

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,
9-6500, AND 9-6600, AND SECTION 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, 9-6500, and 9-6600, and Section 9-3303(1)(d) of the Philadelphia Code (hereinafter “Enforcement Regulations”) are hereby adopted:

1. Scope.

1.1 Authority. The City of Philadelphia Department of Labor promulgates these Enforcement Regulations pursuant to its authority under Philadelphia Home Rule Charter §§ 4-2300 and 8-407 and Philadelphia Code §§ 9-4109, 9-4506, 9-4607, 9-4710, 9-5008, 9-5602, and 9-3303(1)(d) to interpret Chapter 9-6600 of The Philadelphia Code.

1.2 Existing Regulations. Except as specifically provided herein, these Enforcement Regulations shall be read in conjunction with any regulation specific to The Ordinances and supersede:

1.2.1 All previously issued regulations regarding practice and procedure for the enforcement of The Ordinances, as defined in Regulation 2.8; and

1.2.2 Section 11 of the Regulations Regarding Chapter 9-4600 of The Philadelphia Code: Fair Workweek Employment Standards.

1.3 Purpose. These Enforcement Regulations set forth uniform policies and procedures to be followed in connection with investigation and enforcement of The Ordinances, as defined in Section 2.8, and any appeals resulting therefrom.

1.4 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 resolution on the merits of all investigations before the Office.

2. Definitions.

As used herein, the following terms shall have the meanings indicated. Other terms not specifically defined in these Enforcement Regulations shall have the meanings set forth in The Ordinances.

2.1 Employee. An Employee, as defined by Code §§ 9-4103(4), 9-4301(2) , 9-4601(5), and 9-5001; a Domestic Worker, as defined by Code § 9-4501(1); a Parking Employee, as defined by Code § 9-4701(6); a Covered Individual, as defined by Code § 9-5601(1); or a Worker, as defined by Code § 9-6501(14).

- 2.2 Department.** The Philadelphia Department of Labor.
- 2.3 Determination.** Written findings and decision of the Office following an investigation of alleged violations of any of The Ordinances.
- 2.4 Director.** The Director of the Office or the Director’s designee.
- 2.5 Jurisdictional Requirements.** The essential legal, procedural, and factual criteria that must be satisfied for the Office to have lawful authority to investigate and enforce a complaint, including, but not limited to, any geographic, definitional, or timeliness requirements, as set forth in The Ordinances.
- 2.6 Notice of Investigation.** A written notice, including, but not limited to a Request for Information, indicating that the Office has opened an investigation into an alleged violation of one of The Ordinances.
- 2.7 Office.** The Office of Worker Protections, within the Department.
- 2.8 The Ordinances.** The portions of The Philadelphia Code regulating the relationship between private employers and their Employees that are not within the purview of the Commission on Human Relations and are subject to enforcement by the Office and, specifically:
- 2.8.1** Chapter 9-2300 (Protection of Displaced Service Employees);
 - 2.8.2** Chapter 9-4100 (Promoting Healthy Families and Workplaces);
 - 2.8.3** Chapter 9-4300 (Wage Theft Complaints);
 - 2.8.4** Chapter 9-4500 (Protections for Domestic Workers);
 - 2.8.5** Chapter 9-4600 (Fair Workweek Employment Standards);
 - 2.8.6** Chapter 9-4700 (Wrongful Discharge from Parking Employment);
 - 2.8.7** Chapter 9-5000 (Employee Protections in Connection with COVID-19 Emergency Health Order);
 - 2.8.8** Chapter 9-5600 (Workforce and Career Pathways Information Sheet);
 - 2.8.9** Section 9-3303(1)(d) (Use of Tower Cranes);
 - 2.8.10** Chapter 9-6500 (Protecting Victims of Retaliation);
 - 2.8.11** Any other worker protection law that is enforced or administered by the Office.
- 2.9 Pre-Determination Settlement Agreement.** A voluntary agreement reached between the Office, the Respondent, and where necessary, the complainant(s) prior to the completion of an investigation and issuance of a Determination.

2.10 Post-Determination Settlement Agreement. A voluntary agreement reached between the Office, the Respondent and, where necessary, the complainant(s), after the completion of an investigation and issuance of a Determination.

