

Memorandum

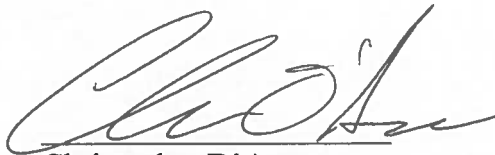
TO: Basil Merenda, Director of Labor
Department of Labor

FROM: Christopher D'Amore, Deputy City Solicitor

DATE: June 5, 2023

SUBJECT: Regulations Regarding Practice and Procedure for the Enforcement of Chapters 9-4100, 9-4300, 9-4500, 9-4600, 9-4700, 9-5000, 9-5600, and 9-3303(1)(d) of the Philadelphia Code

I have reviewed the Regulations Regarding Practice and Procedure for the Enforcement of Chapters 9-4100, 9-4300, 9-4500, 9-4600, 9-4700, 9-5000, 9-5600, and 9-3303(1)(d) of the Philadelphia Code which I understand were approved by the Department of Labor on April 20, 2023. I find the regulations to be legal and in proper form. In accordance with Section 8-407(a) of The Philadelphia Home Rule Charter, you may now forward these regulations to the Department of Records where they will be made available for public inspection.



Christopher D'Amore
Deputy City Solicitor

**City of Philadelphia
Department of Labor
Office of Worker Protections**

**Regulations Regarding Practice and Procedure for the Enforcement of
Chapters 9-4100, 9-4300, 9-4500, 9-4600, 9-4700, 9-5000, 9-5600, and
9-3303(1)(d) of the Philadelphia Code**

The following regulations regarding Chapters 9-4100, 9-4300, 9-4500, 9-4600, 9-4700, 9-5000, 9-5600, and 9-3303(1)(d) of the Philadelphia Code (hereinafter “Enforcement Regulations”) are hereby adopted:

1. Declaration of Authority.

1.1 Authority.

The City of Philadelphia Department of Labor is established by and has those powers and duties set forth in Section 4-2300 of the Philadelphia Home Rule Charter.

1.2 Existing Regulations.

These Enforcement Regulations shall supplement earlier regulations promulgated by the Office of the Managing Director, Mayor’s Office of Labor, or the Department of Labor regarding the Worker-Protection Ordinances except the following regulations which these Enforcement Regulations supersede:

- Section 11 of the Third Supplemental Emergency Regulation Regarding COVID-19 and Chapter 9-4100 of the Philadelphia Code: Promoting Healthy Families and Workplaces;
- Paragraphs 16 through 22, inclusive, of the Regulations Regarding Chapter 9-4100 of the Philadelphia Code: Promoting Healthy Families and Workplaces; and
- Section 11 of the Regulations Regarding Chapter 9-4600 of the Philadelphia Code: Fair Workweek Employment Standards.

1.3 Office of Worker Protections.

The Office of Worker Protections, within the Department of Labor, is the agency authorized and empowered to conduct investigations of any matter pertaining to the worker-protection laws of the City, such as mandatory leave rules, wage payment violations, mandatory notification rules and other City laws designed to regulate the relationship between private employers and their employees, but not including those protections within the purview of the Human Relations Commission. In conjunction with the Law Department, the Office participates in legal proceedings to enforce such laws.

1.4 Purpose.

These Enforcement Regulations, promulgated by the Department of Labor pursuant to its authority under Sections 4-2300 and 8-407 of the Home Rule Charter and Philadelphia Code Sections 9-4109, 9-4506, 9-4607, 9-4710, 9-5008, 9-5602, and 9-3033(1)(d), are intended to set forth policies and procedures followed by the Office of Worker Protections for its investigations and enforcement of the City’s worker-protection laws and any appeals from determinations or notices of violation resulting from those investigations under the following laws (collectively, the “Worker-Protection Ordinances”):

- A) Chapter 9-4100 – Promoting Healthy Families and Workplaces;
- B) Chapter 9-4300 – Wage Theft Complaints;
- C) Chapter 9-4500 – Protections for Domestic Workers;
- D) Chapter 9-4600 – Fair Workweek Employment Standards;
- E) Chapter 9-4700 – Wrongful Discharge from Parking Employment;
- F) Chapter 9-5000 – Employee Protections in Connection with COVID-19 Emergency Health Order;
- G) Chapter 9-5600 – Workforce and Career Pathways Information Sheet;
- H) Chapter 9-3303(1)(d) – Use of Tower Cranes; and
- I) Any future worker protection laws that are enforced or administered by the Office of Worker Protections.

