

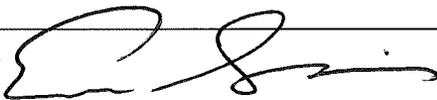
Memorandum

**TO: HONORABLE MAYOR
AND COUNCIL**

FROM: William F. Sherry, A.A.E.

**SUBJECT: Recommended "Parity"
Adjustments to the Airport
Living Wage Ordinance**

DATE: November 23, 2010

Approved 

Date 11/23/10

RECOMMENDATION

Approve an ordinance amending Chapter 25.11 of Title 25 of the San Jose Municipal Code to:

- A. Discontinue proactive enforcement of the Airport Living Wage Ordinance (ALWO) and begin complaint-based enforcement to enforce compensation provisions.
- B. Allow at least 30 days to "cure" an identified violation.
- C. Allow the exemption for the passenger airlines to expire.
- D. Require all Airport businesses to provide 12 paid days off per year to covered employees.
- E. Require all Airport businesses to provide 10 unpaid days off per year to covered employees.
- F. Establish a minimum Airport Living Wage health benefits cost of at least \$2.58 per hour.
- G. Establish Airport Living Wage Rates at \$11.65 per hour with health benefits and \$14.23 per hour without health benefits.
- H. Adjust Airport Living Wage Rates by the Consumer Price Index for All Urban Consumers (CPI-U) for San Francisco-Oakland-San José.

OUTCOME

The objective of the study is to identify opportunities to recommend revisions to the ALWO that will bring the application of living wage at SJC more into parity with other Bay Area airports

and thus significantly reduce or eliminate competitive disadvantages for the Airport. Amending the ALWO will bring it into general alignment with the policies, practices and costs of competitor airports in California operating under living wage so there are no significant differences in its application at SJC. Staff believes this “parity” will position the Airport to be strategically more competitive, while still implementing the community values represented by the ALWO.

EXECUTIVE SUMMARY

In May 2010, Council approved the Airport’s Competitive Strategic Plan. The goal of the plan is to improve the Airport’s competitiveness by reviewing a number of initiatives to reduce the Airport’s operating costs to airlines. As part of Council’s approval of the Airport’s Competitive Strategic Plan, staff was authorized to perform a “parity study” of the living wage policies and practices of the two other airports in the Bay Area. The objective of the study was to identify opportunities to recommend revisions to the ALWO that will bring the application of living wage at SJC more into parity with other Bay Area airports and thus reduce or eliminate competitive disadvantages for the Airport.

Staff reviewed the provisions and regulations of the living wage ordinances of San Francisco and Oakland airports and any other commercial airports in California that operate under living wage ordinances. Staff found only one additional California city that applies living wage to its airports: the City of Los Angeles. Based on this review, staff recommends several revisions to the ALWO that will reduce competitive disadvantages for SJC while still maintaining a living wage ordinance that advances the goals of the program.. The most important of the recommended changes are: 1) discontinue proactive enforcement in favor of complaint-driven enforcement; 2) establish new Airport living wage rates; 3) require compensated days off and baseline per hour health care costs; 4) do not extend the current passenger airline exemptions; and 5) provide for a 30-day cure period to remedy violations before levying fines.

Staff believes the policy recommendations contained in this report will: 1) reduce the administrative and some of the financial burden of the ALWO on Airport businesses; and 2) reduce competitive differences in the application of living wage at SJC compared with other living wage airports in California.

In addition staff intends to implement regulations that will help bring the Airport more into alignment with airports operating under living wage ordinances. These regulations will: require employers to post notices of the City’s Living Wage Ordinance compensation requirements and prohibition against retaliation in prominent worksite locations frequented by employees.

Although the airlines have expressed appreciation and general support for the recommendations contained in this report, they do not believe the recommendations go far enough to address their concerns and would rather have an “opt out” provision from the Ordinance based on the collective bargaining agreements they have with representative labor organizations. Those Airport employers without collective bargaining agreements would like to be able to count financial outlays for health benefits and retirement towards the living wage requirements – as the

passenger airlines are able to do until December 31, 2010. Staff has not recommended such options because they are not within the parameters of the purpose of the parity study. However, staff would not object to such provisions as long as they are consistently applied and will look to Council for policy direction in this area.

BACKGROUND

In March 2010, Airport staff presented a study of the budget and policy issues impacting the Airport's competitiveness, as well as a series of strategies to address them. The study underscored the very competitive environment the Airport must operate in while trying to generate the customer revenues it needs to pay for its operation and capital expenditures. In an effort to keep its "cost per enplaned passenger" (airport costs to the airlines to place a passenger on a plane) competitive with competitor airports, particularly with those airports in the Bay Area, the study outlined a number of measures to reduce Airport costs in the near-term future and keep the Airport on a course to add jobs and create economic opportunity at the Airport and throughout the region.

One of the identified issues was to conduct a "parity study" of San Francisco and Oakland airports living wage ordinances, identify differences with San Jose's ALWO and propose adjustments to bring SJC into closer alignment with competitor airports to address airline concerns regarding competitive disadvantages at SJC. The largest of those concerns have been related to the proactive enforcement approach, the imposition of fines without a cure period, and the higher hourly wage requirements. The purpose of the parity study is to evaluate the policies, practices and costs of the ALWO that would require closer alignment with those airports in California that operate under a living wage ordinance in order to remove any significant competitive disadvantages that make it more difficult for businesses to operate at SJC compared to other California airports operating under living wage ordinances. At Council's direction, staff returned in late May with a competitive strategic plan for the Airport that included the parity study. On May 25, 2010 Council approved proceeding with the study as part of its approval of the Airport's Competitiveness Strategic Plan.

This report contains staff's recommendations for revisions to the ALWO. As defined in the Competitiveness Strategic Plan, the purpose of the recommended ALWO revisions is not to dismantle the Ordinance but to achieve the highest degree of parity possible with nearby competitor airports and thus reduce airline concerns about any competitive disadvantages at SJC.

ANALYSIS

Identifying Benchmark Airports

In addition to the airports in San Francisco and Oakland, staff expanded its review to cover the seven other largest commercial airports (airports that provide regularly scheduled passenger service) in California by passenger activity. In calendar year 2009, each of the ten largest California airports had activity levels of one million or more passengers a year. Of the state's

largest ten airports, there are only four airports that operate under living wage ordinances. They are:

- Mineta San José International (SJC);
- San Francisco International Airport (SFO);
- Oakland International Airport (OAK); and
- Los Angeles World Airports (LAWA) which includes commercial airports Los Angeles International Airport and Ontario and general aviation airports Palmdale and Van Nuys – all of which operate under the City of Los Angeles' Living Wage Ordinance.

