLS could improve its management and oversight of its outreach contractors by requiring in its contracts that contractors submit evidence of their outreach activities with their invoices. Specifically, we found that OLS did not require contractors to submit evidence of their outreach activities. In April 2019, OLS provided us with samples of the evidence it collected of outreach activities from its contractors. However, it is not clear whether OLS now formally requires outreach contractors to provide evidence of outreach activities.

Further, during this audit, we found OLS did not conduct audits of its contractors or until 2018 attend contractors’ classes and trainings.

We were unable to verify some activities reported in some contractors' invoices. We reviewed the event calendars and social media on which the outreach provider advertised events, but those activities were not listed in the event calendars or social media.

Additionally, the quality of the complaint referrals noted in the invoices that contractors made to OLS is unclear because OLS does not track contractor referrals of possible violations to OLS. Finally, most of the invoices did not provide the cost breakdown of certain activities or the duration of contacts with employees or businesses. For example, if a contractor states that it placed an ad in a local radio station, the cost of that ad should be listed in the invoice, and a receipt should be provided for that expense.

### Recommendation 13

**The Office of Labor Standards should increase its outreach contractor oversight, including requiring evidence of outreach activities, such as flyers, photos and sign-in sheets. It should also require an accounting of and receipts for contractor expenses, and conduct audits of its outreach contractors.**

### Outreach Contractor Intake Reporting Could Be Enhanced

We reviewed an OLS outreach report, which summarized the efforts of its contract providers, and contractor invoices to learn about the information outreach contractors submit to OLS. We found that outreach contractors do not during intakes collect demographic data about individuals raising possible labor standard violations. Demographic information on intakes would be helpful to OLS because it can help inform its strategic enforcement planning efforts. For example, it would help OLS understand which racial/ethnic groups and industries are subject to the most alleged violations.

In the invoices we reviewed, contractors provided minimal information about their intakes with employees. Contractors also did not report the reasons why employee intakes were referred to organizations other than OLS. The OLS outreach report does not discuss how allegations from intakes were resolved by the contract organization. If a worker does not opt to file a claim with OLS, but believes their employers violated a labor law, contractors should nevertheless obtain information about the employer and submit that information to OLS. This information could be analyzed to assist OLS in making decisions regarding its strategic enforcement efforts and about whether its outreach efforts should be refocused

### Recommendation 14

**The Office of Labor Standard's (OLS) reporting tools of contractor performance should be improved to better measure the effectiveness of its outreach efforts. Specifically, OLS and its**

contractors should more consistently track demographic information of employee intakes, and how employee intakes were addressed, including the reasons for referrals to other agencies.

## OBJECTIVES, SCOPE, AND METHODOLOGY

### Objectives

The objective of this audit was to assess the effectiveness of Seattle's Office of Labor Standards' (OLS) enforcement of the Minimum Wage Ordinance. City Council Resolution 31524 called for a review of the frequency of non-compliance with Minimum Wage regulations through a review of "formal complaints" to the City. Because OLS' enforcement strategy includes investigating potential violations in addition to those identified in a complaint, when appropriate, this audit also included a review of the enforcement of other City labor standards regulations.

### Scope

We reviewed OLS' enforcement and outreach efforts. We reviewed OLS data from 2016 through the first quarter of 2018 and in some cases through the end of December 2018. We also analyzed data and reviewed case files that were filed in 2013 through the first quarter of 2018 for employers with more than one case file. In some situations, OLS updated information it had provided us during the audit with information through the end of 2018.

### Methodology

Our conclusions, findings, and recommendations are based on the evidence we obtained in our audit work, which included the following:

- Review of pertinent Seattle Municipal Code, OLS program documents, and information provided on OLS' website.
- Review of OLS enforcement and outreach policies and procedures.
- Review of articles, books, and documents related to labor standards and strategic enforcement published by advocates, scholars, and individuals regarded as field experts. A list of these materials is found in Appendix C.
- Review of labor standards closed case records from 2014 through the first quarter of 2018.
- Review of financial remedies (i.e., fines and penalties assessed on employers) resulting from the City's labor standards enforcement efforts, from 2013 through the first quarter of 2018.
- Review of OLS' budget, staffing, and information systems.
- Review of OLS' outreach efforts, including OLS reports on outreach, a sample of OLS outreach contract provider invoices

and information such as social media and websites of organizations where outreach activities occurred.

- Interviews with an Associate Professor who has written extensively on labor standards, and with officials from OLS, the Seattle City Attorney's Office, the cities of Los Angeles and San Francisco, a worker industry organization that has a subcontract with an OLS community outreach provider, and a labor standards advocacy organization.

We also benchmarked aspects of OLS' operations with two West Coast cities with labor standards enforcement agencies: San Francisco's Office of Labor Standards Enforcement and the Los Angeles Office of Wage Standards. We selected these cities because they have minimum wage ordinances [with a phased in \\$15 minimum wage law](#) and are cities with similar values and demographics as Seattle. We also asked officials from OLS, the City/County of San Francisco Office of Labor Standards, and the National Employment Law Project, which agencies they believe engaged in labor standards enforcement best practices, and they recommended we contact the City of New York (NYC) Office of Labor Policy and Standards (OLPS) within the Department of Consumer Affairs. NYC does not enforce minimum wage and so they provided us with limited information with which to benchmark.

Although we reviewed all the data for cases within our scope of work, we used the judgmental method to select a sample for our case file review of closed cases. Therefore, the results of our case file review of closed cases cannot be projected to the population of all employers with labor standard cases, as we did not select a random sample. Rather, we designed our sample to ensure we included employers with multiple City labor standard complaints regardless of outcome.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our finding and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objectives.

## APPENDIX A

### Department Comments and Office of City Auditor Responses to Comments

#### Office of Labor Standards Comments



Date: October 24, 2019

To: David G. Jones, City Auditor  
Virginia Garcia, Assistant City Auditor

From: Martin S. Garfinkel, Director, Office of Labor Standards (OLS)

Re: Seattle Minimum Wage Enforcement Audit

Thank you for the opportunity to review and respond to the final draft of the Seattle Minimum Wage Enforcement Audit. Our office takes pride in its willingness to innovate and to make changes in our approaches and procedures if needed to achieve our mission. We respond below to the Audit's fourteen (14) recommendations, as well as to its narratives and conclusions.

#### Recommendations and Responses

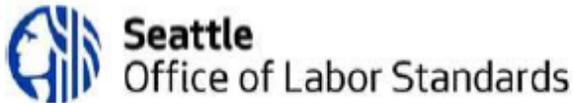
**Recommendation 1:** OLS should minimize or eliminate the use of the "other" category and collect demographic and industry information during worker inquiries to ensure it has the information needed to inform its strategic enforcement and outreach efforts.

**OLS Response: Agree.** We agree that intake information may provide helpful insights. As we informed the auditor, the over-use of the "other" category in the past was due in part to a database transition and in part to staff oversight. In any event, we have instructed staff not to use this category in the future. With respect to demographic data, we will continue to collect this information but only on a voluntary basis. We recognize that many workers (understandably in this political environment) do not wish to provide this type of information to a government agency.

**Recommendation 2:** OLS should develop a directed investigations implementation plan for the labor standards ordinances it enforces and document the effectiveness and results of its directed enforcement efforts in its OLS dashboard.

**OLS Response: Agree in part.** We agree that directed investigations are important as part of strategic enforcement, that OLS should do more directed investigations, and that such investigations should be carefully planned and documented.

