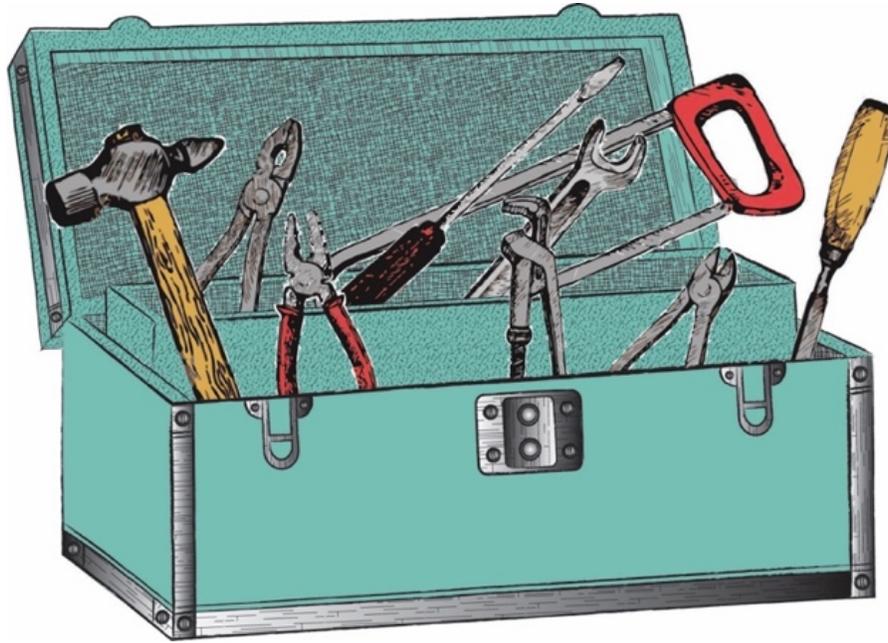


# The Labor Standards Enforcement Toolbox



## Tool 6: Negotiations and Settlement Agreements

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## EXECUTIVE SUMMARY

The purpose of this paper is to help labor standards enforcement agencies incorporate principles of strategic enforcement into their negotiation and settlement practices. It guides agencies through pre-negotiation investigation, negotiations and drafting settlement terms. The paper emphasizes the importance of a floor in negotiations, distinguishing nonnegotiable terms from those that may be flexible. It encourages agencies to be consistent with a floor but also creative to address the specific circumstances at play in each investigation. Finally, the paper provides a number of examples from jurisdictions across the country which demonstrate how thinking strategically could support an agency to have a lasting impact on compliance in the agency's jurisdiction.

## INTRODUCTION

In a labor standards case, a settlement agreement is a contract between the employer and the agency that sets out binding terms to resolve the investigation. A settlement concludes the investigation and generally is executed in lieu of an order, citation, or civil prosecution.

*When used strategically, settlement agreements are a powerful tool to bring an employer into compliance, ensure high collection rates, recover money quickly for employees, minimize litigation, and order creative, tailored remedies.*

Settlement negotiations and agreements can be used strategically to both get workers the money they are owed quickly and to establish mechanisms to increase the likelihood the employer will follow the laws in the future. When used strategically, settlement agreements are a powerful tool to bring an employer into compliance, ensure higher collection rates, recover money faster for employees, minimize litigation, and order remedies outside of what the law would permit in a finding of violation and citation. Generally, jurisdictions have better collection rates in cases that settle. Investigations tend to resolve quicker when they result in settlement – that means employers come into compliance more quickly, employees get their remedies sooner, and the agency saves resources. Cases that settle typically cannot be appealed, which also increases the efficiency of the agency. Litigation of settlements only happens if an employer fails to comply with the terms, which is a rarity and requires the agency to prove a violation of the settlement terms rather than litigate the entire claim. Finally, unlike a citation or administrative or court order, the terms of

which are typically prescribed by law, there is much more flexibility about what can be included in a settlement. Agencies can negotiate creative terms such as compliance monitoring through community organizations, a tip pooling policy, or even employee training, which might not be available outside of settlement.