SFO, OAK and LAWA became the benchmark airports for the parity study. The remaining five large commercial airports that do not operate under living wage ordinances include:

- San Diego International;
- Sacramento International;
- Burbank-Bob Hope Airport;
- John Wayne-Orange County; and
- Long Beach.

Within the context of SJC positioning itself to be strategically competitive for air service, it is important to note that the Airport must not only compete with those competitor airports in California that operate under living wage ordinances, it also must compete for air service with those airports in California, and beyond, that do not operate under living wage ordinances. This point is noted to underscore the highly competitive nature of securing air service as well as the value of reviewing parity issues to ensure the Airport remains as competitive as possible while maintaining the City's policy that employees at the Airport are paid a living wage.

Comparison Methodology

Staff reviewed all comparable areas of the four living wage ordinances that are in effect at the other three airports. Staff focused primarily on key areas that would appear to have the most impact on employer cost and time to comply with the City's ordinance. While reviewing all the provisions of each ordinance, staff especially focused the comparison on the following areas:

- coverage (When does the ordinance apply?)
- exemptions (Which employers and what types of employee are exempted from having to comply with the ordinance or receive its benefits? Are there any types of exemptions for the airlines?)
- minimum compensation with and without benefits
- compensated and uncompensated days off
- record keeping requirements
- reporting requirements (How often does the governing authority require relevant employment and payroll information to be reported?)
- monitoring/enforcement approaches (Is the compliance structure proactive or complaint-driven?)

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- fines for noncompliance (How much are fines? How often are they levied?)
- cure periods (Are fines for noncompliance levied if a violation is corrected within a specified time or are they levied upon the finding of a violation whether or not compliance is achieved?)

Since the purpose of the comparison is to maintain “parity” with the competitor airports in the state but particularly those airports in the Bay Area, to the extent possible, in areas where a disparity was identified, staff is recommending the ALWO be adjusted to achieve a closer state of parity, *regardless of whether the recommended provision adjustment is more or less restrictive than it currently is in the San José ordinance.*

Where exact parity could not be achieved, staff is recommending an adjustment to bring the City’s Ordinance into closer alignment, if not completely into parity, with the other airports.

Administration of Living Wage at SJC

San Jose’s Living Wage Policy, adopted in November 1998, applies to 18 types of direct service contracts with an expenditure of \$20,000 or more. Covered employees are those who spend at least 50% of their time on the City contract. In 2005, living wage requirements were extended to rental car companies effective January 1, 2006. San Jose’s current living wage is \$12.94 per hour if health benefits are provided and \$14.19 per hour if health benefits are not provided.

While the Living Wage Policy covered City-contracted employees at the Airport, other Airport business employees were not subject to living wage and benefit requirements. To address this disparity, the Council adopted the Airport Living Wage Ordinance (ALWO) in October 2008. The ALWO expanded coverage to Airport businesses conducting commercial activity at the Airport pursuant to an Airport contract or permit issued by the City as well as their subcontractors conducting commercial activity at the Airport. Similar to the City’s Living Wage Policy, the ALWO covers those employees who spend at least 50% of their time at the Airport working on Airport contracts. Like the City’s Living Wage Policy, the ALWO requires a minimum compensation of \$12.94 per hour with health benefits and \$14.19 per hour without benefits.

The Ordinance contains a temporary exemption for the passenger airlines in the application of the minimum compensation that allows airlines to use a combination of hourly wages and direct hourly contributions to health benefits and retirement plans to demonstrate in aggregate their employees are receiving the minimum compensation levels established in the ordinance. *This temporary exemption is scheduled to expire on December 31, 2010.* The Ordinance also exempts contractors operating at the Airport under the terms of an existing Airport contract that includes the terms and conditions of the Living Wage Policy and/or Prevailing Wage Policy for the remaining term of the Airport contract only. Any new contracts at the Airport are subject to the ALWO.

The ALWO took effect on January 1, 2009 and is administered by the Department of Public Works’ Office of Equality Assurance (OEA).

1. San José Administrative Structure

Per Council approval in October 2008, the administration of the ALWO is proactive. Employers are required to maintain certain employment and payroll records and must provide quarterly reports to the City that are reviewed by OEA staff for compliance. When instances of non-compliance are identified, an administrative citation is issued detailing:

- the nature and date of the violation;
- the amount of the fine and restitution for the violation;
- when the fine is due;
- an order prohibiting the repeated occurrence of the violation; and
- the administrative citation review process for appealing the finding of a violation.

The Ordinance sets the fine for the underpayment of wages at three times the difference between the amount of wages paid and the amount of wages that should have been paid (not to exceed \$100 a day per employee). OEA determinations of violations can be appealed. Any recipient of an administrative citation may contest the violation and request a hearing. Appeals are heard by the City Manager or her designee. After considering all testimony and evidence, a written decision to uphold or cancel the administrative citation is issued. The City Manager's decision is final.

As of August 2010, employers are given a first-violation only 30-day cure period to pay restitution without the imposition of a fine. However, currently, no cure period is given after the first violation and fines are imposed notwithstanding employer compliance.

Between January 2009 (when the ALWO took effect) through September 30, 2010, twelve (12) violations have been identified by OEA staff. All but one violation has been resolved. The chart below summarizes the eleven (11) resolved violations by category of operators, number of violations, number of workers affected and restitution paid.

Operators	Number of violations	Number of workers affected	\$ Amount of restitution
Passenger Airlines	6	28	\$20,650
Cargo Airlines	2	30	\$30,234
Fixed Base Operators	1	1	\$454
Concessionaires	1	2	\$1,105
Passenger Airline Subcontractors	1	1	\$586
TOTALS	11	62	\$53,029

The one company that has refused to comply with the Ordinance has filed suit against the City in federal court. For the period of January 1, 2009 through June 30, 2009, the company owes 71 workers \$186,000 in back wages and \$558,567 in fines for non-compliance. The amount of restitution owed continues to escalate each day the company's workers are not paid the City's mandated wage rate as does the fine for non-compliance. Of all the 12 violations identified by OEA staff, this violation is the most egregious – accounting for the most employees affected, most of the owed restitution and most of the levied fines.

