

Communication from Public

Name: UCLA Labor Center

Date Submitted: 10/21/2024 02:32 PM

Council File No: 14-1371-S13

Comments for Public Posting: Greetings Councilmembers: Attached is a letter from UCLA Labor Center and National Employment Law Project. Thank you,
Victor Narro UCLA Labor Center

October 18, 2024

Honorable Members of Los Angeles City Council
200 N Spring Street
Los Angeles, CA 90012

Re: Amendment to Wage Ordinance on Subcontracting of Hotel Housekeeping

Dear Honorable Councilmembers:

The UCLA Labor Center and National Employment Law Project jointly write to provide information and data to support changes to the Living Wage Ordinance impacting hotel workers in the City of Los Angeles, in accordance with findings from the Chief Legislative Analyst's report. Data support the proposed amendments to the City of Los Angeles' Hotel Worker Minimum Wage Ordinance (also known as the "Olympic Wage"), which would limit hotels' subcontracting of housekeeping work to emergency circumstances. Outsourcing of jobs to the temp and staffing industry has been consistently shown to degrade job quality, as thinly capitalized temp and staffing agencies have been found to violate workplace laws at higher rates. By limiting outsourcing of hotel jobs, the ordinance would provide important protection for hotel workers and ensure that these important frontline service positions provide good jobs for working Angelenos.

Founded in 1963, The UCLA Labor Center believes that a public university belongs to the people and should advance quality education and employment for all. Every day we bring together workers, students, faculty, and policymakers to address the most critical issues facing working people today. Our research, education, and policy work lifts industry standards, creates jobs that are good for communities, and strengthens immigrant rights, especially for students and youth.

Founded in 1969, NELP has been at the forefront of the fight for workers' rights, striving to create a just and inclusive economy. Our commitment to empowering workers is reflected in our multifaceted approach, which combines legal advocacy, policy research, and grassroots organizing. NELP works with local, state, and federal policymakers across the country on a range of workforce policy issues. In recent years, we have worked with state and local governments across the country on initiatives such as this ordinance aimed at addressing abusive employment conditions in the temp and staffing industry.

The economic assessment of the proposed updates to the ordinance commissioned by the Los Angeles Chief Legislative Analyst highlighted that "ensuring compliance" would be "key to

achieving the intended benefits” of the ordinance.^[1] There is ample evidence demonstrating that the city’s ability to ensure compliance with the new Olympic Wage and the other important protections in the ordinance will be greatly undermined so long as hotel housekeeping jobs continue to be outsourced to temp and staffing agencies.

As critical background, the hotel and restaurant sector is characterized by widespread violations of workplace laws and protections. A landmark study by the UCLA Institute for Research on Labor and Employment found that 67% of hotel and restaurant workers who worked more than forty hours in a week reported that they were not paid legally mandated overtime pay, while 78.9% of workers who performed work outside of their regular shift reported “off-the-clock” violations where they were not paid for all of their time worked.^[2] A contributing factor for these high violation rates is the abuse of temporary staffing arrangements.

Subcontracted employment, commonly defined as temporary, outsourced, and contingent work, has seen significant growth in the US economy in recent decades.^[3] In hotel housekeeping and janitorial services, this most commonly takes the form of staffing agencies, which contract with host companies to provide a low-cost and contingent workforce. As explained by a UC Berkeley Center for Labor Research and Education report on janitorial subcontractors, because labor costs make up the main cost of providing services, “wages, benefits, and other employment costs are the primary basis” on which the staffing agencies compete, “not innovation or productivity.”^[4] These agencies generally derive their profits from the difference between the “markup” they charge to employers and the wages they pay to employees.^[5] As a result, the U.S. Department of Labor has found that suppressed wages, reduced benefits, and the ability to dodge labor standards are not bugs, but core features upon which many staffing agencies’ business model relies.^[6]

It should come as little surprise, then, that temporary staffing agencies consistently have some of the highest rates of wage and hour violations across industries.^[7] Temporary workers are greatly disincentivized from reporting labor violations due to high rates of retaliation and the ease with which retaliation against temporary workers may be accomplished.^[8] Employers can, and often do, use staffing agencies to screen^[9] and even blacklist^[10] employees who report violations. Staffing agencies are also known to withhold key information (such as the name of the agency) that would be required to file workplace-related claims from their employees, who are disproportionately less educated, less likely to speak English, and more likely to be undocumented.^[11]

Notable instances of the exploitation of hotel housekeepers by temporary staffing agencies have occurred over just the last year in Los Angeles. In November 2023, the LA Times reported that local hotels were employing migrant workers from a local staffing agency that recruited them

from a shelter on Skid Row.^[12] These workers, who had recently immigrated from Venezuela and Colombia, reportedly were not told how much they would be paid hourly or given legally required breaks, nor given legally required pay stubs with their hours worked.^[13] The LA Times reported that “[o]ne migrant worker, a 17-year-old student at Belmont High School who requested anonymity, said he skipped two days of school to clean rooms” at a hotel.^[14] According to UNITE HERE Local 11, after these workers spoke up, they reported being blacklisted by the staffing agency. The California Labor Commissioner and the Los Angeles County District Attorney’s Office reportedly launched investigations concerning compliance with labor and child labor laws.^[15]