There are a number of factors to think through as an agency negotiates and drafts a settlement agreement – essential terms, ways the agency can leverage its other tools to make settlement appealing to an employer, and creative ways to help the employer comply and set employees up to access their rights.

## NEGOTIATIONS

Negotiations involved adequate preparation; setting the bar for which terms are negotiable; and framing a clear and efficient process for all parties involved. When negotiating settlement agreements, there are three guiding principles to which enforcement agencies should adhere:

**Principle 1: All affected workers must receive, at a minimum, full back wages and interest to rectify the harm caused by the violation.**

**Principle 2: Ongoing, long-term compliance is essential.**

**Principle 3: Tier use of resources and remedies**

More egregious, intentional violations receive more time, resources, and penalties.



Negotiating settlements in accordance with these principles requires preparation and unyielding policy regarding nonnegotiable settlement terms.

### ***Preparation***

Adequate preparation is critical to the agency’s ability to efficiently and effectively negotiate settlements.

In order for the agency to ensure all workers affected by violations of labor standards laws receive full back wages and interest, the agency must first establish: 1) Whether a violation has occurred; 2) Who was harmed by the violation; and 3) How much money is owed in back wages, interest, and other damages to each affected worker. This means most settlement negotiations cannot occur until after the agency has

conducted an [investigation](#), including requesting and reviewing payroll documents; conducting interviews; and calculating back wages, interest, and other damages.<sup>i</sup>

**Before Negotiating, Determine:**

1. Did a violation occur?
2. Who suffered?
3. How much are they owed?

Some employers may attempt to settle the case before the investigation is done, arguing that settlement is a quick resolution to allegations. However, enforcement agencies are not adversaries in a lawsuit. Instead, agencies are advocates for the laws they enforce,

charged with determining whether a violation has occurred, and remedying violations established. Agencies must prepare before they start negotiating a resolution.

The violations and amounts owed are the bases for the settlement agreement, rendering this step fundamental to preparing for negotiations. As such, investigators must be able to thoroughly explain to the employer what the violations are, how they were established, why back wages are owed, and how back wages and interest were calculated. While such explanations may not be necessary in every negotiation, some employers need to understand the evidence against them before agreeing to settle. Providing more information initially in negotiations can lend credibility to your work, empower the employer with more information about the violations, and facilitate a better working relationship with the employer. Moreover, should settlement negotiations fall apart, the agency has already conducted a competent investigation.

Agencies should require the employer to come into compliance before beginning settlement conversations. The Massachusetts Attorney General's Fair Labor Division follows this principle and finds that employers are responsive to it because they know it's a condition precedent to settlement.

*To focus its efforts strategically, the agency will want to spend more time on settlements of high priority cases, focusing on detailed agreements with comprehensive remedies that address the root causes of the violations; in exchange, it may be ok to resolve an investigation with a lower-risk employer more efficiently, with fewer terms or a less comprehensive evaluation of the circumstances.*

Settlement can be a powerful tool to get money to workers; however, an agency cannot negotiate indefinitely. It's wise to set a cap on the timeline of your negotiation

and know when you need to end it. Of course, each case is unique, but two months of negotiating is generally a good bar. The goal is to move the matter along and ultimately save resources, so where negotiations become entrenched or unnecessarily prolonged, the agency should conclude settlement negotiations.

## **Setting the Bar**

The second step in preparing for negotiations is determining what is and is not negotiable. The investigator should have a plan for the negotiations outlining where and when they can compromise, and what is a deal breaker.

There are generally three categories of settlement terms:

### **1. Back wages and interest - non-negotiable**

To fully execute its responsibility of enforcing the laws, the agency should only settle if the employer is willing to pay all wages and interest due to all employees as part of settlement. To do less is a disservice to the law and employees. Negotiation on this front is only acceptable in limited circumstances, including if:

1. There is a reasonable dispute over the amount due,
2. The evidence is weak such that there is a significant risk of losing on appeal or in litigation, or
3. Employees are not willing to come forward to prove a violation if a finding is issued and the matter ends up in litigation.

