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01/19/2023

The Honorable David Alvarez
Chair, Joint Legislative Audit Committee
Legislative Office Building
1020 N Street, Room 107
Sacramento CA, 95811

Dear Chair Alvarez,

With your support, I am writing respectfully to ask the Joint Legislative Audit Committee to approve an audit to evaluate the persistent backlog of wage theft cases at the California Labor Commissioner's Office.

The increasing backlog of wage theft cases shows that the state must act urgently to review the Office's current staffing levels and claim processing protocol to assure California workers receive their due wages. Under statute, the Office is required to process cases so they are adjudicated within 120 days of receipt. Recent data provided by the Department of Industrial Relations shows that the current wait time is 780 days as of October 2022 just to receive a hearing. The wait time for a case to be closed is likely even longer, forcing workers to wait unreasonable amounts of time for their case to be resolved.

Aside from the processing of claims, an independent audit is needed to assess the claims' resolution and how difficult it is for workers to obtain their owed wages following a judgment. A report published by the Legislative Analyst's Office (LAO) in 2020 shows that the larger the worker's judgment, the less likely it is that worker will be able to collect their owed wages from their employer. In 2017, workers collected less than 20 percent of the amount owed. About 60 percent of workers during that same year collected zero owed wages. For workers who were able to collect owed wages, the median amount collected was about \$3,700, while the median for those workers unable to collect wages was \$8,600.

While recent legislation expanding labor protections, particularly for garment workers, increased the Labor Commissioner's case load, it is important to evaluate the Office's personnel levels. In 2019, the Office underwent a hiring freeze for six months and lost its authority to hire. Following the freeze, hiring was temporarily conducted by the California Department of Human Resources (CalHR). Ultimately, this hindered the Office's progress in meeting its staffing goals. According to a hearing conducted by the Senate Budget

Subcommittee Five in May 2022, the Labor Commissioner's Office was facing a 32 percent employee vacancy of about 239 employees. During an informational hearing held by the Assembly Labor and Employment committee in November 2022, the Labor Commissioner stated that the Office had hired 127 employees this year in the Wage Claims unit. However, it is unclear if this expansion is sufficient to speed up the claim processing and to what extent employee retention issues affect the hiring effort.

In addition, it is important to evaluate the Office's processes for evaluating a wage claim. While some focus has been directed towards personnel numbers, little attention has been given to the Office's evaluation of wage claims. There may be opportunities for streamlining the process without sacrificing the quality of the review, which could alleviate the workload for staff and allow workers' claims to be closed quicker. An independent audit could reveal potential bottlenecks and how to open them up. The same LAO report showed the wage theft claims that took longer to evaluate were more likely to favor the non-compliant employer. Specifically, delays increase the likelihood that the worker will drop the claim, incentivize workers to settle for a smaller amount, and have a chilling effect on workers filing claims due to the large backlog.

Finally, the state and Legislature would benefit from an evaluation on the Office's progress in assisting workers collect their wages following the reached judgment, along with recommendations on how the Office could streamline and provide resources to workers attempting to collect wages. Currently, little resources are available within the Office to assist workers in collecting their owed wages. This leaves the burden on the worker to collect their owed wages on their own, who may not be informed enough to know how to do so.

The Governor's 2023-24 proposed budget allocates \$11.7 million in special funds and 42 new positions for the Department of Industrial Relations to address the current wage theft backlog. The budget also allocates \$6.5 million in special funds ongoing for the Department to address cases more efficiently. As shown above, the Department has vacant positions and it is unclear whether 42 additional positions will be sufficient without examining employee retention and other practices harming the Department's progress towards filling the vacancies. An audit by the California State Auditor will provide independent and verified information regarding the current state of the Labor Commissioner Office's wage claim unit, the degree to which personnel problems impact claim backlogs, the efficiencies of the Office's Policies, and how the Office could assist workers following the reached judgment on their case. This examination and policy recommendations will provide excellent guidance for subsequent legislative or budget action to alleviate the wage claim backlog.

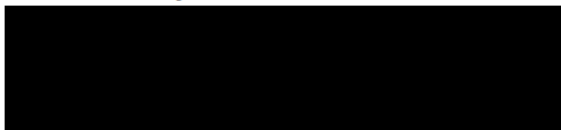
The audit's scope will include, but is not limited to, the following:

- (1) Review and evaluate the laws, rules, and regulations pertinent to the audit's objectives.
- (2) Measure the current and previous backlog over the past five years to the extent data is available, the median wait time to be adjudicated and closed, and to what extent new laws increasing worker protections impacts the current backlog.

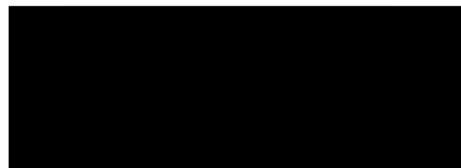
- (3) Assess the Labor Commissioner's progress in reaching optimal staffing levels, the current caseload assigned to each employee in the wage claims unit, current employee turnover levels, and the number of personnel required to meet the statutory requirement of cases reaching adjudication within 120 days.
- (4) Evaluate whether current employee salaries within the wage claim unit is equitable and if retention would improve with an increased salary or reclassification. Review current training procedures for new employees in the wage claim unit and what the training consists of.
- (5) Evaluate the current process each wage theft claim undergoes during review by an employee. Explain the current process and identify potential areas of inefficiency. Recommend ways to improve those areas while still completing a thorough review.
- (6) Review the current number of workers who are able to collect their owed wages following receipt of judgement and report the percentage of workers who received zero wages, received only partial wages, and received all owed wages. Assess the reasons why workers cannot collect their owed wages and make recommendations for how the Labor Commissioner's Office could improve the resources available to workers seeking to recover their judgement.
- (7) Report the current powers available to the Labor Commissioner to enforce employers paying owed wages once a judgement is reached and how those powers are currently utilized. Make recommendations for how the state could improve the powers available to the Commissioner.
- (8) Review and assess any other issues that are pertinent to the audit.

Thank you for your consideration. For questions, please contact me directly or my legislative aide, Shoshana Levy, at (916) 651-4007 or Shoshana.Levy@sen.ca.gov

Sincerely,



Senator Steven M. Glazer



Assemblymember David Alvarez
Chair, Joint Legislative Audit Committee