2.11 Request for Information. A written request for documents and information.

3. Complaints and Investigations.

3.1 Receipt of Complaints and Initiation of Investigations. The Office shall receive complaints of alleged violations of The Ordinances. It may investigate complaints received and may initiate its own investigations of alleged violations of The Ordinances.

3.1.1. The Office shall review each received complaint to determine if it meets the Jurisdictional Requirements of The Ordinances implicated by the complaint. The Office may initiate an investigation based on its review.

3.1.2. The Office may also initiate its own investigation in circumstances including, but not limited to:

3.1.2.1 When the Director has reason to believe that a violation has occurred or will occur; or

3.1.2.2 When circumstances show that violations are likely to occur within a business or class of businesses because the workforce either:

3.1.2.2.1 Contains significant numbers of Employees who are vulnerable to a violation of The Ordinances; or

3.1.2.2.2 Is unlikely to volunteer information regarding such violations.

3.1.3 The Office may expand the scope of any investigation beyond a single individual's claims to include all Employees at an employer's business in situations including, but not limited to:

3.1.3.1 When the Office has reason to believe that multiple Employees have or are likely to have experienced violations of any of The Ordinances;

3.1.3.2 When a complaint alleges or suggests that the employer may be engaged in a pattern or practice of violations against multiple Employees; or

3.1.3.3 When requested by the Complainant.

3.1.4 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 shall notify the complainant prior to any referral.

3.1.5 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:

3.1.5.1 A short, plain statement of the allegations;

3.1.5.2 A summary statement of the rights and obligations of the parties; and

3.1.5.3 A Request for Information.

3.2 Confidentiality. When requested by Complainant, the Office shall keep confidential the identity of any Complainant while an investigation is open and ongoing, unless disclosure of such Complainant's identity is necessary to allow an employer a fair opportunity to respond to an allegation, to resolve an investigation by the Office, or to comply with applicable law. The Office shall, to the extent practicable, notify the Complainant that the Office will be disclosing their identity prior to such disclosure. Once an investigation is completed, the Office may publicly disclose the results of an investigation. When requested by Complainant, the Office shall keep confidential the identity of the Complainant in any public disclosure.

3.3 Subpoenas. The Office may issue subpoenas for records or testimony. Subpoenas issued by the Office shall be signed by the Director, and shall be returnable within thirty (30) days of receipt by the subpoenaed party, or such other reasonable timeframe set forth in the subpoena. If a recipient of the subpoena fails to timely respond to a subpoena, or if the response is deficient, the Office may, at 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.

3.4 Response to Notice of Investigation or Request for Information. A response to a Notice of Investigation or Request for Information shall be provided to the Office by the alleged employer or responsible party within thirty (30) days of the date of service of the Notice or Request, unless an extension has been provided by the Office.

3.5 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 or by the deadline established by an extension granted by the Office, and they have been served as required by The Ordinances and these Enforcement Regulations, the Director may proceed to consider the allegations contained in the complaint as uncontested and enter a Determination that the alleged employer or responsible party has violated The Ordinances based on the available evidence.

4. Retaliation Claims

4.1 Chapter 9-6500 of the Code governs retaliation claims related to The Ordinances.

4.2 Adverse Action. Adverse action, as defined in Code § 9-6501(1), includes contacting or threatening to contact law enforcement or a government agency, reporting or threatening to report suspected or actual immigration status or work authorization, and false reporting or threats of false reporting to a government agency.

4.3 Protected Activity. Protected activity, as defined in Code § 9-6501(11), includes filing a complaint with the Office, a court of competent jurisdiction, or another government agency

that investigates similar worker protection violations, including but not limited to the Pennsylvania Department of Labor's Bureau of Labor Law Compliance or the U.S. Department of Labor.

5. Employer Responsibilities

5.1 Record Keeping. Employers shall create true, accurate and contemporaneous records documenting compliance with The Ordinances and all applicable regulations and shall retain such records for a period of three years, unless The Ordinances applicable to the complaint require a different record retention period. If an Employer has received notice that a complaint has been filed with the Office or in court, the Employer shall maintain all records, including text messages and emails related to the complainant(s) and the allegations in the complaint, during the pendency of the proceedings, including any appeal.