If the agency uses representative evidence to determine the remedy, negotiations may be an opportunity to obtain more information, which could result in an adjustment of the remedy. For example, the initial review of time records and interviews for three team leads and three team members at a restaurant may show that employees are owed, on average, an additional seven percent (7%) of what they originally were paid. The employer may raise that the amount owed varies greatly by position, such that team leads are owed an additional ten percent (10%) of what they were originally paid but team members are owed an additional four percent (4%) of what they were originally paid. Breaking it up by position may more accurately capture wages due and reduces the financial burden to the employer because there are more team members than team leads. Of course, workers should be made aware of any such changes and be given the opportunity to provide their own evidence if they disagree with the employer's argument. Ideally, the agency works out a use of representative evidence and the employer and employees agree to it up front, so the agency avoids having to expend resources recalculating remedies. However, sometimes communication barriers and parties' failure to engage from the outset

require adjustments as negotiations unfold.

### **Representative Evidence Applied**

16 full time employees earn \$15 an hour and work a total of 33,280 hours.

#### **All 16 Employees compensated at 7%:**

\$34,944.00 in wages only  
\$4,193.28 in interest at 12%  
\$8,726.00 in liquidated damages at 25%  
Total: \$47,873.28

#### **Employees compensated based on position:**

\$14,976 to 12 team members at 4%  
\$12,480.00 to 4 team leads at 10%  
Overall: \$27,456.00 in wages  
\$3,294.72 in interest at 12%  
\$6,864.00 in liquidated damages at 25%  
Total: \$37,614.72

In all, a difference over \$10,000 by applying the position-specific average.

## **2. Suggested nonnegotiable terms**

The agency should have an agency-wide policy on baseline settlement terms that are nonnegotiable in cases where a violation has been established. Investigators must know which terms are nonnegotiable and be able to articulate a thorough and convincing argument as to why those terms are not on the table. Additionally, the employer should be informed of the nonnegotiable terms from the outset of negotiations.

In each investigation, investigators should assess whether there are other terms outside of the normal nonnegotiable list that they will require given the circumstances. This assessment should be done on a case-by-case basis, and guided by the three principles of full back wages and interest to workers, long-term compliance, and tiering its use of resources.

Some examples of non-negotiable terms include the following.

1. **Violation** – As a best practice, the agreement would note that the employer violated the law. This is especially important with tiered penalty systems that increase the penalties for subsequent violations.

2. **No retaliation** – Include a statement that the employer will not retaliate and that it will distribute a copy of the settlement or a summary of it to management, including a summary of management’s legal responsibilities.ii
3. **Terms necessary for compliance** – For any violations not addressed prior to settlement, describe what the employer needs to do to cure the wrong and maintain future compliance. Examples include notifying employees of their paid sick and safe time balance and separately designating overtime hours and pay for overtime on pay stubs.
4. **Proof of compliance** – Have the employer submit copies of anything they are required to create, copies of payroll records, and a proof of compliance declaration.

**Sample compliance declaration from Seattle OLS:**

Case Nos. \_\_\_\_\_ – To be signed and returned to the Office of Labor Standards no later than DATE.

I, \_\_\_\_\_, am over the age of 18 and competent to declare the following:

1. I am an agent of EMPLOYER with the authority to speak on behalf of the company and bind the company to agreements. My official title is \_\_\_\_\_.
2. EMPLOYER currently employs \_\_\_\_\_ people worldwide. It employs \_\_\_\_\_ full-time equivalent employees on average per calendar week.
3. All employees are accruing paid sick and safe time as required by the Paid Sick and Safe Time Ordinance.
4. All employees are receiving notification in writing each pay period of their current paid sick and safe time balances.
5. No employee is being disciplined for using paid sick and safe time.
6. Employees are carrying over paid sick and safe time balances from year-to-year in accordance with the Ordinance and the Settlement Agreement and Order.

I swear under penalty of perjury the above statements are true and correct to the best of my knowledge.