The audit does do not, however, sufficiently place directed investigations into the larger context of "strategic enforcement." The term "strategic enforcement" recognizes that



government's limited resources should be used in an intentional and strategic manner that brings about the greatest possible impact, particularly in high priority industries (i.e., those where wage violations are known to occur but are under-reported). A directed investigation is one tool of strategic enforcement. We do not believe there should be a rigid ratio of directed versus complaint-based investigations.

When asked to review this portion of the draft audit, national expert Terri Gerstein (the Director of the State and Local Enforcement Project at Harvard Law School and, formerly, labor bureau chief at the N.Y. Attorney General's office and Deputy Labor Commissioner at the N.Y. Labor Department), comments:

*[A] formulaic focus on directed versus complaint-based investigations is too narrow an approach. One can easily imagine directed investigations in which the targets are poorly chosen, recoveries are limited, and media coverage non-existent. Compare this with a package of complaint-based and directed investigations in the same industry, with meaningful recoveries, robust measures for future compliance, widespread post-investigation outreach to affected workers and employers in the industry, and media coverage alerting workers and employers about the law. The goal is to use resources wisely to deter violations and a combination of approaches is important for reaching this goal.*

Emphasis added.

When the City Council passed Resolution 31662 (referenced in the audit) in support of proactive investigations in 2016, it had no way of knowing whether OLS would receive complaints from workers employed in high priority industries. In fact, recent experience has shown that we receive many complaints from business sectors that would otherwise be candidates for directed investigations. Thus, in those sectors, OLS is in the position of using complaint-driven investigations (which benefit from having witnesses who have stepped forward to provide information) to root out wage violations.

In addition, the audit does not recognize that OLS makes frequent use of another important tool of strategic enforcement, namely, an active media strategy in order to help generate a culture of compliance among businesses. As Ms. Gerstein comments: "I cannot emphasize enough the importance of press releases and media coverage in deterring violations and driving compliance. I have vast anecdotal evidence of the impact of media based on my years enforcing New York's laws, but there is also academic literature supporting the notion that press drives compliance."

Further, the audit's narrative also neglects to mention that OLS has already undertaken planning for directed investigations. For example, we have created an internal Strategic Enforcement Coordinating Committee for just this purpose. Also, we have had many trainings



and meetings with community partners to discuss the need for directed investigations, and to educate them on the type of investigations that would qualify for such treatment. And, we are in the early stages of a long-term directed investigation campaign in a high priority industry (soon-to-be disclosed) where we have good reason to believe violations occur and are under-reported.

Finally, OLS's approach in this area has been aided by several racial equity analyses over the past two years, as well as by trainings from two nationally recognized wage enforcement experts, i.e., Ms. Gerstein as well as Professor Janice Fine from Rutgers School of Management and Labor Relations and Director of Research and Strategy at the Center for Innovation in Worker Organization.

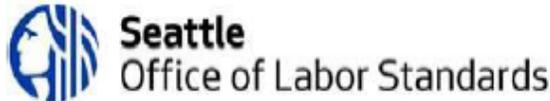
**Recommendation 3:** OLS should seek clarification from the City Council to determine whether OLS' policy of emphasizing assessing employers for remedies that are paid to employees while deemphasizing civil penalties and fines that would go to the City is consistent with the intent of the City's labor standards laws.

**OLS Response: Disagree.** While OLS is always interested in working with elected officials to ensure the efficacy of our labor standards, we disagree that there is need to seek clarification from City Council with respect to existing remedies and civil penalties.

The audit appears to raise two issues: (a) whether OLS should redirect to workers the penalties and fines that could be made payable to the City; and (b) whether OLS is "deemphasizing civil penalties and fines that would go to the City."

Before addressing these issues, two clarifications are necessary. First, the audit fails to explain that our ordinances provide that some "penalties" are payable to workers and others are payable to the City; and that "fines" are payable to the City. Also, the audit does not distinguish between the legal requirements for remedies in the context of a formal determination as compared to those in a settlement negotiation. Specifically, where the ordinances provide that a penalty or fine must be paid to the City, this requirement only applies to formal determinations. The ordinances do not, however, limit the agency's ability to negotiate settlements in which penalties and/or fines are paid to workers.

With respect to the first issue cited above (i.e., redirecting remedies to workers), the audit itself demonstrates that this methodology (i.e., maximizing the worker's recovery in settlement) is consistent with the approach of another wage enforcement agency, San Francisco's Office of Labor Standards Enforcement (OLSE). According to the audit, OLSE also prioritizes "get[ting] the workers the money employers owe to them." Audit, p. 13. We agree with this statement, and it is difficult to understand why the audit would suggest a different approach.



Second, with respect to some reductions in civil penalties and fines to achieve a settlement, this approach is also desirable and is consistent with another wage enforcement agency cited in the audit, i.e., the New York State Department of Labor. As the audit states, “enforcement agencies may settle for lower civil penalties because this can decrease the time it takes to get remedy money into the hands of an employee, which could be difference between the employee paying rent and being homeless.” Audit, p. 13. This is the same approach taken by OLS and, again, the audit does not explain why it should be changed.

At times, a reduction or waiver of civil penalties makes it possible to achieve a settlement. This is preferable to taking an inflexible stand in a negotiation, thereby extending the investigation for months or even years. In Seattle, the ordinances give OLS the discretion to settle cases prior to the issuance of a formal determination. OLS uses its discretion to settle cases with three goals in mind: (1) to achieve a resolution efficiently, (2) to obtain employer compliance more quickly, and (3) to reimburse workers their wages owed as soon as possible.

Because the audit does not demonstrate that OLS’s current approach is misplaced, we do not agree to the recommendation.

**Recommendation 4:** OLS should work with the City Attorney’s Office to facilitate the use of a greater range of the enforcement tools available to the City of Seattle, to increase the City’s assessment of civil penalties to the City.

**OLS Response: Agree.** OLS has worked in the past and will continue to work with the City Attorney’s Office to maximize the potential of our enforcement tools to remedy workplace violations. Although we agree with the recommendation, we believe further context is required to understand how OLS has exercised its discretion in deciding whether to impose penalties on employers who have had a “prior violation history.” Audit, p. 14.

First, the Harmonization Ordinance, which went into effect on January 16, 2016, marked a significant change in how the City was able to use civil penalties. Prior to that date, the labor standards had different remedies and only some included a provision calling for escalating penalties for repeat violators. The Harmonization Ordinance created a new uniform remedy structure applicable across all labor standards. Thus, for reasons of due process and fairness, an employer who violated the PSST ordinance in 2014, and did so again in 2016 was not, and legally could not be, treated under the new Harmonization Ordinance as a repeat offender and subject to higher penalties based on the second violation.

Second, the ordinances specifically provide an escalating penalty amount for subsequent violations but only when the later violations involved the same ordinance. See e.g., SMC 14.19.080(B) (“[f]or subsequent violations of this Chapter 14.19, the Director shall assess an amount of liquidated damages in an additional amount of twice the unpaid wages”) (Emphasis added.)



Third, the audit expresses concern that OLS's use of "advisory letters" has undermined its ability to assess higher penalties for repeat violators. Audit p. 15. In fact, advisory letters were only used in the early investigations involving potential PSST violations (i.e., not for Minimum Wage or other ordinances), and were employed because policymakers wanted to create a "soft launch" for the PSST law. Thus, the audit's argument conflates two distinct concepts. While one can question whether policymakers were right to insist upon such a "soft launch," it does not follow that OLS should count the conduct giving rise to an advisory letter as a first violation. The point of that "soft" approach was not to treat the underlying conduct as a violation of law.