These Enforcement Regulations do not apply to any matters arising under the following ordinances:

- A) Chapter 9-5300 – Travel and Hospitality Worker Recall and Retention
- B) Chapter 9-5400 – Retention of Hotel Workers

2. Definitions.

In addition to the definitions provided in the Worker-Protection Ordinances and in pertinent sections of the Philadelphia Home Rule Charter and Philadelphia Code, the following terms have the following meanings for the purposes of the Ordinances.

2.1 Department. The City of Philadelphia Department of Labor.

2.2 Office. The Office of Worker Protections, within the Department.

2.3 The Worker-Protection Ordinances. The Chapters of the Philadelphia Code set forth in paragraphs 1.4(A) through 1.4(I) of these Enforcement Regulations.

2.4 Director. The Director of the Office or the Director’s designee.

2.5 Determination. A Determination shall constitute a notice of violation and order under the Worker-Protection Ordinances and any other matter investigated by the Office where the Director determines that a notice of violation is appropriate.

2.6 Request for Information. A written request for documents and information in the form of responses to written interrogatories and production of documents.

2.7 Notice of Investigation. A written notice from the Office that the Office opened an investigation into an alleged violation of one of the Ordinances. Includes a Notice of Wage Theft and a Request for Information.

2.8 Notice of Wage Theft. A written notice from the Office that the Office opened an investigation into an alleged violation of Chapter 9-4300 – Wage Theft Complaints.

3. The Enforcement Regulations in Relation to the Ordinances.

3.1 Relation to Ordinances.

These Enforcement Regulations interpret and implement the provisions of the Worker-Protection Ordinances.

3.2 Construction of Enforcement Regulations.

These Enforcement Regulations shall be liberally construed to permit the Office to accomplish its administrative duties and to secure the just and timely determination on the merits of all investigations before the Office.

3.3 Severability.

If any of these Enforcement Regulations or any part of a regulation is determined to be invalid, the remaining Enforcement Regulations or part of the regulation affected shall continue in full force and effect.

4. Complaints and Investigations.

4.1 Review of Complaints and Investigations.

The Office shall review each complaint received by the Office.

A) An investigation may be initiated following the receipt by the Office of a complaint. The Office shall review each complaint to determine if it meets any threshold or jurisdictional requirements of the ordinance or ordinances implicated by the complaint.

B) The Office may also initiate an investigation in situations including, but not limited to, when the Director has reason to believe that a violation has occurred or will occur, or when circumstances show that violations are likely to occur within a business or class of businesses because the workforce contains significant numbers of employees who are vulnerable to a violation of the Worker-Protection Ordinances or because the workforce is unlikely to volunteer information regarding such violations.

C) The Director may refer a complaint to other federal, state, or local agencies that are charged with the administration or enforcement of laws applicable to the complaint and will notify the complainant prior to any referral.

4.2 Notice of Investigation.

After conducting a review of the complaint and initiating an investigation, the Office shall serve a Notice of Investigation upon the alleged employer or responsible party and the complainant. The Notice of Investigation shall include:

- A) a short, plain statement of the allegations;
- B) a summary statement of the rights and obligations of the parties; and

C) in matters involving a complaint or allegations under Chapter 9-4300 (Wage Theft Complaints) or Chapter 9-5000 (Employee Protections in Connection with COVID-19 Emergency Health Order) the Notice of Investigation shall also include a copy of the complaint.

4.3 Method of Service.

Service of the Notice of Investigation shall be made in writing as required by the Ordinances or law. Where the Ordinances do not otherwise specify a method of service, service may be made by:

- A) personal service;
- B) certified mail, return receipt requested;
- C) electronic means (i.e. e-mail or text message) if acknowledged by the recipient or if the recipient previously consented to service by electronic means; or
- D) by any means where the intended recipient affirmatively acknowledges receipt of service.

4.4 Confidentiality.

The Office shall not, except where permitted or required by the Ordinances or required by law, disclose the identity of the complainant or identifying information about the complainant. Where disclosure is permitted, but not required, the Director shall notify the complainant prior to any disclosure.