Although the Ordinance allows “any person” to bring a complaint to the City and prohibits employer retaliation against any employee that registers a complaint with the City, to date, *all* violations have been identified by OEA staff. None have been initiated as result of a complaint received from an individual employee or interested parties, such as labor organizations.

In addition to fines for back wages, employers are fined for late submission of quarterly reports (\$100 per day). Quarterly reports are due at the end of each quarter and become subject to late fines five (5) calendar days after they are due. If compliance is not achieved and/or fines for noncompliance are not paid, the City has several avenues it can pursue, including: 1) withholding any payment due the employer; 2) declaring the employer in default and terminating the contract; 3) the use of any other available legal means.

To date, seven businesses, including two passenger airlines, one cargo airline and three passenger airline subcontractors, have been assessed \$10,953 in late reporting fines. As of September 30, 2010, \$10,230 (about 93%) has been remitted to the City. One passenger airline has not remitted its \$400+ late fine since July 2009. OEA staff has repeatedly reminded the company of their outstanding late fine. OEA has requested Airport staff to draw the late fine from the airline's security deposit. The last \$300 in late fines is owed by the company now in litigation with the City.

Living Wage at Other Airports

The benchmarked airports contain a number of similar provisions to ALWO. Like San José, Los Angeles, San Francisco and Oakland have had living wage ordinances in effect at their airports since 1997, 2000 and 2002 respectively. All three cities set minimum compensation levels and require the maintenance of certain employment and payroll records. The other three cities have fines and penalties for non-compliance and remedies similar to San José when compliance is not achieved and/or fines are not paid. Below is a very broad outline of each airport's living wage ordinance:

San Francisco International Airport

SFO actually operates under several wage and benefit requirements: 1) Minimum Compensation Ordinance (MCO); 2) Quality Standards Program (QSP); and 3) Health Care Accountability Ordinance (HCAO).

1. Minimum Compensation Ordinance

SFO employers with a lease, license, operating agreement, concession agreement or any other contract and operating on Airport property and are not directly employed in security and safety jobs are covered by the City of San Francisco's Minimum Compensation Ordinance (MCO). In addition, under the MCO, SFO employers must comply with the City and County of San Francisco's Health Accountability Ordinance, which requires businesses and their subcontractors that employ covered personnel that work at least 20 hours a week to:

- Offer health care benefits to covered employees; or
- Make payments to the City of San Francisco of \$3 per hour per non-covered employee (capped at \$120 a week) for use by the San Francisco Public Health Department to provide medical care to the uninsured; or
- In some cases, make the \$3 payment directly to the employee.

Under the MCO, the required living wage is \$11.54 per hour for for-profit businesses and \$11.03 per hour for non-profit businesses. MCO does not have separate wage levels for with and without benefits. Health benefits are addressed per the Healthcare Accountability Ordinance as outlined above.

2. Quality Standards Program (QSP)

Some SFO employees are covered by the Airport's QSP and equipment standards. QSP applies to any airport business (including the airlines) and their service providers that employ personnel in jobs directly impacting airport safety and security (e.g., checkpoint security, passenger check-in, baggage check-in, aircraft cleaning, fueling, baggage/cargo handling, etc.). QSP establishes a base hourly wage and benefits level for security and safety personnel as well as training level standards.

The QSP living wage level is \$12.33 per hour. Like the MCO, QSP does not have separate wage levels for with and without benefits. Employers are required to comply with the Healthcare Accountability Ordinance.

Oakland International Airport

Living wage in Oakland is required by the City Charter and applies to the Port of Oakland, which includes Oakland International Airport. Employers and their subcontractors on Port property that: 1) have service contracts with the Port valued at \$50,000 or more; provide aviation or maritime services; and/or employ more than twenty employees per pay period who each spend at least 25% of their time on Port-related employment are covered by the city's living wage laws. The current living wage compensation levels for Oakland are 1) \$11.15 per hour (with health benefits of at least \$1.67 per hour); or 2) \$12.82 per hour without benefits.

Los Angeles World Airports

The City Los Angeles' living wage ordinance covers the four airports that make up Los Angeles World Airports (LAWA): commercial airports Los Angeles International and Ontario International and general aviation airports Palmdale and Van Nuys. At the airport, Los Angeles' living wage covers service contracts for \$25,000 or more and lasting at least three months or agreements involving the leasing of City property. Employees working under such agreements are covered. For the Airport, the required living wage compensation is \$10.30 per hour with health benefits of at least \$4.50 per hour or \$14.80 per hours without benefits. .

Parity Review Results

Staff review of the benchmarked airports determined in a number of the focus comparison areas there are no substantial differences between SJC and the benchmarked airports in the policies and application of living wage or there were no significant benefits compelling a recommendation for change and, as a result, staff made no recommendations in those areas. Those areas included:

- when the living wage policy may be waived;
- which employees are covered;
- which types of employees are exempted from coverage;
- fines and liquidated damages;
- exemptions for small businesses;
- the appeal process; and
- the prohibition of employer retaliation against employees that complain to city officials.

However, in several of the selected comparison areas staff did identify some notable differences in policy, costs and/or administration of living wage. Those areas included

- compensated and uncompensated days off;
- periodic reporting requirements;
- monitoring/enforcement practice;
- the specification of use of cure periods;
- when fines are levied;
- hourly living wage levels; and
- exemptions of any kind for airlines.

The recommended measures for achieving parity fall within three broad areas:

1. revisions to the ALWO that require Council approval;
2. mandated cost adjustments (that, as part of the ALWO, also require Council approval); and
3. regulatory/administrative revisions that the ALWO already gives staff the ability to promulgate and implement.

Though staff has identified three areas for revision and adjustment, all three types of revisions and adjustments are needed to achieve the maximum degree of parity.