Finally, the audit overstates the significance of case files upon which it relies, many of which date back several years. For example, in one case, an employer was investigated for possible violations of Wage Theft and PSST. The PSST case was dismissed and therefore only the Wage Theft case was settled, with the result that no second violation occurred. In several other cases, the employers were found to have violated different ordinances and/or some of the investigations were settled before the Harmonization Ordinance went into effect. Consequently, it would not have been appropriate to treat the employers as repeat violators.

**Recommendation 5:** OLS and the City Attorney's Office should work together to propose to the City Council changes to the City's labor standards laws that would help encourage employers to cooperate with OLS by allowing for the daily and per employee accumulation of penalties while employers remain out of compliance with the City's labor standards laws.

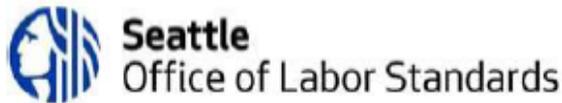
**OLS Response: Agree in part.** We welcome the addition of tools for promoting employer cooperation and to reduce case age.

As the audit recognizes, OLS has made substantial progress in reducing the average age of our investigations. We have streamlined our processes, have closed out the backlog of older cases, and continued progress is anticipated. The large spike in 2018 in the average age of resolved cases (i.e., 542 days) reflects our success in closing out very old investigations, some dating back to 2015. Since that time, we have seen a significant reduction in the average age of resolved cases.

In addition, we have closed out older cases without sacrificing effectiveness. As the audit shows, our total assessments rose to \$2,130,626 in 2018 from \$504,325 in 2017. The assessments have increased again in 2019, with assessments totaling \$2,394,178 through August 30, 2019.

**Recommendation 6:** The City should refrain from negotiating confidential settlements with employers and should make it clear to employers that such agreements are unenforceable.

**OLS Response: Agree (but this recommendation is unnecessary).** We agree that confidential settlements should not be used. However, this recommendation is unnecessary because, as a matter of practice and policy, OLS does not use confidential agreements. To our knowledge,



there was only one exception (occurring in 2017) to this practice out of hundreds of case resolutions.

**Recommendation 7:** OLS should devise a proposal to incorporate strategic planning, evaluation and review as an ongoing function of OLS management and should conduct the following assessments with recommendations to the City Council by September 2020.

- An assessment of the relative merits of assigning all OLS investigators to investigate all labor standards laws versus creating a dedicated unit for some OLS investigators to investigate a narrower list of labor standards laws that would include PSST, MW and Wage Theft.
- An assessment of the appropriate level of enforcement versus outreach resources needed to implement strategic enforcement and achieve desired outcomes.

**OLS Response: Agree.** We agree that it is useful and necessary to periodically assess “alternative staffing strategies,” as well as the “level of enforcement versus outreach resources.”

However, the audit’s narrative appears to recommend the creation of “dedicated units” of investigators focused on specific ordinances, as opposed to having well-trained generalists. We do not agree that such an approach makes sense, for several reasons. First, it would be impractical. Investigations involving three of our laws, Paid Sick and Safe Time (PSST), Minimum Wage and the Wage Theft ordinances, comprise most of our enforcement workload. To keep up with this volume, the entire enforcement team has to be capable of investigating cases involving each of these ordinances.

In addition, our current approach promotes efficiencies in case resolution. The overwhelming majority of our cases involve more than one ordinance. Rigid specialization would limit investigators’ ability to spot these violations and to handle multi-ordinance investigations.

Further, with dedicated units, there is no way to ensure in advance that our mix of cases matches investigatory expertise. At any one time, we could have more cases involving a particular ordinance than trained investigators to handle them. In that event, the existence of dedicated units would lead to an unequal distribution of cases among investigators.

Fourth, we have found that the assignment to investigators of a caseload with a diversity of issues is more interesting and engaging, thereby increasing job satisfaction and employee retention.

Finally, when asked to comment on this topic, Professor Fine expressed her strong preference for “unitary enforcement” (i.e. all investigators capable of investigating all ordinances):



*Unitary enforcement compels investigators to look at the business practices of a firm more broadly rather than isolated individual parts and to make judgments about why violations are happening and how firm practices can be improved. There is much more possibility for synergy with unitary enforcement and less potential for wasteful or adverse outcomes that sometimes arise when enforcement is divided such that groups of investigators focus only on certain laws. Ordinance-based teams have resulted in notable siloing. Investigators are not always sufficiently trained on laws outside of the law/s enforced by their team. Where employers have violated laws spanning multiple teams, siloing has sometimes resulted in insufficient referrals among teams such that employers were not held accountable for all violations.*

Emphasis added.

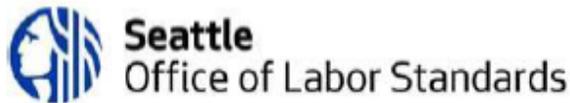
**Recommendation 8:** As part of its Comprehensive Outreach Plan, OLS should develop a long-term strategy to develop the capacities of worker and community organization it contracts with to 1) increase OLS' understanding of industries at high risk of labor standards violations, and 2) assist OLS in its enforcement efforts, including identifying violations, subsequent case preparation, and witness interviews.

**OLS Response: Agree (but this recommendation is not necessary).** OLS has been engaged in these and other steps to ensure that our community partners are educated about the elements of strategic enforcement so that they inform us about the industries that require our attention. This type of partnership is critical to an effective strategic enforcement plan.

As mentioned in our response to Recommendation 2 above, we have had numerous meetings and trainings with our community partners on this topic. In addition, we have created an internal committee, the Strategic Enforcement Coordinating Committee, to formulate and evaluate our strategic enforcement initiatives. Further, we have launched a Community Intake and Referral Process under which community partners will conduct intake interviews and share with us information obtained so that we may better identify companies and industries at high risk for labor violations.

**Recommendation 9:** The City should direct all City departments to cooperate in the enforcement of labor standards laws. The City should work with Public Health – Seattle & King County officials or use food safety inspection data to identify employers who potentially may be violating labor standards laws.

**OLS Response: Agree.** We currently engage in numerous collaborations with other City Departments and welcome opportunities to do so. With respect to the Seattle/King County



Public Health Department, we agree that a collaboration would be helpful, particularly in the area of PSST since we have a mutual interest in having restaurant workers receive and take the paid sick leave due to them. We have made three overtures for partnerships over the past several years. Our latest request is already bearing fruit. Specifically, we have started to plan cross-trainings of our staffs on both the PSST law and issues concerning infectious diseases in restaurants.

**Recommendation 10:** OLS should improve its website to clarify its enforcement processes, and report on key performance indicators, such as the amount of civil penalties to the City assessed. It should also report the number and results of directed investigations, and the average number of days to resolve investigations. This information and the OLS complaint/inquiry form should be provided in multiple languages.

**OLS Response: Agree.** Following a racial equity analysis of our website in 2018, we launched a website redesign that emphasizes improved accessibility, clarity, and alignment with our policy and enforcement priorities. We have completed the groundwork for the redesign (which included close collaborations with a web architect at Seattle IT). We hope and expect to have the new and improved website functional in early 2020.

**Recommendation 11:** OLS should create a comprehensive outreach plan that directs and coordinates the work of OLS' internal and external outreach functions with the goal of improving organizational efficiencies, oversight, and performance, and the coordination between OLS and its contract outreach providers, as well as among the outreach providers.