Staffing agencies also allow employers to cut labor costs by exploiting loopholes that are technically legal but disincentivized in a traditional employment context. For example, to incentivize stable employment, the Unemployment Insurance system raises tax rates for employers when their former employees start receiving benefits; due to particularly high turnover rates, staffing agencies often expect to max out this tax rate anyway, meaning the agency and the employer are insulated from one of the core incentive frameworks that define conventional workplaces.^[16] As another example, the California Family Rights Act (CAFRA) requires most employers to provide family leave benefits to employees who work for 12 months and 1250 hours; employers that use temporary employees can more easily maintain a revolving supply of workers who do not meet the thresholds required for coverage.^[17]

In other words, employers can use temporary staffing agencies to avoid or defy the liability and incentive structures established under labor and employment law. This phenomenon, which former Wage and Hour Administrator and Brandeis University Professor David Weil call the “fissured workplace,” presents significant challenges to the enforcement of conventional American employment laws, which often take traditional relationships between employees and employers for granted.^[18]

Labor abuses are particularly egregious in the hotel industry due to its peculiar nature. In most industries that use staffing agencies, “fissuring” entails a division of work and responsibility between the client employer and a staffing agency. Such subcontracting arrangements are common in hotels; indeed, some hotels contract out the bulk or even all of their core housekeeping work. But, as U.S. Department of Labor research has highlighted, the industry features notable additional forms of fissuring, with ownership often separated from the franchised brand, which itself is often separated from the property management company.^[19] Typically, each party has different, conflicting incentives. For example, property managers seeking to win a contract in these highly competitive markets are incentivized to bolster their attractiveness to owners by cutting costs however possible. At the same time, they have less incentive to comply with regulations because they are aware that the franchised brand will bear



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the brunt of the brand damage and the owners will bear the brunt of liability. The exact nature of where these fault lines fall can vary from hotel to hotel, but it is clear overall that this extreme fissuring makes the likelihood of violations in hotels particularly high.^[20]

Because of the inherent downsides to subcontracting, there has been a major policy push to limit or eliminate it in certain industries across the nation. Recently, multiple federal agencies, such as the Environmental Protection Agency and the Department of Commerce, have begun requesting that grantees provide evidence that they directly hire employees as opposed to subcontracting them in order to demonstrate that they are committed to providing their workers with strong labor protections.^[21] Illinois and New Jersey have passed laws that impose a range of regulations related to temporary staffing agencies, and a spate of smaller bills from around the country have enacted other reforms.^[22]

Most recently, New York City is currently considering a bill that, like the proposed amendment in Los Angeles, would require hotels to directly employ housekeeping workers (as well as front desk employees). The Hotel Association of New York City has dropped its opposition to the measure, helping to clear the way toward its passage.^[23]

As it considers enacting the proposed “Olympic Wage” ordinance, Los Angeles is poised to take important steps toward ensuring that one of its most important sectors—tourism—supports the communities of workers that give it dynamism. However, absent the proposed amendment addressing subcontracting, there is risk that these proposed improvements and the implementation of other minimum labor standards enacted by the City will be significantly undermined. Our analysis of existing data concludes this amendment ensures the successful implementation of these critical worker protections.

Thank you for considering our views on this important legislation.

Respectfully submitted,

Tia Koonse
Legal and Policy Research Manager
UCLA Labor Center

Paul K. Sonn
State Policy Program Director
National Employment Law Project

^[1] Berkeley Economic Advising and Research, Amending the Los Angeles Living Wage and Hotel Worker Minimum Wage Ordinances: An Economic Assessment, September 5, 2024, p. 61 https://clkrep.lacity.org/online/docs/2014/14-1371-s13_rpt_cla_9-05-24.pdf.

^[2] Ruth Milkman et al. Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-Wage Workers, Institute for Research on Labor and Employment - University of California, Los Angeles, 2010, pp. 32-38 <https://irle.ucla.edu/old/publications/documents/LAwagetheft-Milkman-Narro-110.pdf>.

^[3] Jenny R. Yang et al, Reimagining Workplace Protections: A Policy Agenda to Meet Independent Contractors' and Temporary Workers' Needs, Urban Institute, December 8, 2020, p. vi https://www.urban.org/sites/default/files/publication/103331/reimagining-workplace-protections_0.pdf.