5.2 Notice of Rights. Employers shall follow the Notice Requirements under Code § 9-6607 and any other applicable provision of The Ordinances by providing the Notice Poster created by the Office to all covered Employees, or posting the Notice Poster in a conspicuous and accessible location at the worksite where covered Employees are employed. The Notice Poster shall be provided in English and in all languages that are preferred spoken languages by at least 5% of the employer's workforce. Employers are not required to have their Employees sign off on receipt of the Notice to demonstrate compliance with this provision.

6. Service

6.1 Service of the Notice of Investigation shall be made in writing, and may be made by:

6.1.1 Personal service;

6.1.2 Certified mail, return receipt requested;

6.1.3 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

6.1.4 By any means where the intended recipient affirmatively acknowledges receipt of service.

6.2 Service of Determinations shall be made by:

6.2.1 Personal service; or

6.2.2 Email to an email address previously used by the recipient to communicate with the Office and regular mail service.

7. Pre-Determination Settlement Agreements

7.1 At any time before the Office's issuance of a Determination, including during mediation, the Office may resolve a complaint through a Pre-Determination Settlement Agreement.

7.2 The Pre-Determination Settlement Agreement shall not include a non-disclosure agreement or clause that violates the Pennsylvania Right to Know Law.

8. Fact-Finding and Complaint Resolution 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 complaint resolution conferences. The Director or a third-party mediator shall conduct the conference. Such conferences are part of the investigation. The purpose of the conference may include:

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

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

8.1.3 To attempt to settle the allegations or violations.

8.2 Required Participants. All parties deemed by the Director as relevant to the investigation shall attend the conference, including:

8.2.1 Complainant and/or a representative of the complainant;

8.2.2 Representative(s) of the Respondent with knowledge relevant to the complaint and legal authority to resolve the complaint; and

8.2.3 Any other party deemed by the Director to be relevant to the investigation.

8.3 Legal Representatives. Participants at fact-finding and complaint resolution conferences may be accompanied by a legal representative who may advise only the party they represent. The representative may not question or cross-examine parties or other witnesses.

9. Determinations

9.1 Timing of a Determination. Timeframe(s) set forth for Determinations in The 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 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 timeframe, the Office shall issue an interim finding that additional investigation is needed and that a Determination will be released after the investigation concludes.

9.2 Form of Determination Letters. Determination Letters shall state:

9.2.1 The Office's investigative conclusion as to whether The Ordinances were violated, stating one of the following for each allegation:

9.2.1.1 Determination of a Violation. The Director has determined a violation has occurred or is occurring.

9.2.1.2 Determination of No Violation. The Director has determined a violation has not occurred.

9.2.2 The facts, as determined by the Office, that support the Determination that The Ordinances were or were not violated;

9.2.3 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;

9.2.4 An order to the employer or responsible party to pay specified amounts and/or comply with other appropriate relief.

9.3 Orders

9.3.1 An order shall include an itemized statement listing, where appropriate:

9.3.1.1 Payments owed to the Employee or Employees, including:

9.3.1.1.1 Any unpaid wages and benefits;

9.3.1.1.2 Any unpaid sick or leave time the Employee or Employees were entitled to receive;

9.3.1.1.3 Other damages suffered by the Employee or Employees related to the violation;

9.3.1.1.4 Presumed damages for violations of Chapter 9-4500 (Protections for Domestic Workers), Chapter 9-4600 (Fair Workweek Employment Standards), or any of The Ordinances, as applicable;

9.3.1.1.5 Predictability Pay owed for violations of Chapter 9-4600 (Fair Workweek Employment Standards) or any of The Ordinances, as applicable;

9.3.1.1.6 Liquidated damages to compensate the Employee for collateral harms suffered as a result of violations of Chapter 9-4100 (Promoting Healthy Families and Workplaces), Chapter 9-4300 (Wage Theft Complaints), Chapter 9-4500 (Protections for Domestic Workers), Chapter 9-6500 (Protecting Victims of Retaliation), or any of The Ordinances, as applicable;

9.3.1.1.6.1 Liquidated damages for violations of Chapters 9-4100, 9-4500, 9-6500 shall equal other monetary damages determined to be owed to the Employee by the Office.