**OLS Response: Agree.** We agree that an enhanced approach to outreach is needed. For this reason, we have decided to create a distinct outreach team by the end of 2019. While still small (we have four engagement specialists, one of whom is one is dedicated to the Domestic Workers Ordinance), this team will be headed by the newly created position of Outreach Manager (whom we expect to hire soon). This new team will be able to improve our planning and coordination of outreach efforts.

**Recommendation 12:** OLS should conduct an analysis of the merits of contracting with a prime contractor who then subcontracts with other contractors versus contracting directly with multiple contractors. This analysis should consider racial equity implications, and OLS' ability to oversee multiple contractors and hold them accountable. The result of this analysis should be submitted to the City Council.

**OLS Response: Disagree.** OLS intentionally permits a mix of solo and collaborative primary contractors and has done so in large part based on our commitment to racial equity. This



configuration promotes the diversity of organizations, which in turn increases the diversity of communities served. In our current 2019 racial equity toolkit, we learned that organizations serving low income workers and immigrant communities strongly prefer the option of whether to operate as a part of a collaborative or as a separate grantee. A collaborative works best when comprised of organizations that choose to worker together, rather than the result of government pressure to do so. If we limited our contracts to large collaboratives, it would likely lead to the loss of certain small solo contractors and the communities they serve. Thus, any potential administrative efficiency gains from the exclusive use of collaboratives would be outweighed by this negative impact.

**Recommendation 13:** OLS should increase its outreach contractor oversight, including requiring evidence of outreach activities, such as flyers, photos and sign-in sheets. It should also require an accounting of and receipts for contractor expenses, and conduct audits of its outreach contractors.

**OLS Response: Agree in part.** We agree that improvements in oversight of contracts can always be made. However, the audit's conclusions neglect to mention OLS's existing oversight of the COEF and the Business Outreach and Education Fund (BOEF). Currently, we take many steps to ensure that our partners fulfill their obligations through data reporting, detailed quarterly narrative reports, mandatory 1-on-1 meetings, and quarterly meetings. Also, we receive from contractors examples of outreach materials they develop and distribute.

We are committed to ensuring that our partners use grant money effectively. At the same time, we are cognizant of the potential negative impacts on community organizations that can result from burdensome and unnecessary administrative requirements. Professor Fine, commenting on this issue, states as follows:

*I have seen some overly stringent attempts to micro-manage and hold partners accountable by doling out very small amounts of money for specific outreach tasks and requiring a level of individual documentation so extreme that the organizations lose interest in doing it. This is often enormously time consuming for the groups and undermines the partnerships. Unsurprisingly, these partnerships then produced fewer positive outcomes. Where reporting requirements become so onerous that organizations feel they are spending more resources preparing reports than doing their work, the partnership is no longer mutually beneficial. This, of course, is not to say partners should not be held accountable, but rather that any changes to reporting requirements should not be made unilaterally by the agency, but rather through a collaborative process with the agency's partners.... Thus far, OLS has done a remarkable job of maintaining open dialogue with its partners and making key decisions*



*collaboratively; in order to maintain the trust of their partners, OLS must continue to openly engage with rather than dictate to the organizations.*

Emphasis added.

**Recommendation 14:** OLS' reporting tools of contractor performance should be improved to better measure the effectiveness of its outreach efforts. Specifically, OLS and its contractors should more consistently track demographic information of employee intakes, and how employee intakes were addressed, including the reasons for referrals to other agencies.

**OLS Response: Agree in part.** We agree that it could be helpful to have contractors ask workers at intakes to provide demographic information and will consider doing so in the future. (Parenthetically, our contractors collect this information at the trainings they conduct.) However, it is important to recognize that in this political environment, workers are often reluctant to provide this information, even anonymously.

However, the audit's suggestion that we do not receive information on "how employee intakes were addressed," is incorrect. While such feedback was not contained in the one "outreach report" referenced in the audit, we do receive this type of information in the quarterly narratives received from contractors.

Thank you again for the opportunity to respond to the audit.

## Office of City Auditor (OCA) Responses to Office of Labor Standards (OLS) Comments

**Recommendation 1:** OLS should minimize or eliminate the use of the “other” category and collect demographic and industry information during worker inquiries to ensure it has the information needed to inform its strategic enforcement and outreach efforts.

**OLS Response 1:** Agree. We agree that intake information may provide helpful insights. As we informed the auditor, the over-use of the “other” category in the past was due in part to a database transition and in part to staff oversight. In any event, we have instructed staff not to use this category in the future. With respect to demographic data, we will continue to collect this information but only on a voluntary basis. We recognize that many workers (understandably in this political environment) do not wish to provide this type of information to a government agency.

**OCA Response 1:** We agree that OLS’ data collection methods should provide individuals the option to not disclose information. Our concern is that OLS is currently not asking for demographic information, which is necessary to inform its strategic enforcement efforts, during intakes.

**Recommendation 2:** OLS should develop a directed investigations implementation plan for the labor standards ordinances it enforces and document the effectiveness and results of its directed enforcement efforts in its OLS dashboard.

**OLS Response 2:** Agree in part. We agree that directed investigations are important as part of strategic enforcement, that OLS should do more directed investigations, and that such investigations should be carefully planned and documented.

The audit does do not, however, sufficiently place directed investigations into the larger context of “strategic enforcement.” The term “strategic enforcement” recognizes that government’s limited resources should be used in an intentional and strategic manner that brings about the greatest possible impact, particularly in high priority industries (i.e., those where wage violations are known to occur but are under-reported). A directed investigation is one tool of strategic enforcement. We do not believe there should be a rigid ratio of directed versus complaint-based investigations.

When asked to review this portion of the draft audit, national expert Terri Gerstein (the Director of the State and Local Enforcement Project at Harvard Law School and, formerly, labor bureau chief at the N.Y. Attorney General’s office and Deputy Labor Commissioner at the N.Y. Labor Department), comments:

[A] formulaic focus on directed versus complaint-based investigations is too narrow an approach. One can easily imagine directed investigations in which the targets are poorly chosen, recoveries are limited, and media coverage non-existent. Compare this with a package of complaint-based and directed investigations in the same industry, with meaningful recoveries, robust measures for future compliance, widespread post-investigation outreach to affected workers and employers in the industry, and media coverage alerting workers and employers about the law. The goal is to use resources wisely to deter violations and a combination of approaches is important for reaching this goal.

Emphasis added.

When the City Council passed Resolution 31662 (referenced in the audit) in support of proactive investigations in 2016, it had no way of knowing whether OLS would receive complaints from workers employed in high priority industries. In fact, recent experience has shown that we receive many complaints from business sectors that would otherwise be candidates for directed investigations. Thus, in those sectors, OLS is in the position of using complaint-driven investigations (which benefit from having witnesses who have stepped forward to provide information) to root out wage violations.

In addition, the audit does not recognize that OLS makes frequent use of another important tool of strategic enforcement, namely, an active media strategy in order to help generate a culture of compliance among businesses. As Ms. Gerstein comments: "I cannot emphasize enough the importance of press releases and media coverage in deterring violations and driving compliance. I have vast anecdotal evidence of the impact of media based on my years enforcing New York's laws, but there is also academic literature supporting the notion that press drives compliance."

Further, the audit's narrative also neglects to mention that OLS has already undertaken planning for directed investigations. For example, we have created an internal Strategic Enforcement Coordinating Committee for just this purpose. Also, we have had many trainings and meetings with community partners to discuss the need for directed investigations, and to educate them on the type of investigations that would qualify for such treatment. And, we are in the early stages of a long-term directed investigation campaign in a high priority industry (soon-to-be disclosed) where we have good reason to believe violations occur and are under-reported.