^[4] Sara Hinkley, Annette Bernhardt, and Sarah Thompson, Race to the Bottom: How Low-Road Subcontracting Affects Working Conditions in California's Property Services Industry, UC Berkeley Labor Center, March 18, 2016, p. 5 <https://laborcenter.berkeley.edu/pdf/2016/Race-to-the-Bottom.pdf>.

^[5] Rebecca Smith, Claire McKenna, Temped Out: How the Domestic Outsourcing of Blue-Collar Jobs Harms America's Workers, National Employment Law Project, September 2, 2014, p. 11 <https://www.nelp.org/app/uploads/2015/02/Temped-Out.pdf>.

^[6] U.S. Department of Labor Employment and Training Administration, Unemployment Insurance Program Letter No. 41-98, August 17, 1998 https://oui.doleta.gov/dmstree/uipl/uipl98/uipl_4198.htm ("One of the incentives for employers to use temporary workers is that these workers reduce employer costs since they often do not enjoy the wages, hours, and other conditions enjoyed by their permanent counterparts. Temporary workers may be ineligible for fringe benefits and they may not be trained for higher-skilled jobs.").

^[7] Michael Grabell, The Expendables: How the Temps Who Power Corporate Giants Are Getting Crushed, ProPublica, June 27, 2013 <https://www.propublica.org/article/the-expendables-how-the-temps-who-power-corporate-giants-are-getting-crushed> ("Temp agencies consistently rank among the worst large industries for the rate of wage and hour violations, according a ProPublica analysis of federal enforcement data.")

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^[12] Suhauna Hussain, L.A. hotels hire migrants from Skid Row homeless shelter to replace striking workers. Gascón investigates, Los Angeles Times, October 23, 2023 <https://www.latimes.com/business/story/2023-10-23/hotels-are-replacing-striking-workers-with-migrants-from-skid-row-shelter>.

^[13] Id.

^[14] Id.

^[15] Business Wire, UNITE HERE Local 11 Files Federal Labor Charge Against Holiday Inn LAX, Alleging that Manager Unlawfully Prohibited Unhoused Refugee From Talking About Their Labor Conditions, November 30, 2023 <https://www.businesswire.com/news/home/20231130107065/en/UNITE-HERE-Local-11-Files-Federal-Labor-Charge-Against-Holiday-Inn-LAX-Alleging-that-Manager-Unlawfully-Prohibited-Unhoused-Refugee-From-Talking-About-Their-Labor-Conditions>.

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^[19] Id. at 68.

^[20] Id. at 58, 68.

^[21] Climate Pollution Reduction Grants Program, Climate Pollution Reduction Grants Program: Implementation Grants General Competition: Notice of Funding Opportunity (NOFO) Amendment No. 3, Environmental Protection Agency (EPA), January 16, 2024, p. 40 <https://www.grants.gov/search-results-detail/350252> (Located under Related Documents); National Telecommunications and Information Administration (NTIA), Notice of Funding Opportunity: Broadband Equity, Access, and Deployment Program, U.S. Department of Commerce, May 13, 2022, p. 57 <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>; National Telecommunications and Information Administration (NTIA), Notice of Funding Opportunity: Middle Mile Grant Program, U.S. Department of Commerce, May 13, 2022, p. 16 <https://www.grants.gov/search-results-detail/340300> (Located under Related Documents).

^[22] Day and Temporary Services Act, 820 ILCS 175, <https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2417> ; Jeff Schuhrke, A Trailblazing New Law in Illinois Will Dramatically Expand Temp Workers' Rights, In These Times, October 4, 2017, <https://inthesetimes.com/article/a-trailblazing-new-law-in-illinois-will-dramatically-expand-temp-workers-ri>; New Jersey Temporary Workers' Bill of Rights, N.J. Stat. § 34:8D-1 et seq., https://pub.njleg.state.nj.us/Bills/2022/PL23/10_.PDF.; National Employment Law Project, New

Jersey's Temp Workers Win a Bill of Rights!, May 1, 2023

<https://www.nelp.org/new-jerseys-temp-workers-win/>; National Employment Law Project,
Proactive Policy Solutions for Contracted Workers, March 2022

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^[23] [Kathryn Brenzel](#), Hotel industry reaches deal with Council on contentious licensing bill, The
Real Deal, October 2, 2024,

<https://therealdeal.com/new-york/2024/10/02/julie-menin-reaches-deal-on-hotel-licensing-bill/>.

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^[15] Business Wire, UNITE HERE Local 11 Files Federal Labor Charge Against Holiday Inn LAX, Alleging that Manager Unlawfully Prohibited Unhoused Refugee From Talking About Their Labor Conditions, November 30, 2023 <https://www.businesswire.com/news/home/20231130107065/en/UNITE-HERE-Local-11-Files-Federal-Labor-Charge-Against-Holiday-Inn-LAX-Alleging-that-Manager-Unlawfully-Prohibited-Unhoused-Refugee-From-Talking-About-Their-Labor-Conditions>.

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