4.5 Answer.

In an investigation pertaining to a complaint alleging a violation of either Chapter 9-4300 (Wage Theft Complaints) or Chapter 9-5600 (Employee Protections in Connection with COVID-19 Emergency Health Order), an answer to the Notice of Investigation shall be filed with the Office by the alleged employer or responsible party as directed by the Office. If the alleged employer or responsible party fails to timely file an answer, the Director may proceed to consider the allegations contained in the complaint as uncontested.

4.6 Subpoenas.

Pursuant to the Philadelphia Home Rule Charter Sections 8-409 and 4-2300 and the Worker-Protection Ordinances, the Office may issue subpoenas. Subpoenas issued by the Office shall be signed by the Director, or the Director's designee, and shall be returnable within 30 days of receipt of the subpoena by the subpoenaed party, or such other reasonable timeframe set forth in the subpoena. If a recipient of the subpoena fails to respond, the Office may, in the Director's discretion, refer the subpoena to the City of Philadelphia Law Department to initiate proceedings to enforce the subpoena in a court of competent jurisdiction.

5. Determinations

5.1 Timing of a Determination.

Timeframe(s) set forth for Determinations in the Worker-Protection Ordinances are aspirational and nonbinding. The Office will take reasonable steps in all matters to make Determinations within any timeframe(s) set forth in the Worker-Protection Ordinances but recognizes that staffing levels, the volume of complaints, and the cooperation of the parties may not allow this to occur. Where the Office finds that the investigation is not complete within such time frame, the Office will issue an interim determination making a finding that additional investigation is needed and shall so notify the parties of its continued investigation and that a subsequent determination will be released after the investigation concludes.

5.2 Investigations in which Determinations are Required.

Except where not required to do so as set forth in 5.3 and 5.4, the Director will issue a written Determination in all investigations that includes a statement of whether a violation of the Worker-Protection Ordinances has or has not occurred and the supporting facts.

A) Investigations in which there is a Violation. Where the Director determines a violation has occurred or is occurring, the Director shall issue and serve the Determination upon all parties and shall include notice of the right to appeal the Determination.

B) Investigations in which there is no Violation. Where the Director has determined a violation has not occurred and the investigation was initiated by a complainant, the Director shall issue a Determination that includes notice of the complainant's right to appeal the Determination. This notice may be included in a closing letter.

5.3 Dismissal of an Investigation without a Determination.

The Director may dismiss an investigation without issuing a Determination when the Director determines dismissal is appropriate, including, but not limited to, investigations where:

A) The Director determines that the commencement of an investigation was not timely made, that a complaint was not timely filed, or that the Office does not otherwise have jurisdiction;

B) A civil action has been filed and is being actively litigated in a court which seeks relief on the same facts as are under investigation;

C) The complainant fails to provide necessary information requested by the Director, fails or refuses to appear or to be available for interviews or conferences as necessary, or otherwise refuses to cooperate with the Director to the extent that the Director is unable to complete the investigation and at least seven (7) days have elapsed since the Director sent notice of intent to dismiss the investigation; or

D) The complainant cannot be located by the Director after reasonable efforts have been made to do so. Before any such dismissal, the Director shall give notice of the Director's intent to dismiss the investigation to the complainant's last known mailing or email address or by text message. No case shall be dismissed until at least seven (7) days have elapsed since the Director sent notice of intent to dismiss the investigation.

5.4 Administrative Dismissal of Investigations.

The Director may administratively close an investigation when it is appropriate, including, but not limited to, investigations where a settlement agreement has been reached prior to a Determination pursuant to Section 8 of these Enforcement Regulations.

5.5 Notice of Dismissal.

Upon dismissal under Section 5.3 or 5.4 of these Enforcement Regulations, the Office will notify the complainant and, where applicable, the alleged employer or responsible party that an investigation has been dismissed.

5.6 Failure to Respond.

If an alleged employer or responsible party fails to respond to a Notice of Investigation or Request for Information within thirty (30) days of service, and they have been served as required by the Worker-Protection Ordinances and these Enforcement Regulations, the Director may enter a Determination by that the alleged employer has violated the Worker-Protection Ordinance(s) based on the available evidence.

5.7 Amounts payable.

All amounts determined to be due and payable and entered on a Determination shall be paid within 60 days of service of the Determination upon the employer or responsible party. The Director may at the Director's discretion allow an employer or responsible party to enter a reasonable payment plan for a period not to exceed six months. The Director may refer a Determination that has not been paid to the City of Philadelphia Law Department for appropriate action.