Finally, OLS's approach in this area has been aided by several racial equity analyses over the past two years, as well as by trainings from two nationally recognized wage enforcement experts, i.e., Ms. Gerstein as well as Professor Janice Fine from Rutgers School of Management and Labor Relations and Director of Research and Strategy at the Center for Innovation in Worker Organization.

**OCA Response 2:** We did not recommend, nor do we imply that directed investigations should be conducted based on a ratio of complaints. In our 2014 Paid Sick and Safe Time Ordinance Enforcement Audit, and as stated on page 8 of this audit, our office recommended that the City augment its complaint-based approach to addressing employer non-compliance with a proactive enforcement approach.

The finding that supports this recommendation was that OLS was not responsive to the Resolution 31662 because the directed investigations that it conducted were not, as is recommended by industry experts, based on an analysis of high-risk industries or high-risk employers that may be unlikely to have employees who would report noncompliance. Rather, OLS mostly initiated investigations without complaints when OLS staff became aware of employer advertisements in violation of the First Change Employment Ordinance and considered these investigations, which were initiated by the OLS Director, as directed investigations.

**Recommendation 3:** OLS should seek clarification from the City Council to determine whether OLS' policy of emphasizing assessing employers for remedies that are paid to employees while

deemphasizing civil penalties and fines that would go to the City is consistent with the intent of the City's labor standards laws.

**OLS Response 3:** Disagree 3. While OLS is always interested in working with elected officials to ensure the efficacy of our labor standards, we disagree that there is need to seek clarification from City Council with respect to existing remedies and civil penalties.

The audit appears to raise two issues: (a) whether OLS should redirect to workers the penalties and fines that could be made payable to the City; and (b) whether OLS is "deemphasizing civil penalties and fines that would go to the City."

Before addressing these issues, two clarifications are necessary. First, the audit fails to explain that our ordinances provide that some "penalties" are payable to workers and others are payable to the City; and that "fines" are payable to the City. Also, the audit does not distinguish between the legal requirements for remedies in the context of a formal determination as compared to those in a settlement negotiation. Specifically, where the ordinances provide that a penalty or fine must be paid to the City, this requirement only applies to formal determinations. The ordinances do not, however, limit the agency's ability to negotiate settlements in which penalties and/or fines are paid to workers.

With respect to the first issue cited above (i.e., redirecting remedies to workers), the audit itself demonstrates that this methodology (i.e., maximizing the worker's recovery in settlement) is consistent with the approach of another wage enforcement agency, San Francisco's Office of Labor Standards Enforcement (OLSE). According to the audit, OLSE also prioritizes "get[ting] the workers the money employers owe to them." Audit, p. 13. We agree with this statement, and it is difficult to understand why the audit would suggest a different approach.

Second, with respect to some reductions in civil penalties and fines to achieve a settlement, this approach is also desirable and is consistent with another wage enforcement agency cited in the audit, i.e., the New York State Department of Labor. As the audit states, "enforcement agencies may settle for lower civil penalties because this can decrease the time it takes to get remedy money into the hands of an employee, which could be difference between the employee paying rent and being homeless." Audit, p. 13. This is the same approach taken by OLS and, again, the audit does not explain why it should be changed.

At times, a reduction or waiver of civil penalties makes it possible to achieve a settlement. This is preferable to taking an inflexible stand in a negotiation, thereby extending the investigation for months or even years. In Seattle, the ordinances give OLS the discretion to settle cases prior to the issuance of a formal determination. OLS uses its discretion to settle cases with three goals in mind: (1) to achieve a resolution efficiently, (2) to obtain employer compliance more quickly, and (3) to reimburse workers their wages owed as soon as possible.

Because the audit does not demonstrate that OLS's current approach is misplaced, we do not agree to the recommendation.

**OCA Response 3:** We do not recommend or suggest that OLS should stop redirecting to workers the penalties and fines that could be made payable to the City. However, we were concerned with OLS' use of its discretion to impose civil penalties and fines that can go to the City in addition to those that go to employees. Our recommendation is for OLS to seek clarification from policy makers whether its current

approach of using its discretion to not impose civil penalties and fines that would go to the City is consistent with the Harmonization Ordinance that gave OLS additional authority to impose penalties, fines, and also the authority to assess the costs of enforcing the ordinance on employers found in violation the City's labor standards laws. We provided information in this audit from other jurisdictions as context for policy makers to consider as they clarify the ordinance's intent and provide direction to OLS. Information from other jurisdictions approaches, while consistent with OLS's approach, should not preclude the discussion with policy makers.

Furthermore, on page 11 of the audit, we explain, contrary to OLS' assertion, that City ordinances allow remedies to that could be paid by employers to employees. In addition, we stated that the City could assess civil penalties and fines on employers that go to the City. We also explain on page 11, that settlements are a reason why OLS does not routinely assess civil fines that would go to the City.

**Recommendation 4:** OLS should work with the City Attorney's Office to facilitate the use of a greater range of the enforcement tools available to the City of Seattle, to increase the City's assessment of civil penalties to the City.

**OLS Response 4:** Agree. OLS has worked in the past and will continue to work with the City Attorney's Office to maximize the potential of our enforcement tools to remedy workplace violations. Although we agree with the recommendation, we believe further context is required to understand how OLS has exercised its discretion in deciding whether to impose penalties on employers who have had a "prior violation history." Audit, p. 14.

First, the Harmonization Ordinance, which went into effect on January 16, 2016, marked a significant change in how the City was able to use civil penalties. Prior to that date, the labor standards had different remedies and only some included a provision calling for escalating penalties for repeat violators. The Harmonization Ordinance created a new uniform remedy structure applicable across all labor standards. Thus, for reasons of due process and fairness, an employer who violated the PSST ordinance in 2014, and did so again in 2016 was not, and legally could not be, treated under the new Harmonization Ordinance as a repeat offender and subject to higher penalties based on the second violation.

Second, the ordinances specifically provide an escalating penalty amount for subsequent violations but only when the later violations involved the same ordinance. See e.g., SMC 14.19.080(B) ("for subsequent violations of this Chapter 14.19, the Director shall assess an amount of liquidated damages in an additional amount of twice the unpaid wages") (Emphasis added.)

Third, the audit expresses concern that OLS's use of "advisory letters" has undermined its ability to assess higher penalties for repeat violators. Audit p. 15. In fact, advisory letters were only used in the early investigations involving potential PSST violations (i.e., not for Minimum Wage or other ordinances), and were employed because policymakers wanted to create a "soft launch" for the PSST law. Thus, the audit's argument conflates two distinct concepts. While one can question whether policymakers were right to insist upon such a "soft launch," it does not follow that OLS should count the conduct giving rise to an advisory letter as a first violation. The point of that "soft" approach was not to treat the underlying conduct as a violation of law.

Finally, the audit overstates the significance of case files upon which it relies, many of which date back several years. For example, in one case, an employer was investigated for possible violations of Wage Theft and PSST. The PSST case was dismissed and therefore only the Wage Theft case was settled, with the result that no second violation occurred. In several other cases, the employers were found to have violated different ordinances and/or some of the investigations were settled before the Harmonization Ordinance went into effect. Consequently, it would not have been appropriate to treat the employers as repeat violators.