9.3.1.1.6.2 Liquidated damages for violations Chapter 9-4300 shall equal unpaid wages or five hundred dollars (\$500), whichever is greater.

9.3.1.1.6.3 Liquidated damages for violations of Chapter 9-4700 (Wrongful Discharge from Parking Employment) shall equal other monetary damages determined to be owed to the Employee by the Office, not to exceed two thousand dollars (\$2,000).

9.3.1.1.7 Other damages suffered by the Employee or Employees related to the violation;

9.3.1.1.8 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.

9.3.1.2 Civil penalties payable to the City, which may be assessed based on consideration of:

9.3.1.2.1 Mitigating factors, including but not limited to an employer's first-time violation and an employer's cooperation during an investigation; and

9.3.1.2.2 Aggravating factors, including but not limited to willful non-compliance, repeated violations, lack of cooperation during an investigation, and any substantiated instances of retaliation.

9.3.1.3 Other appropriate relief as authorized by The Ordinances.

9.3.2 All amounts set forth in the Order shall be paid within 60 days of service of the Determination upon the employer or responsible party, unless the Office, at the Director's discretion, allows the employer or responsible party to enter a reasonable payment plan for a period not to exceed six months. If the Respondent fails to comply with any Order, the Office may refer matters to the City of Philadelphia Law Department to initiate proceedings for enforcement of the Order, but only after the Respondent has exhausted any appeals available to them under the Pennsylvania Local Agency Law (2 Pa. C.S.A. §§ 551–555, 751–754) or other applicable law.

9.4 Dismissal of an Investigation without a Determination. The Director may dismiss an investigation without issuing a Determination when appropriate, including, but not limited to, when:

9.4.1 The Director determines that the Jurisdictional Requirements are not satisfied;

9.4.2 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;

9.4.3 The same allegations have already been investigated and adjudicated by another agency;

9.4.4 The complainant cannot be located by the Director after reasonable efforts have been made to do so, 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 days have elapsed since the Director sent notice of intent to dismiss the investigation; or

9.4.5 The parties have voluntarily agreed to resolve the complaint prior to issuance of a Determination, including, but not limited to, investigations where a mediation or settlement agreement has been reached pursuant to Section 8 of these Regulation.

10. Post-Determination Settlement Agreement

10.1 At any time following the Office's issuance of a determination, the Office may resolve a complaint through a Post-Determination Settlement Agreement. The Office may also hold a post-Determination settlement conference with any relevant party to engage in settlement negotiations.

10.2 A Post-Determination Settlement Agreement shall not include a non-disclosure agreement or clause that violates the Pennsylvania Right to Know Law.

11. Appeals.

11.1 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. A Complainant may also appeal the dismissal of a Complaint for lack of jurisdiction, as permitted under Code § 9-6602(3). Appeals shall be filed and conducted in the manner and in the form prescribed by any regulations, rules, procedures, policies, and orders promulgated and adopted by the Board of Labor Standards.

11.2 Resubmitted Complaints. If the Office rejects a complaint due to failure to meet Jurisdictional Requirements, the Complainant shall have the right to submit a revised complaint or to appeal that decision to the Board of Labor Standards. A resubmitted complaint that the Office deems eligible for investigation shall be backdated to the filing date of the initial complaint.

11.3 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 in a court of competent jurisdiction.

11.4 Certain Appeals Not Permitted. Except as provided in Paragraph 11.1, any dismissal of an investigation without a Determination and any Post-Determination Settlement Agreement may not be appealed to the Board of Labor Standards.

11.5 Private Right of Action. A private right of action as defined in The Ordinances shall operate independently of any right to appeal. Absent express, voluntary written waiver, a party may pursue a private right of action, regardless of whether an appeal is permitted or also pursued.

12. Enforcement of Office Determinations and Orders.

12.1 Enforcement of Determinations Generally. If a Respondent fails to comply with any Determination, the Office may refer matters to the City of Philadelphia Law Department to initiate proceedings for enforcement of the Determination in a court of competent jurisdiction.

12.2 Collections. Where a court of competent jurisdiction has entered a judgment that includes monetary relief payable to a Complainant, the Complainant or the City Solicitor, at the

request of the Office, may initiate collections proceedings in accordance with Pennsylvania law for such monetary relief that remains unpaid.