



New York State Department of Labor

Andrew M. Cuomo, *Governor*

Peter M. Rivera, *Commissioner*

September 4, 2014

John Buyce
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th floor
Albany, NY 12236-0001

Re: Labor Department 90 Day Response to:
Comptroller's Audit of Wage Theft Investigations

Dear Mr. Buyce:

Pursuant to Section 170 of the Executive Law, I write to provide the Department of Labor's (the "Department") 90 day response to the Office of the State Comptroller's ("OSC") audit of Wage Theft Investigations (Report 2013-S-38, the "OSC Report"), which made certain recommendations regarding the Department's Division of Labor Standards (the "Division") procedures.

The Department is overwhelmingly successful at fulfilling its mission to recover wages, penalties, interest, and damages for low wage workers. As OSC was aware prior to the publication of its report, the Department recovered and disbursed to workers nearly \$23 million of unpaid or underpaid wages in calendar year 2013. As of the date of this writing the Department recovered and disbursed over \$20.1 million for workers through just the first eight months of 2014, and is on pace for a record breaking year. The Division is slated to recover more unpaid wages for workers – its primary mission – in 2014 than it has in any other year in its history.

The Department has the second largest staff in the nation dedicated to the investigation of unpaid and/or underpaid wage claims and has tasked its staff with a broad mission unmatched by other states or the federal government. Unlike all other enforcement and regulatory agencies with the power and mandate to help aggrieved workers, the Department investigates every complaint filed by, or on behalf of, low wage workers, provided it has the requisite jurisdiction and basic claimant information.

The Department's commitment to helping every worker shows in its record of timely investigation of wage complaints. Seventy-eight percent (78%) of the investigations opened in January of 2014 were completed within 6 months. In calendar year 2013 the Department opened 6,533 new cases for investigation of unpaid or underpaid wages and 6,794 wage investigations were completed and closed that same year.

Before addressing each of OSC's specific recommendations, it bears mention that all Division level operational changes recommended by OSC were either complete at the time OSC published its report or are substantially complete as of the date of this letter.

OSC Recommendation No. 1:

Continue efforts to close the oldest cases and strive to investigate and resolve cases timely.

Department Response to Recommendation No. 1:

The Labor Department fully implemented operational changes to “close oldest cases and resolve cases timely” prior to the audit and publication of the OSC Report. The Division mandates timely completion of all new investigations. Of cases opened in January of 2014 (435), 78% were fully investigated within 6 months. Of all cases opened since May 6, 2013, only 27% of the investigations were open for longer than 6 months. The Department is committed to continuing to meet and exceed the 6 month investigation process goal in the future.

OSC Recommendation No. 2:

Monitor the newly implemented strategies discussed in this report and continue to pursue additional initiatives to reduce the wage investigation case backlog and complete new wage investigation cases sooner.

Department Response to Recommendation No. 2:

The Labor Department fully implemented operational changes to “complete new wage investigations sooner” prior to the audit and publication of the OSC report. The Department is continually analyzing and improving its operations. The Division has continued to triage new investigations and distribute case assignments to specialized teams; redistribute new investigations to districts with lower caseloads; redistribute investigator lines made available through retirement and resignation to districts experiencing the heaviest intake loads.

OSC Recommendation No. 3:

Work with ITS to correct WPM system flaws and develop its capability to create meaningful reports to better manage the current cases and backlog.

Department Response to Recommendation No. 3:

The Labor Department has substantially implemented this recommendation. The Office of Information Technology Services (OITS) has successfully completed and made available to management a number of reporting tools that will allow Division Leadership to aggregate data by claim type, district location, number of workers, amounts due and investigation status. These reports will provide for enhanced tracking of ongoing cases and the reporting out of wage complaint information. In addition, new data tools will make it easier for the Division to develop targeted investigation strategies to respond to geographic need or trends in certain industries.

OSC Recommendation No. 4:

Establish specific payment plan procedures and include them in the policies and procedures manual.

Department Response to Recommendation No. 4:

The Labor Department fully implemented this recommendation. Specific payment plan procedures were developed and presented to all field investigators and supervisors through an in-service training on August 6, 2014. The procedures presented were summarized in a memo issued to staff on August 25, 2014.

OSC Recommendation No. 5:

Develop criteria for investigators to use to determine if a payment plan should be granted.

Department Response to Recommendation No. 5:

The Labor Department fully implemented this recommendation. Criteria to guide the process of granting payment plans was presented at the August 6, 2014 training and is included in the memo addressing payment plan procedures (discussed above).

OSC Recommendation No. 6:

Ensure that each district office follows the payment plan procedures and keeps similar records.

Department Response No. 6:

The Labor Department fully implemented this recommendation. The memo to all investigators included directives as to the type of payment plan records to be maintained at each district office. Division Management will be reviewing payment plan activity and the documentation maintained to ensure the new procedures are implemented. The Department implemented a payment plan data-tracking tool for managing these plans. Senior Investigators enter information on any new payment plans into a report that is reviewed by Division Management regularly. This new system provides executive oversight and control over the issuance and management of these plans created at the district office level.

OSC Recommendation No. 7:

Develop a centralized payment collection system to effectively separate incompatible duties and to manage all payment plan information and transactions.

Department Response No. 7:

The Department disagrees with this recommendation, and accordingly, there is no plan to develop a centralized payment collection system. Payment plans are most effectively monitored and enforced at the district level. Moreover, a centralized payment plan collection unit would require a vast re-allocation of resources. Instead, the Department created a system of reports maintained at the district office level, and reviewed regularly by Division management in Albany. Each payment plan and employers' progress in completing that plan is visible to senior management in Albany. The Labor Standards Director's Office has staff assigned to continuously monitor these plans and alert senior management to plans that are in arrears.

We appreciate OSC's efforts to make recommendations which enhance our operations. If there are any questions, please contact Rajni Chawla, Director of Internal Audit at (518) 457-9076.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter M. Rivera". The signature is fluid and cursive, with the first name "Peter" being the most prominent.

Peter M. Rivera
Commissioner

cc: Governor, Andrew M. Cuomo
Lieutenant Governor, Robert J. Duffy
Senate Majority Leader, Dean G. Skelos
Assembly Speaker, Sheldon Silver
Senate Majority Coalition Leader, Jeffrey Klein
Senate Minority Leader, Andrea Stewart- Cousins
Assembly Majority Leader, Joseph Morelle
Assembly Minority Leader, Brian M. Kolb
Chair, Senate Finance Committee, John A. DeFrancisco
Ranking Minority Member of Senate Finance Committee, Liz Krueger
Chair, Assembly Ways and Means Committee, Herman D. Farrell, Jr.
Ranking Minority Member, Assembly Ways and Means Committee, Bob Oaks
Director, Division of the Budget, Robert L. Megna