**OCA Response 4:** We choose to focus on employers who had a history of settlements and/or evidence of noncompliance in order to understand how OLS used the discretion authorized in the City's ordinances and the limitations of the ordinances when dealing with employers with such history. In this audit, we did not find that OLS was applying the law incorrectly; however, we highlight several reasons that account for the relatively low assessments of civil penalties and fines that would go to the City.

We did not rely on case files to reach our conclusions. We were able to identify these reasons from our analysis of the entire universe of closed case records through 2018, the entire universe of records resulting from employer financial assessments that went to employees and the City, and our analysis of updated versions of financial information after we identified several errors in OLS' financial remedies spreadsheet. This analysis was augmented by our detailed analysis of nearly 50 employers case files and documents, of which 35 were found to have multiple allegations and documented evidence of noncompliance involving more than one case file. We conducted this review to determine how the impact of the City's labor standard laws have been implemented on those firms that have a history of documented noncompliance to determine how well the City uses its enforcement tools to prevent future or further violations from the same employer. We do not believe such an analysis has ever been conducted by OLS.

**Recommendation 5:** OLS and the City Attorney's Office should work together to propose to the City Council changes to the City's labor standards laws that would help encourage employers to cooperate with OLS by allowing for the daily and per employee accumulation of penalties while employers remain out of compliance with the City's labor standards laws.

**OLS Response 5:** Agree in part. We welcome the addition of tools for promoting employer cooperation and to reduce case age.

As the audit recognizes, OLS has made substantial progress in reducing the average age of our investigations. We have streamlined our processes, have closed out the backlog of older cases, and continued progress is anticipated. The large spike in 2018 in the average age of resolved cases (i.e., 542 days) reflects our success in closing out very old investigations, some dating back to 2015. Since that time, we have seen a significant reduction in the average age of resolved cases.

In addition, we have closed out older cases without sacrificing effectiveness. As the audit shows, our total assessments rose to \$2,130,626 in 2018 from \$504,325 in 2017. The assessments have increased again in 2019, with assessments totaling \$2,394,178 through August 30, 2019.

**OCA Response 5:** While we acknowledge OLS' progress in closing the backlog of cases, we believe it is preferable to create legal incentives for employers to cooperate with OLS' investigations and prevent employers from delaying responding to OLS requests for information.

**Recommendation 6:** The City should refrain from negotiating confidential settlements with employers and should make it clear to employers that such agreements are unenforceable.

**OLS Response 6:** Agree (but this recommendation is unnecessary). We agree that confidential settlements should not be used. However, this recommendation is unnecessary because, as a matter of practice and policy, OLS does not use confidential agreements. To our knowledge, there was only one exception (occurring in 2017) to this practice out of hundreds of case resolutions.

**OCA Response 6:** Communicating to the public the results of labor standards investigations and settlements is key to discouraging employers from violating labor standards laws and encourages voluntary compliance. We believe there should be a written policy that clearly communicates the reason why the City does not use confidential settlements. This is a simple internal control that can help prevent anyone in who is involved in the settlement process from negotiating one in the future.

**Recommendation 7:** OLS should devise a proposal to incorporate strategic planning, evaluation and review as an ongoing function of OLS management and should conduct the following assessments with a report to the City Council by September 2020.

- An assessment of alternative staffing strategies to improve the efficiency and effectiveness of its investigations, and
- An assessment of the appropriate level of enforcement versus outreach resources needed to implement strategic enforcement and achieve desired outcomes.

**OLS Response 7:** Agree. We agree that it is useful and necessary to periodically assess “alternative staffing strategies,” as well as the “level of enforcement versus outreach resources.”

However, the audit’s narrative appears to recommend the creation of “dedicated units” of investigators focused on specific ordinances, as opposed to having well-trained generalists. We do not agree that such an approach makes sense, for several reasons. First, it would be impractical. Investigations involving three of our laws, Paid Sick and Safe Time (PSST), Minimum Wage and the Wage Theft ordinances, comprise most of our enforcement workload. To keep up with this volume, the entire enforcement team has to be capable of investigating cases involving each of these ordinances.

In addition, our current approach promotes efficiencies in case resolution. The overwhelming majority of our cases involve more than one ordinance. Rigid specialization would limit investigators’ ability to spot these violations and to handle multi-ordinance investigations.

Further, with dedicated units, there is no way to ensure in advance that our mix of cases matches investigatory expertise. At any one time, we could have more cases involving a particular ordinance than trained investigators to handle them. In that event, the existence of dedicated units would lead to an unequal distribution of cases among investigators.

Fourth, we have found that the assignment to investigators of a caseload with a diversity of issues is more interesting and engaging, thereby increasing job satisfaction and employee retention.

Finally, when asked to comment on this topic, Professor Fine expressed her strong preference for “unitary enforcement” (i.e. all investigators capable of investigating all ordinances):

Unitary enforcement compels investigators to look at the business practices of a firm more broadly rather than isolated individual parts and to make judgments about why violations are happening and how firm practices can be improved. There is much more possibility for synergy with unitary enforcement and less potential for wasteful or adverse outcomes that sometimes arise when enforcement is divided such that groups of investigators focus only on certain laws. Ordinance-based teams have resulted in notable siloing. Investigators are not always sufficiently trained on laws outside of the law/s enforced by their team. Where employers have violated laws spanning multiple teams, siloing has sometimes resulted in insufficient referrals among teams such that employers were not held accountable for all violations.

Emphasis added.

**OCA Response 7:** Enforcement of the City’s ordinances may not require the same type or level of expertise. An assessment of alternative staffing strategies and models used in other jurisdictions with the goal of improving its outcomes is a feasible exercise for OLS to undertake.

**Recommendation 8:** As part of its Comprehensive Outreach Plan, OLS should develop a long-term strategy to develop the capacities of worker and community organization it contracts with to 1) increase OLS’ understanding of industries at high risk of labor standards violations, and 2) assist OLS in its enforcement efforts, including identifying violations, subsequent case preparation, and witness interviews.

**OLS Response 8:** Agree (but this recommendation is not necessary). OLS has been engaged in these and other steps to ensure that our community partners are educated about the elements of strategic enforcement so that they inform us about the industries that require our attention. This type of partnership is critical to an effective strategic enforcement plan.

As mentioned in our response to Recommendation 2 above, we have had numerous meetings and trainings with our community partners on this topic. In addition, we have created an internal committee, the Strategic Enforcement Coordinating Committee, to formulate and evaluate our strategic enforcement initiatives. Further, we have launched a Community Intake and Referral Process under which community partners will conduct intake interviews and share with us information obtained so that we may better identify companies and industries at high risk for labor violations.

**OCA Response 8:** We are pleased that OLS agrees with this recommendation and hopes that it continues the progress it describes in its comment.

**Recommendation 9:** The City should direct all City departments to cooperate in the enforcement of labor standards laws. The City should work with Public Health – Seattle and King County officials or use food safety inspection data to identify employers who potentially may be violating labor standards laws.

**OLS Response 9:** Agree. We currently engage in numerous collaborations with other City Departments and welcome opportunities to do so. With respect to the Seattle/King County Public Health Department, we agree that a collaboration would be helpful, particularly in the area of PSST since we have a mutual interest in having restaurant workers receive and take the paid sick leave due to them. We have made three overtures for partnerships over the past several years. Our latest request is already bearing fruit. Specifically, we have started to plan cross-trainings of our staffs on both the PSST law and issues concerning infectious diseases in restaurants.

**OCA Response 9:** No comment

**Recommendation 10:** OLS should improve its website to clarify its enforcement processes, and report on key performance indicators, such as the amount of civil penalties to the City assessed. It should also report the number and results of directed investigations, and the average number of days to resolve investigations. This information and the OLS complaint/inquiry form should be provided in multiple languages.