RECOMMENDATIONS

I. Recommended Operating Revisions

To achieve the overall objective of reducing or eliminating airline concerns of competitive disadvantage in the application of living wage policies at the Airport, staff recommends the following ALWO operational revisions:

Monitoring/Enforcement

- Discontinue proactive enforcement and initiate the investigations of violations based only on complaints.*

Enforcement at all three of the benchmarked airports is primarily complaint-driven. Violations can also be determined as the result of random audits. Complaints are received from employees, though in Oakland, complaints are also received from the unions representing covered employees. In terms of the number of complaints received, San Francisco's Minimum Compensation Ordinance program reports receiving three complaints in the past year (staff was unable to obtain details on the number of companies involved and the number of employees impacted). SFO's QSP also reported receiving three complaints over the past year (no specific data was readily available on number of companies involved and the number of employees impacted). Oakland received five complaints in the past year that involved 6-8 businesses and impacted at least 30 employees. Los Angeles reports that in calendar year 2009 it received 24 complaints against 12 different contractors. In calendar year 2010, in great part due to the implementation of new ordinance requirements, year-to-date 85 complaints against 17 different contractors have been received from employees. As noted earlier, since the San José ALWO took effect twenty-three months ago, twelve violations have been identified by OEA staff with all but one violation resolved.

To achieve parity with the benchmarked airports in this area, staff recommends the City discontinue the current policy of proactive enforcement that requires quarterly employer reporting of wage and benefit information for staff review in favor of relying on complaints submitted by employees to confirm compliance. This recommendation should significantly relieve the administrative burden on employers while still providing the City with the ability and authority to identify and investigate violations. Failure to provide information in cooperation with the investigation of a complaint would still be considered a violation subject to fines. For those employers that have a direct contract with the City, continued failure to cooperate would be considered a breach of the employer's contract with the City subject to all available remedies to the City, up to and including termination. Any interested party, including labor organizations, should also be encouraged to bring forward complaints.

Cure Periods/Levying of Fines

- ❑ *Allow at least 30 days to "cure" all identified violations.*

All three airports report that covered employers are given some time to "cure," or remedy, the violation before any imposition of fines or monetary penalties are levied. While all three of the ordinances authorize the assessment of fines and/or liquidated damages, staff in all three cities confirmed that the administrative practice is that fines are not levied if compliance is achieved within the applicable cure period.

As of August 2010, OEA staff does not impose fines for a first violation that is cured within the time prescribed by the City (currently 30 days). However, fines are levied in the case of any subsequent violations, regardless of whether the violation is cured. Staff recommends the ALWO be amended to require that employers have 30 days to cure any violation (and not just the first violation). If compliance is achieved during the cure period, no fine will be levied. In the vast majority of the cases, thirty days should be sufficient to return to a state of compliance. However, like staff in the other comparison cities, OEA staff should also have the flexibility (though not the obligation) to provide additional time for compliance in those rare cases when more than 30 days is reasonably needed to correct the violation *and* staff concludes the employer is making a diligent effort to comply.

Airline Exemption

- ❑ *Allow the exemption for the passenger airlines to expire.*

Passenger airlines at SJC currently are allowed to calculate their compliance with the wage requirements of with the Living Wage Ordinance by using a combination of hourly wages and hourly contributions to health benefits and retirement to demonstrate that, in aggregate, their employees are receiving the minimum compensation levels established in the ordinance. The exemption is set to expire on December 31, 2010. None of the three other airports provide such an exemption in their living wage ordinance for their passenger airlines. Staff recognizes that the passenger airline industry is the core business of the Airport. Staff also recognizes that San José's hourly living wage rates are among the highest for airports in the state. Nevertheless, to achieve parity with the other airports in the state in the application of living wage, San José could allow the exemptions to expire in December 2010 and require the airlines to operate under the same requirements as the other businesses at the Airport and under similar requirements they operate under at the other three airports that have living wage ordinances in effect.

II. Recommended Cost Adjustments

Total Living Wage Compensation Package

In reviewing living wage compensation costs at SJC and other airports, staff identified three broad categories of costs to employers:

- hourly wage rates;
- health care benefits; and
- paid time off.

While SJC's hourly living wage rate is among the highest of four California airports, the ALWO's *total* current compensation costs (total mandated costs to the employer of hourly wages, health care benefits and paid time off) is lower than that of the benchmarked airports. Chart A in Attachment A-1 shows the comparative costs of current "with" and "without" hourly wages only. Chart B shows total "without" mandated wages, health care and paid time off costs to employers. .

In Chart A, SJC has the highest "with benefits" hourly wage rate and second highest "without benefits" hourly rates. However, in Chart B, in the "without benefits" total compensation costs category (including all mandated costs), while SJC has the highest hourly rates, it has the next to lowest total costs to employers.

SJC currently does not have mandated costs in two of the three areas: health care benefits and paid time off. However, to achieve a greater degree of parity with the benchmarked airports, staff believes SJC needs to mandate paid days off and baseline health care costs. In addition, the lower total compensation costs to employers notwithstanding, Airport staff believes parity requires the hourly wage rate component at SJC be reduced to be more comparable with the benchmarked airports. In summary, to achieve a greater degree of parity with the benchmarked airports in three areas of mandated costs (wage rates, health care and paid time off), Airport staff is recommending mandated paid days off and a baseline cost for health care, combined with a reduction in the required hourly wage rates.

Based on the broad objective of parity and a review of the mandated living wage costs at the other airports, staff makes the following recommendations in the following areas:

Minimum Compensated and Uncompensated Days Off

- *Require employers to provide twelve paid days off to all covered employees.*

Currently, the ALWO does not require employers to provide covered full-time employees with compensated days off. (That does not mean covered employees do not get compensated days off; only that the ALWO does not require employers to provide compensated days off.) However, all three benchmarked airports require covered employees to have at least twelve paid days off a year for sick leave, vacation, and personal necessity. To achieve parity in this area, staff is recommending the City's ALWO be revised to provide full-time employees with twelve paid days off. Like the benchmarked airports, the days would begin accumulating for new employees after the first six months of satisfactory employment with the company. Compensated holidays off established by employer policy (e.g., holidays) would count towards the twelve days off. Part-time covered employees would be entitled to paid time off proportional to that accrued by full-time employees. In recognition of the cash value of the paid days off, as well as the potential productivity impact on the business operations, similar to San Francisco's MCO and

QSP ordinances, staff also recommends that employers have the option to pay the cash equivalent by adjusting the employee's hourly pay for any paid days off less than the twelve recommended by staff.

This recommendation could add costs up to a maximum range of \$1,242 and \$1,362 per employee to the employer for the total mandated living wage compensation at SJC. The more paid days off a given SJC-based employer now gives its employees, the less financial the impact of this recommendation.