5.8 Determinations.

Determinations shall state:

- A) whether the Worker-Protection Ordinance(s) was violated;
- B) the facts, as determined by the Office, that support the determination that the Worker-Protection Ordinance(s) was violated;
- C) notice of the right to appeal the Determination to the City of Philadelphia Board of Labor Standards, subject to the regulations, procedures, policies, or orders of the Board of Labor Standards;
- D) an order requiring the employer or responsible party to pay amounts listed in an itemized statement, including where appropriate:
 - 1) any unpaid wages and benefits payable to the employee or employees;
 - 2) any unpaid sick or leave time the employee or employees would have been entitled to payable to the employee or employees;
 - 3) other damages payable to the employee or employees suffered by the employee or employees related to the violation;
 - 4) fines payable to the City in accordance with the Philadelphia Code;
 - 5) presumed damages payable to the employee or employees where the Office determines that an employer violated section 9-4500 – Protections for Domestic Workers, section 9-4600 – Fair

Workweek Employment Standards, or any other Worker-Protection Ordinance that allows for presumed damages;

6) predictability pay payable to the employee or employees where the Office determines that an employer violated section 9-4600 – Fair Workweek Employment Standards;

7) Interest on any backpay award calculated as simple interest using the United States Prime Rate as of the date that the backpay was due to be paid to the employee. Interest awards are purely compensatory and are intended to compensate the employee or employees for the time value of the funds.

8) other appropriate relief as authorized by the Worker-Protection Ordinances.

5.9 Service.

Service of Determinations shall be made by certified mail, personal service, or by service to an email address previously used by the recipient to communicate with the Office.

6. Appeals.

6.1 Right to appeal.

Any party aggrieved by any Determination, and who has a direct interest in such Determination, shall have the right to file an appeal therefrom to the Board of Labor Standards within thirty (30) days of the date of service of such Determination. Appeals shall be filed and conducted in the manner and in the form prescribed by any regulations, rules, procedures, policies, and orders adopted and promulgated by the Board of Labor Standards.

6.2 Failure to appeal.

Failure of a party aggrieved by any Determination to timely file an appeal to the Board of Labor Standards shall result in the Office's Determination being final and enforceable.

6.3 Appeals not permitted.

Where a private right of action exists, no party may appeal an Administrative Dismissal of a Complaint or the dismissal of an Investigation without a Determination to the Board of Labor Standards.

7. Enforcement of Office Determinations and Orders.

7.1 Enforcement of Determinations Generally.

The Office may apply in a court of competent jurisdiction to enforce any final Determination.

7.2 Relief that may be sought.

The Office may apply to a court of competent jurisdiction for relief and seek as follows:

A) An order enforcing the Determination and declaring that the amounts determined by the Office to be due and owing to an employee or employees are due and owing and that such amounts must be paid to the employee;

B) Injunctive relief, and when the employee is joined as a party, reinstatement;

C) Where the Determination includes a finding that the employer or responsible party violated a Worker-Protection Ordinance(s), a fine payable to the City in accordance with the Philadelphia Code;

D) Any other appropriate relief.

8. Fact Finding and Mediation Conferences.

8.1 When a conference may be held.

At such times as are deemed appropriate by the Director, the Director may hold fact finding and mediation conferences, including an investigation interview. The Director will conduct the conference. Such conferences are part of the investigation. All parties deemed by the Director as relevant to the investigation shall attend the conference. The purpose of the conference may include:

A) To identify the undisputed elements of the factual allegations or alleged violations;

B) To define and, if possible, resolve the disputed elements of the allegations or violations; and

C) To attempt to settle the allegations or violations.

8.2 Participants at fact finding conferences may be accompanied by a legal representative but the role of the representative is advisory only. The representative will not be allowed to question or cross-examine parties or other witnesses.

8.3 A representative of an employer or responsible party at a conference shall include:

A) A person with knowledge of the facts pertaining to the investigation; and

B) A person with authority to negotiate a settlement.

8.4 If the Office and the parties agree to an appropriate settlement, the Director or one of the participants will draft a predetermination settlement (PDS) agreement.

8.5 The PDS shall not include a non-disclosure agreement or clause that violates the Pennsylvania Right to Know Law.