**OLS Response 10:** Agree. Following a racial equity analysis of our website in 2018, we launched a website redesign that emphasizes improved accessibility, clarity, and alignment with our policy and enforcement priorities. We have completed the groundwork for the redesign (which included close collaborations with a web architect at Seattle IT). We hope and expect to have the new and improved website functional in early 2020.

**OCA Response 10:** No comment

**Recommendation 11:** OLS should create a comprehensive outreach plan that directs and coordinates the work of OLS' internal and external outreach functions with the goal of improving organizational efficiencies, oversight, and performance, and the coordination between OLS and its contract outreach providers, as well as among the outreach providers.

**OLS Response 11:** Agree. We agree that an enhanced approach to outreach is needed. For this reason, we have decided to create a distinct outreach team by the end of 2019. While still small (we have four engagement specialists, one of whom is one is dedicated to the Domestic Workers Ordinance), this team will be headed by the newly created position of Outreach Manager (whom we expect to hire soon). This new team will be able to improve our planning and coordination of outreach efforts.

**OCA Response 11:** No comment.

**Recommendation 12:** OLS should conduct an analysis of the merits of contracting with a prime contractor who then subcontracts with other contractors versus contracting directly with multiple contractors. This analysis should consider racial equity implications, and OLS' ability to oversee multiple contractors and hold them accountable. The result of this analysis should be submitted to the City Council.

**OLS Response 12:** Disagree. OLS intentionally permits a mix of solo and collaborative primary contractors and has done so in large part based on our commitment to racial equity. This configuration

promotes the diversity of organizations, which in turn increases the diversity of communities served. In our current 2019 racial equity toolkit, we learned that organizations serving low income workers and immigrant communities strongly prefer the option of whether to operate as a part of a collaborative or as a separate grantee. A collaborative works best when comprised of organizations that choose to worker together, rather than the result of government pressure to do so. If we limited our contracts to large collaboratives, it would likely lead to the loss of certain small solo contractors and the communities they serve. Thus, any potential administrative efficiency gains from the exclusive use of collaboratives would be outweighed by this negative impact.

**OCA Response 12:** During our audit we found that OLS had not conducted a racial equity toolkit analysis to determine the number of contractors to contract with. OLS has agreed to provide us with the results of its 2019 racial equity toolkit performed on this topic after it is completed.

**Recommendation 13:** OLS should increase its outreach contractor oversight, including requiring evidence of outreach activities, such as flyers, photos and sign-in sheets. It should also require an accounting of and receipts for contractor expenses, and conduct audits of its outreach contractors.

**OLS Response 13:** Agree in part. We agree that improvements in oversight of contracts can always be made. However, the audit's conclusions neglect to mention OLS's existing oversight of the COEF and the Business Outreach and Education Fund (BOEF). Currently, we take many steps to ensure that our partners fulfill their obligations through data reporting, detailed quarterly narrative reports, mandatory 1-on-1 meetings, and quarterly meetings. Also, we receive from contractors examples of outreach materials they develop and distribute.

We are committed to ensuring that our partners use grant money effectively. At the same time, we are cognizant of the potential negative impacts on community organizations that can result from burdensome and unnecessary administrative requirements. Professor Fine, commenting on this issue, states as follows:

I have seen some overly stringent attempts to micro-manage and hold partners accountable by doling out very small amounts of money for specific outreach tasks and requiring a level of individual documentation so extreme that the organizations lose interest in doing it. This is often enormously time consuming for the groups and undermines the partnerships. Unsurprisingly, these partnerships then produced fewer positive outcomes. Where reporting requirements become so onerous that organizations feel they are spending more resources preparing reports than doing their work, the partnership is no longer mutually beneficial. This, of course, is not to say partners should not be held accountable, but rather that any changes to reporting requirements should not be made unilaterally by the agency, but rather through a collaborative process with the agency's partners.... Thus far, OLS has done a remarkable job of maintaining open dialogue with its partners and making key decisions collaboratively; in order to maintain the trust of their partners, OLS must continue to openly engage with rather than dictate to the organizations.

Emphasis added.

**OCA Comment 13:** Several contractor invoices for outreach services we reviewed amounted to over \$30,000. We believe that it is reasonable for OLS to request for evidence of outreach performed and to request a breakdown of expenses incurred supported by receipts for those expenses, such as for the cost of radio ads. Photographs of employers visited, and evidence that the events occurred, such as flyers or announcements on the host’s social media event calendar are appropriate forms of evidence to demonstrate the event occurred. The system OLS uses to reimburse outreach contractors do not provide an adequate level of reasonable assurance that the work was preformed, and the outreach occurred. The current system can be simplified with stronger documented evidence of the outreach events provided by the contractor.

**Recommendation 14:** OLS’ reporting tools of contractor performance should be improved to better measure the effectiveness of its outreach efforts. Specifically, OLS and its contractors should more consistently track demographic information of employee intakes, and how employee intakes were addressed, including the reasons for referrals to other agencies.

**OLS Response 14:** Agree in part. We agree that it could be helpful to have contractors ask workers at intakes to provide demographic information and will consider doing so in the future. (Parenthetically, our contractors collect this information at the trainings they conduct.) However, it is important to recognize that in this political environment, workers are often reluctant to provide this information, even anonymously.

However, the audit’s suggestion that we do not receive information on “how employee intakes were addressed,” is incorrect. While such feedback was not contained in the one “outreach report” referenced in the audit, we do receive this type of information in the quarterly narratives received from contractors.

**OCA Response 14:** It is difficult to quantify the effectiveness of outreach contacts through OLS’ reporting tools and narrative summaries because they do not include information on why someone was referred to other agencies, and the results of those referrals. In addition, contractors do not provide consistent information on the narratives making them difficult to analyze.

## APPENDIX B

### List of Recommendations

**Recommendation 1:** The Office of Labor Standards should minimize or eliminate the use of the “other” category and collect demographic and industry information during worker inquiries to ensure it has the information needed to inform its strategic enforcement and outreach efforts.

**Recommendation 2:** The Office of Labor Standards (OLS) should develop a directed investigations implementation plan for the labor standards ordinances it enforces and document the effectiveness and results of its directed enforcement efforts in its OLS dashboard.

**Recommendation 3:** The Office of Labor Standards (OLS) should seek clarification from the City Council to determine whether OLS’ policy of emphasizing assessing employers for remedies that are paid to employees while deemphasizing civil penalties and fines that would go to the City is consistent with the intent of the City’s labor standards laws.

**Recommendation 4:** OLS should work with the City Attorney’s Office to facilitate the use of a greater range of the enforcement tools available to the City of Seattle, to increase the City’s assessment of civil penalties to the City.

**Recommendation 5:** The Office of Labor Standards (OLS) and the City Attorney’s Office should work together to propose to the City Council changes to the City’s labor standards laws that would help encourage employers to cooperate with OLS by allowing for the daily and per employee accumulation of penalties while employers remain out of compliance with the City’s labor standard laws.

**Recommendation 6:** The City should refrain from negotiating confidential settlements with employers and should make it clear to employers that such agreements are unenforceable.

**Recommendation 7:** The Office of Labor Standards (OLS) should devise a proposal to incorporate strategic planning, evaluation and review as an ongoing function of OLS management and should conduct the following assessments with a report to the City Council by September 2020.