- ❑ *Require all full-time covered employees to be given 10 unpaid days off.*

Currently the ALWO has no requirements for unpaid days off. However, Los Angeles and San Francisco require covered full-time employees to have 10 unpaid days off for sick leave for the employee or members of his family (as defined in their ordinances) when the employee has exhausted all of his paid time off. Oakland has no such provisions for uncompensated time off. Staff recommends that all covered full-time employees be provided 10 uncompensated days off for sick leave for themselves or defined members of their families. This recommendation will have a presumed negative productivity impact on the covered business. However, it is not possible to reasonably quantify the cost of the productivity impact on the employer.

Baseline Health Care Costs

- ❑ *Establish a minimum Airport living wage health benefits cost of at least \$2.58 per hour.*

Currently the ALWO does not mandate a minimum level of health care costs for employers electing to pay benefits. OEA is responsible for reviewing health plans submitted by those companies who elect to provide health benefits. OEA does *not* review employer health plans to approve their content. OEA's review of employers' health plan focuses on: 1) if health benefits are actually provided; and if so, 2) whether the employer paying at least 50% of the premiums.

As noted earlier, San Francisco's Healthcare Accountability Ordinance (HCO) requires employers who elect not to provide health care benefits to their employees to pay \$3 per hour – up to \$120 a week – per employee. Those employers who elect to provide health benefits must submit their health plans to the City to be reviewed by the San Francisco's Department of Public Health. Like San José, San Francisco does not mandate a baseline cost for employer-provided health plans. However, QSP staff states the average hourly cost of approved health plans is \$2.60 per hour. The exact cost for each employer depends on the demographics of the workforce.

The Port of Oakland allows employers to pay the lower living wage hourly rate if they provide health benefits valued at least \$1.67 per hour. If the employer does not provide at least \$1.67 per hour in health benefits, the employer must pay the higher hourly wage rate of \$12.82 per hour – or \$1.67 higher the lower rate of \$11.15 per hour.

Los Angeles allows Airport employers to pay the lower living wage rate of \$10.30 per hour if they provide health benefits of at least \$4.50 per hour. An employer may provide benefits of less

than \$4.50/hr. However, any differential in cost must be added to the employee's hourly rate of pay.

As noted above, two of the three cities (Oakland and Los Angeles) require employers to pay baseline health benefits costs to pay the lower hourly living wage. The third city (San Francisco) requires employers to pay baseline health benefit costs to its Public Health Department if it does not provide health benefits to its employees.

To achieve greater parity with the two airports cities that require employers to pay baseline health benefits to pay the lower hourly living wage rate, staff recommends the ALWO be revised to require employers to pay baseline health care cost of at least \$2.58 per hour per employee to pay the lower hourly living wage rate. For those employers who elect not to provide health benefits, staff recommends the hourly mandated health benefits cost be added to the lower hourly "with benefits" living wage rate to become the higher hourly "without benefits" living wage rate.

The recommended amount is based on the average per hour cost of health plans that have been submitted to OEA staff for approval by 25 of the 38 Airport employers (66%) that are subject to the ALWO. Based on the documentation submitted to OEA staff by employers, Airport employer hourly health costs ranged from a low of \$0.33 per hour to a high of \$5.94 per hour. The remaining thirteen employers do not offer health benefits and pay the higher hourly cost (currently \$14.19 per hour).

Since the recommended mandated health care cost is based on average cost of health care plans recently submitted by Airport employers to the to the City for approval, staff believes the cost impacts on employers should not be significant in many cases. However, those employers who now do not pay benefits of at least \$2.58 an hour or more would be required to pay the higher hourly wage rate. Based on the hourly wage rate recommendations below, those Airport employers who currently do not pay health benefits will see a slight increase in the current higher hourly wage rate of \$14.19 that they now pay.

Consistent with the two airports that require employers to pay a minimum health benefits cost to pay the lower living wage hourly rate, 100% of the recommended minimum health care cost of \$2.58 must be paid by the employer. Consistent with the practice at the Port of Oakland, if the employer pays less than the mandatory minimum cost, the employer must pay the "without benefits" hourly wage rate. The recommended mandatory minimum hourly employer health cost would be higher than that required by Oakland (\$1.67) but lower than the hourly cost required by Los Angeles (\$4.50) and San Francisco (\$3.00 if not benefits are paid). Health costs would continue to be submitted to City staff to ensure the minimum health cost requirement is met. As is currently the case, the staff review is focused on the hourly *cost* of health plans and not on the *content* of those plans.

Wages

- Establish Airport living wage rates at \$11.65 per hour with health benefits and \$14.23 per hour without health benefits.*

Hourly Living Wage Rates

SJC's *total mandated* living wage compensation costs to employers are in alignment with the total costs for employers at the other benchmarked airports, primarily because SJC currently does not require a minimum health benefit cost for employers or require paid days off like the other benchmarked airports. However, the SJC hourly wage component is notably higher than the benchmarked airports in both the "with benefits" and "without benefits" categories (see Chart A of Attachment A-1).

With the exception of Los Angeles' hourly "without benefits" living wage rate, San José's hourly living wage rates are higher in both categories than the benchmarked airports. Within the Bay Area, SJC's hourly living wage rate "with benefits" is between 5% and 14% higher than San Francisco and Oakland. The San José living wage rate "without benefits" is about 10% to 13% higher than Oakland and San Francisco.

Reducing SJC Hourly Living Wage Rates

Since 2007 SJC has seen a decline of 25% in the number of passengers using the Airport and a 33% reduction in the number of flights. Through layoffs, attrition and contracting out, the Airport has reduced its staff from 400 full-time positions in 2008 to about 200 full-time positions today. SJC is now the #3 airport in passenger activity and flights of the Bay Area's three major commercial airports and has lost the most air service of the three Bay Area airports in the past three years.

If the Airport is going to successfully compete in the Bay Area for needed air service, the hourly wage costs to employers to operate in San José must also be competitive with the other Bay Area airports. When the factors of declining passenger activity for several years, two strong competitor airports within 50 miles with an over abundance of flights options and San José's ranking as the third of three commercial airports in the Bay Area are considered, Airport staff believes the notably higher hourly wage rate makes it more difficult to secure additional air service at SJC. The fact that SJC is the only airport that has an exemption allowing the airlines to include health insurance payments and retirement benefits in calculating the San José living wage compensation for their employees underscores the impact of the hourly wage cost component on the airline employers at SJC. Reducing the current hourly wage rates will reduce its adverse impact on securing air service and provide a better environment for sustaining and creating jobs at the Airport and throughout the region over the long term.