- An assessment of alternative staffing strategies to improve the efficiency and effectiveness of its investigations, and
- An assessment of the appropriate level of enforcement versus outreach resources needed to implement strategic enforcement and achieve desired outcomes.

**Recommendation 8:** As part of its Comprehensive Outreach Plan, the Office of Labor Standards (OLS) should develop a long-term strategy to develop the capacities of worker and community organizations it contracts with to 1) increase OLS’ understanding of industries at high risk of labor standard violations, and 2) to assist OLS in its enforcement efforts, including identifying violations, subsequent case preparation, and witness interviews.

**Recommendation 9:** The City should direct all City departments to cooperate in the enforcement of labor standards laws. The City should work with Public Health – Seattle and King County officials or use food safety inspection data to identify employers who potentially may be violating labor standards laws.

**Recommendation 10:** The Office of Labor Standards (OLS) should improve its website to clarify its enforcement processes, and report on key performance indicators, such as the amount of civil penalties to the City assessed. It should also report the number and results of directed investigations, and the average number of days to resolve investigations. This information and the OLS complaint/inquiry form should be provided in multiple languages.

**Recommendation 11:** The Office of Labor Standards (OLS) should create a comprehensive outreach plan that directs and coordinates the work of OLS' internal and external outreach functions with the goal of improving organizational efficiencies, oversight, and performance, and the coordination between OLS and its external contract outreach providers, as well among the outreach providers.

**Recommendation 12:** The Office of Labor Standards (OLS) should conduct an analysis of the merits of contracting with a prime contractor who then subcontracts with other contractors versus contracting directly with multiple contractors. This analysis should consider racial equity implications, and OLS' ability to oversee multiple contractors and hold them accountable. The results of this analysis should be submitted to the City Council.

**Recommendation 13:** The Office of Labor Standards should increase its outreach contractor oversight, including requiring evidence of outreach activities, such as flyers, photos and sign-in sheets. It should also require an accounting of and receipts for contractor expenses, and conduct audits of its outreach contractors.

**Recommendation 14:** The Office of Labor Standard's (OLS) reporting tools of contractor performance should be improved to better measure the effectiveness of its outreach efforts. Specifically, OLS and its contractors should more consistently track demographic information of employee intakes, and how employee intakes were addressed, including the reasons for referrals to other agencies.

## APPENDIX C

### Outreach Contractors by Jurisdiction

Jurisdiction	Contracting Organizations
<b>Seattle Office of Labor Standards (OLS)</b>	<p><b>Community Outreach Education Fund for Employee Outreach:</b></p> <ol style="list-style-type: none"> <li>1) Latino Community Collaborative, includes Casa Latina (lead), Entre Hermanos, South Park Information Resource Center, and Washington Wage Claim Project</li> <li>2) Chinese Information Service Center</li> <li>3) El Centro de la Raza</li> <li>4) Eritrean Association,</li> <li>5) Fair Work Center Collaborative includes Fair Work Center (lead), 21 Progress, AL Noor Islamic Community Center, API Chaya, Bayan PNW, Latino Community Fund, LGBTQ Allyship, Partner in Employment, and Somali Community Services</li> <li>6) Millionaire Club Charity</li> <li>7) NAACP</li> <li>8) West African Community Council</li> </ol> <p><b>Business Outreach Education Fund for Employer Outreach:</b></p> <ol style="list-style-type: none"> <li>1) Seattle Business Education HUB includes the Eritrean Community Connection and the Somali Community Services of Seattle</li> <li>2) Latino Community Fund includes El Centro de la Raza and South Park Merchants Association</li> <li>3) Ethnic Chamber of Commerce Coalition (lead) includes Greater Seattle Chinese Chamber of Commerce, King County Hispanic Chamber of Commerce, Korean American Chamber of Commerce, Washington State, Greater Seattle Vietnamese Chamber of Commerce, Filipino Chamber of Commerce of the Pacific Northwest, Taiwanese Chamber of Commerce of Seattle, The Washington State India Trade Relationship Action Committee, The Chinese American General Chamber, Greater Seattle Business Association, and The Korean American Grocer's Association. Subcontractors includes Business Impact Northwest and Cascadia Consulting Group.</li> <li>4) Ethnic Business Coalition</li> <li>5) Ventures includes Wayfind, Urban Impact, Pike Place Market Preservation and Developments Authority, and Seattle Good Business Network</li> </ol>
<b>Los Angeles Office of Wage Standards (OWS)</b>	<ol style="list-style-type: none"> <li>1) Center for Living and Learning (transitioning from rehabilitation, incarceration, and homelessness)</li> <li>2) Coalition for Humane Immigrant Rights of Los Angeles (low wage immigrant workers)</li> <li>3) Community Partners – Los Angeles Black Worker Center (low wage workers mainly in construction)</li> <li>4) Cynthia M Ruiz &amp; Assoc. employers (Chambers of Commerce, Business Improvement Districts)</li> <li>5) Garment Worker Center</li> <li>6) HR BIZZ (employers (Human Resources experts); grocery workers)</li> </ol>

	<ul style="list-style-type: none"> <li>7) Korean American Apparel Manufacturers' Association (KAMA) (garment industry employees)</li> <li>8) Koreatown Immigrant Workers Alliance (KIWA) with Clean Car Wash Campaign (multi-ethnic; multi-lingual and multi-industry worker center)</li> <li>9) Restaurant Opportunities Center (ROC)</li> <li>10) Thai Community Development Center (low wage workers; multi-lingual in Chinese, Spanish, and Cambodian)</li> <li>11) Wage Justice Center (lawyers specializing in wage theft)</li> <li>12) Warehouse Worker Resource Center (warehouse workers and truck drivers who get misclassified; cover the Port)</li> </ul>
<p><b>San Francisco Office of Labor Standards Enforcement (OLSE)</b></p>	<p><b>Chinese Progressive Association, Prime Subcontractors:</b></p> <ul style="list-style-type: none"> <li>1) Asian Law Caucus,</li> <li>2) La Raza Centro Legal,</li> <li>3) Filipino Community Center,</li> <li>4) Dolores Street Community Services,</li> <li>5) Young Workers United,</li> <li>6) South of Market Community Action Network</li> </ul> <p><b>Paid Parental Leave Outreach: Prime Contractor:</b></p> <ul style="list-style-type: none"> <li>7) Legal Aid at Work</li> </ul>

## APPENDIX D

### References

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## APPENDIX E

### Seattle Office of City Auditor Mission, Background, and Quality Assurance

#### **Our Mission:**

To help the City of Seattle achieve honest, efficient management and full accountability throughout City government. We serve the public interest by providing the City Council, Mayor and City department heads with accurate information, unbiased analysis, and objective recommendations on how best to use public resources in support of the well-being of Seattle residents.

#### **Background:**

Seattle voters established our office by a 1991 amendment to the City Charter. The office is an independent department within the legislative branch of City government. The City Auditor reports to the City Council and has a four-year term to ensure her/his independence in deciding what work the office should perform and reporting the results of this work. The Office of City Auditor conducts performance audits and non-audit projects covering City of Seattle programs, departments, grants, and contracts. The City Auditor's goal is to ensure that the City of Seattle is run as effectively, efficiently, and equitably as possible in compliance with applicable laws and regulations.

#### **How We Ensure Quality:**

The office's work is performed in accordance with the Government Auditing Standards issued by the Comptroller General of the United States. These standards provide guidelines for audit planning, fieldwork, quality control systems, staff training, and reporting of results. In addition, the standards require that external auditors periodically review our office's policies, procedures, and activities to ensure that we adhere to these professional standards.

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