For the aforementioned reasons, staff is recommending that the hourly living wage rates with benefits under the ALWO be re-established to the average of the hourly wage rates "with benefits" of the hourly rates of the four California airports operating under living wage ordinances (including SJC). The average of the hourly living wage rate with benefits of all four airports is \$11.65 per hour; about \$1.29 per hour less than the City's current ALWO wage rate of \$12.94.

Staff recommends that the SJC hourly living wage “without benefits” rate be re-established at \$14.23 – or \$2.58 more than the hourly wage rate with benefits. The \$2.58 difference is the average per hour cost of health benefit plans now paid by Airport employers and is \$0.04 higher than the current “without benefits” hourly wage rate.

Staff’s recommended hourly living wage rate of \$11.65 would represent a 10% reduction from the current \$12.94 per hour rate with benefits. This would equate to an annual reduction in wages of about \$2,683 per employee. The recommended hourly wage rate of \$14.23 would be a .003% increase in the City’s current rate of \$14.19 per hour without benefits and represents an increase of about \$83 a year per employee.

The recommended with-benefits hourly rate of \$11.65 would be higher than LAWA, Oakland and slightly higher than San Francisco’s MCO program but lower than SFO’s QSP (see Chart A of Attachment A-2).

Chart A of Attachment A-2 demonstrates how the recommended SJC hourly wage rate and total “with benefits” costs (including required health benefits and paid days off) to employers would compare with the benchmarked airports. The recommended SJC “with benefits” total costs would be higher than Oakland and slightly higher than SFO’s MCO but lower than LAWA and SFO’s QSP.

Chart B of Attachment A-2 also demonstrates how the Airport’s proposed hourly and total “without benefits” cost to employers would compare with the other benchmarked airports. The proposed SJC “without-benefits” hourly rate of \$14.23 remains higher than all the benchmarked airports except LAWA while the total mandated costs to employers would remain lower than all the benchmarked airports except Oakland.

Wage Adjustments

- ❑ *Adjust Airport Living Wage Rates by the Consumer Price Index for All Urban Consumers (CPI-U) for San Francisco-Oakland-San José.*

The living wage rate is reviewed by OEA staff annually by assessing changes in the Federal Poverty Rate for a family of three and the Economic Research Institute’s Geographic Cost-of-Living Differential. If either the poverty rate or the cost-of-living differential increases, the wage rate is adjusted accordingly. If neither changes, the wage rate is adjusted by the Consumer Price Index not to exceed three (3) percent.

It is recommended that the living wage rate be subject to adjustment on an annual basis by reference to any increase in the annual average Consumer Price Index (CPI) for All Urban Consumers in the San Francisco-Oakland-San Jose area. The living wage rate will remain unchanged in the event that the CPI remains unchanged or decreases. This methodology would bring San José into parity with the benchmarked airports.

If staff's aforementioned recommendations are adopted by Council, staff would return to Council within 90 days with an amended ordinance containing the revisions approved by Council for review and approval.

III. Proposed Administrative Amendments

The ALWO authorizes the Director of OEA to formulate regulations consistent with the Ordinance. Staff will use the authority granted in the ordinance to address the following:

Notification

- *Require employers to post a copy of the City's Airport Living Wage Ordinance compensation requirements and prohibition against retaliation in prominent worksite locations frequented by employees.*

All three airports require covered employers to post their cities' living wage requirements so that employees are aware of the minimum hourly compensation requirements as well as minimum paid and unpaid (if applicable) days off and contact information for assistance (see Attachment B). Employers are also required to post notices of the prohibition of retaliation against employees for exercising their rights under their city's living wage ordinance, along with contact information for assistance (see Attachment C). With these notices, employees are in a position to know the minimum pay and paid days off they should be receiving and who they can contact for assistance if they have reason to believe their employer is not in compliance with the given city's living wage ordinance.

Currently, the City does not require such notices to be posted (though the City does require successor employers to notify impacted employees that will be offered continued employment) and, historically, the City has received few, if any, complaints from employees. Staff will revise the current regulations to require employers to post notices on the City's compensation requirements and the prohibition against retaliation. The notifications will be required to be posted in several languages and in prominent work site locations frequented by the business' employees. Informing employees of their protections under the ALWO will be critical to the employee's ability to know when he/she should raise questions with the City regarding his/her employer's compliance with the Ordinance. Without such information and encouragement, employee complaints will remain very low.

Conclusion

Staff believes approval of the recommended Ordinance amendments, cost adjustments and administrative revisions contained in this report will achieve the objective of bringing San José in alignment with the other airports operating under living wage ordinances. These recommendations should also: 1) ease administrative reporting requirements of the ALWO on Airport employers without weakening the City's ability to enforce its provisions; 2) remove competitive disadvantages for SJC; 3) keep the Airport competitive for air service; and 4) provide a baseline of health coverage for covered employees.

Airline Position

Informal airline comments staff has received has been that while the airlines are appreciative and generally supportive of the recommendations proposed by staff, they do not believe staff's recommendations go far enough to address their concerns. The airlines have a strong preference for an "opt out" provision based on the wages and benefits negotiated with their employee labor unions and embodied in their collective bargaining agreements. For those airlines that may not have collective bargaining agreements, the strong preference is to be able continue to count hourly employee health benefits costs and the hourly employee retirement contributions towards meeting the City's hourly living wage requirement as passenger airlines are now allowed to do under the current temporary exemption contained in the ALWO that is set to expire on December 31, 2010.

The airlines do not see the opt out provision for collective bargaining agreements and the staff parity recommendations as mutually exclusive. The parity study is viewed as being potentially beneficial in those instances where an airline does not have a collective bargaining agreement that addresses wages and health benefits. If the airlines had to choose between an opt out provision for a collective bargaining agreement or the parity study recommendations, they would certainly take the collective bargaining opt out provision. If a collective bargaining opt out provision is not possible, the passenger airlines would strongly prefer to see an extension of the current temporary exemption for passenger airlines that allows health and retirement benefits to be counted towards meeting the living wage requirement, because they believe the current exemption recognizes the value of health and retirement benefits negotiated as part of a collective bargaining agreement.

Staff has not recommended an opt out provision and/or an extension of the current exemption because they are not within the parameters of the parity study. Presently, none of the benchmarked airports provide such provisions in their ordinances. However, staff has no objection to such provisions, provided they are consistently applied and will look to the Council for direction in this area.

Acknowledgements

Staff wishes to acknowledge the cooperation and assistance of the staffs at the City and County of San Francisco, the Port of Oakland, Los Angeles World Airways and the City of Los Angeles in the preparation of this report. Their assistance was invaluable in understanding the policies and practices of their cities' living wage ordinance.

POLICY ALTERNATIVES (If applicable)

Alternative #1: Maintain the current proactive enforcement approach.

Pros: Maintains an aggressive enforcement approach to identifying possible violations and achieving the City's intent to ensure covered employees receive the benefits provided in the Ordinance.

Cons: Adds unnecessary time and cost for the large majority of employers that are regularly in compliance with the Ordinance.

Reason for not recommending: Other airports in the state have implemented complaint-driven enforcement systems. The number of violations identified by the benchmarked airports through employee complaints is comparable to the number of violations identified through the City's proactive enforcement approach at less financial and administrative costs for airport businesses.

Alternative #2: Do not adopt the recommended wage adjustments and/or mandated health care and/or paid days off costs to employers.

Pros: 1) Employees already making the lowest wages at the Airport would not see a reduction in their income. 2) The recommended mandated costs will add cost to employers and make the Airport less competitive for air services.

Cons: 1) The individual components of the total cost to the employer are not in alignment with the costs of the benchmarked airports. 2) The recommended adjustments should strengthen health benefits, provide employees with guaranteed paid time off and remove any significant differences in component costs with the benchmarked airports. .

Reason for not recommending: Adjusting the cost components: 1) retains wage levels comparable to those airports that operate under living wage; and 2) is consistent with the objective of reaching parity with the other airports in the cost of living wage to employers.

Alternative #3: Create a collective bargaining opt out provision

Pros: 1) Would address passenger airline concerns about the expiration of the current exemption. 2) Would reduce the financial and administrative costs of living wage compliance for airline businesses with collective bargaining agreements that address wages and health benefits. 3) Would reduce costs of administration for the City.

Cons: None.

Reason for not recommending: No other California airport has such an exemption. Recommending such an exemption would not be consistent with achieving parity with benchmarked airports in the application of living wage.

Alternative #4: Make the current exemption that allows counting hourly health and retirement contributions towards meeting the hourly wage requirement permanent and extend it to all Airport employers that do not have a collective bargaining agreement that addresses wages and health benefits.

Pros: 1) Would cover all Airport employers (including airlines) that may not have a collective bargaining agreement. 2) Would reduce the financial and administrative costs of living wage on any Airport business that chooses to use this exemption. 3) Would reduce administrative costs to City staff.

Cons: 1) Would likely result in lowered wages for some Airport business employees.

Reason for not recommending: No other California airport has such an exemption. Recommending such an exemption would not be consistent with achieving parity with benchmarked airports in the context and the application of living wage.

Alternative #5: Amend any or all of staff's recommendations.

Pros: Allows Council the option to determine highest priority parity issues while maintaining those parts of the Ordinance and/or related administrative practices it believes should be maintained, whether or not they are in parity with other California airports.

Cons: Those parity issues not addressed could continue to add to the Airport's competitive disadvantage.

Reason for not recommending: Staff believes the recommendations contained in this report most closely achieve the overriding objective of identifying and removing those competitive disadvantages in the application of living wage at the Airport and making the Airport more comparable to other California airports.

PUBLIC OUTREACH/INTEREST

This memorandum was posted to the City's website and emailed to key stakeholders including the passenger airlines and other impacted Airport businesses and the South Bay Labor Council.

COORDINATION

The preparation of this report was coordinated with the Department of Public Works, the City Attorney's Office and the Office of the City Manager.

FISCAL/POLICY ALIGNMENT

The City currently maintains a staff of 1.5 FTE's to implement the Living Wage ordinance at the Airport at a cost of \$192,280 a year. With the exception of Oakland, which utilizes .3 FTE for its airport, the City's staffing level is generally comparable to those of San Francisco (two FTE's for its Quality Standards Program, who investigate complaints related to both living wage and prevailing wage requirements, and one FTE for its Minimum Compensation Ordinance) and LAWA (one FTE for living wage-related issues its four airports). Staff anticipates its

HONORABLE MAYOR AND COUNCIL

November 23, 2010

Subject: Recommended Airport Living Wage Ordinance Revisions

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recommendations would have little fiscal impact because while the workload emphasis would shift from reviewing quarterly reports to responding to complaints and doing more random audits, the overall workload would be expected to remain about the same as it is now. However, whether there is any fiscal impact will ultimately depend on some combination of the number of complaints the City receives and the degree of consistent compliance the Airport businesses maintain. Staff recommends the staffing requirements be reconsidered for FY 2012-13.

CEQA

CEQA: Not a Project, File No. PP10-068(b), Municipal Code/Policy.

/s/

William F. Sherry A.A.E.

Director of Aviation

Please direct questions to William Sherry, Director of Aviation, at (408) 392-3610.

Attachments:

A-1: Comparison of Take-Home Wages and Total Compensation Costs

A-2: Comparison of Take-Home Wages and Total Compensation Costs for Recommended Wage Rate

B: Notification: Compensation Requirements

C: Notification: Prohibition against Retaliation

Chart A – Comparison of Current Hourly Living Wage Rates

Airport	Hourly wage rate with benefits	Diff (+/-) compared to SJC	Hourly wage rate without benefits	Diff (+/-) compared to SJC
<i>SJC</i>	<i>\$12.94</i>		<i>\$14.19</i>	
SFO-QSP	\$12.33	-\$0.61	\$12.33	-\$1.86
SFO-MCO	\$11.54	-\$1.40	\$11.54	-\$2.65
OAK	\$11.15	-\$1.79	\$12.82	-\$1.37
LAWA	\$10.30	-\$2.64	\$14.80	+\$0.61
<i>Average</i>	<i>\$11.65</i>	<i>-\$1.61</i>	<i>\$13.14</i>	<i>-\$1.32</i>

**Chart B – Comparison of Current Total “Without-Benefits”
Living Wage Costs to Employers**
(including mandated health care coverage and paid days off)

Airport	Hourly Wage Rate w/out Health	Health Costs	Paid Days Off (value per hour)	Total Hourly Costs to Employer
OAK	\$12.82	--	\$.59	\$13.41
<i>SJC</i>	<i>\$14.19</i>	--	-- ¹	<i>\$14.19</i>
SFO MCO	\$11.54	--	\$.53	\$15.07 ²
LAWA	\$14.80	--	\$.68	\$15.48
SFO QSP	\$12.33	--	\$.57	\$15.90 ³
<i>Average</i>	<i>\$13.14</i>	--	<i>\$.59</i>	<i>\$14.81</i>

¹ Paid days off currently not mandated

² Employer not paying benefits required by San Francisco Healthcare Accountability Ordinance to pay \$3 per hour – up to \$120 a week – per employee to be paid to S.F. Public Health Department

³ See note #2 above

**Chart A - Comparison of Total Compensation "With-Benefits"
Living Wage Costs to Employers**

(including recommended wage rate and mandated health care coverage and paid days off)

Airport	Wage Rate with Health (per hour)	Mandated Health Costs (per hour)	Paid Days Off (per hour)¹	Total Hourly Costs
OAK	\$11.15	\$1.67	\$.59	\$13.41
SFO MCO	\$11.54	\$2.60 ²	\$.53	\$14.67
<i>SJC</i>	<i>\$11.65</i>	<i>\$2.58³</i>	<i>\$.54⁴</i>	<i>\$14.77</i>
LAWA	\$10.30	\$4.50 ⁵	\$.48	\$15.28
SFO QSP	\$12.33	\$2.60 ⁶	\$.57	\$15.50

**Chart B - Comparison of Hourly and Total Compensation
"Without-Benefits" Living Wage Costs**

(including proposed wage rate and mandated health care coverage and paid days off)

Airport	Wage Rate without Health (per hour)	Mandated Health Costs (per hour)	Paid Days Off (per hour)⁷	Total Hourly Costs
OAK	\$12.82	--	\$.59	\$13.41
<i>SJC</i>	<i>\$14.23⁸</i>	<i>---</i>	<i>\$.66⁹</i>	<i>\$14.89</i>
SFO MCO	\$11.54	\$3.00 ¹⁰	\$.53	\$15.07
LAWA	\$14.80	--	\$.68	\$15.48
SFO QSP	\$12.33	\$3.00 ¹¹	\$.57	\$15.50

¹ Divided by 2,080 hours to adjust the employee's hourly pay for any paid days off less than the twelve recommended by staff.

² No established minimum cost. Healthcare Accountability Ordinance requires employers paying benefits to submit their health plans for approval. This is an average per employee per hour cost based on approved plans. Actual cost depends on the demographics of the covered employee group.

³ Proposed mandatory employer health cost.

⁴ Per hour cost if adopted.

⁵ An employer may provide benefits of less than \$4.50/hr. However, any differential in cost must be added to the employee's hourly rate of pay.

⁶ See footnote #3 above.

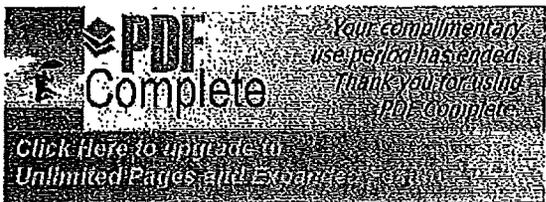
⁷ See #1 above

⁸ Proposed hourly wage rate

⁹ Per hour cost if adopted.

¹⁰ Required \$3.00/hour for health care costs per Healthcare Accountability Ordinance.

¹¹ See note #8 above



Los Angeles
CALIFORNIA



ANTONIO R. VILLARAIGOSA
MAYOR

NOTICE TO EMPLOYEES LIVING WAGE ORDINANCE

This employer is a contractor with the City of Los Angeles. This contract is subject to the Living Wage Ordinance (LWO).

THESE ARE YOUR RIGHTS...

1. Minimum hourly compensation:

- ⊗ \$10.30/hour plus at least \$1.25 an hour in health benefits, OR
- ⊗ \$11.55/hour without health benefits.

Airport Employees:

- ⊗ \$10.30/hour plus at least \$4.50 an hour in health benefits, OR
- ⊗ \$14.80/hour without health benefits
 - The wage rates are adjusted annually. Changes are effective July 1 of each year. These rates are effective July 1, 2010.

2. Minimum days off:

- ⊗ 12 compensated days off per year (including holidays) for sick leave, vacation or personal necessity at the employee's request.
 - A full-time employee should accrue one day per month.
 - Unused compensated time off must be carried over for at least one year.
- AND
- ⊗ 10 additional uncompensated days off per year for family or personal illness.
 - Time off must be available to employees after 6 months of employment.

3. Tax Credit:

- ⊗ Employees earning less than \$12/hour may be eligible to apply for the Federal Earned Income Tax Credit (EITC).
 - Application forms are available from your employer. For additional information about the EITC and obtaining forms, contact the Earned Income Tax Credit Hotline: 1-800-829-1040.

FOR ADDITIONAL INFORMATION OR ASSISTANCE, CALL:

City of Los Angeles
Department of Public Works
Office of Contract Compliance
1149 S. Broadway Street, Suite 300
Los Angeles, CA 90015
Phone: (213) 847-2825 - Fax: (213) 847-2777

CITY OF LOS ANGELES
CALIFORNIA



ANTONIO VILLARAIGOSA
MAYOR

**NOTICE TO EMPLOYEES
WORKING ON CITY CONTRACTS
RE: LIVING WAGE ORDINANCE AND
PROHIBITION AGAINST RETALIATION**

"Section 10.37.5 Retaliation Prohibited" of the Living Wage Ordinance (LWO) provides that any employer that has a contractual relationship with the City may not discharge, reduce the pay of, or discriminate against his or her employees working under the City contract for any of the following reasons:

1. Complaining to the City if your employer is not complying with the Ordinance.
2. Opposing any practice prohibited by the Ordinance.
3. Participating in proceedings related to the Ordinance, such as serving as a witness and testifying in a hearing.
4. Seeking to enforce your rights under this Ordinance by any lawful means.
5. Asserting your rights under the Ordinance.

Also, you may not be fired, lose pay or be discriminated against for asking your employer questions about the Living Wage Ordinance, or asking the City about whether your employer is doing what is required under the LWO. If you are fired, lose pay, or discriminated against, you have the right to file a complaint with the City's Equal Employment Opportunity Enforcement Section, as well as file a claim in court.

For more information, or to obtain a complaint form, please call the Equal Employment Opportunity Enforcement Section at (213) 847-2625.

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