5. **Liquidated Damages** – If the laws an agency enforces permit the agency to award liquidated damages to employees, do so as a matter of practice. Some jurisdictions can award liquidated damages up to 200%. The Fair Labor Standards Act mandates, for example, that an employer "shall be liable" for unpaid minimum wages, overtime and "an additional equal amount as

liquidated damages."<sup>iii</sup> Depending on the facts and available defenses, assessing full liquidated damages in every case may not be appropriate or encourage employers to settle. Including some liquidated damages in the settlement agreement should be the norm to compensate employees for their damages from going without pay, but the amount may vary from case to case and be negotiable.

6. **Press** – The agency needs the flexibility to share the outcomes of all investigations. Press releases are a critical tool for achieving widespread compliance. An agency might decide not to issue a press release every time but instead base its decision on the facts of the case, employer, and amount of money recovered, among other factors. A study of OSHA press releases found that a press release about one facility leads to 2.1 fewer violations at other facilities in the same sector within a 5-kilometer radius, a decrease of 88%. A single press release has the same deterrent effect as 109 investigations. Press releases are especially effective at deterring the worst violations – willful, repeat, severe offenses.<sup>iv</sup>

### Key Elements of a Press Release

1. Name all liable parties
2. List amounts due to workers and the agency
3. Note the number of workers impacted by the violations
4. Explain when payment is due
5. Name each location where violations were found
6. Describe the violations
7. Describe the applicable laws (especially if there are new requirements)
8. Mention community partners that referred or worked on the case
9. Reference related cases (e.g. same industry or similar violation) in which violations were found
10. Make the case for how low road employers hurt compliant businesses
11. Highlight resources for workers and information on how to file a complaint
12. Attach or link to the settlement or citation
13. Provide press releases in languages other than English
14. Distribution – focus on local newspapers and trade publications

### **Evaluate Root Causes to Frame Nonnegotiable Terms**

Also essential to determining the necessary terms of the settlement agreement is understanding the root cause of noncompliance – What went wrong? Why did it

happen? Who is responsible for the wrong? What steps can be taken to prevent the violation from recurring? The reasons could range from an intentional violation to an honest mistake or misunderstanding.

There are varying degrees of culpability for each reason and important considerations when it comes to settlement. Generally, the agency will want to tier the remedies and time it spends on the investigation, allocating more time, resources, and penalties to more egregious and, intentional violations.

## Sample Settlement Terms to Address Employer Motivations

Nature of Violation	Examples/Evidence Indicating Nature of Violation	Sample Settlement Terms
<p><b>Intentional</b></p> <ul style="list-style-type: none"> <li>• Knowledge of the law but did not want to or could not comply</li> <li>• Employer did not pay wages for a month because they ran out of money</li> <li>• Employer knew most competitors were not complying so didn't comply</li> <li>• Employer hires day laborers to avoid paying and providing benefits, fails to pay, and disappears</li> </ul>	<ul style="list-style-type: none"> <li>• Repeatedly violates a law</li> <li>• Employees educate employer about the law, employer disregards them</li> <li>• Payroll documents falsified</li> <li>• Noncompliance with investigation</li> </ul>	<ul style="list-style-type: none"> <li>• For short-term nonpayment, resolve swiftly with back wages, liquidated damages, fines, and penalties before the employer disappears or loses all assets; if the employer continues to operate, require <a href="#">business consultation</a> so issue doesn't recur</li> <li>• For moderate violation, require back wages, liquidated damages, fines, and penalties</li> <li>• For most egregious actor, name the actor individually, require back wages, and additional liquidated damages, fines, and penalties, <a href="#">employee training</a> by a community organization and proactive compliance monitoring</li> </ul>

<p><b>Apathy</b></p> <ul style="list-style-type: none"> <li>• Employer knew/should have known about the law and did bare minimum to comply</li> </ul>	<ul style="list-style-type: none"> <li>• National temp company knows there are different labor standards laws but doesn't want to dedicate resources to understand and comply with various requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Require company to create <a href="#">compliance officer</a> position</li> <li>• Require regular production of proof of compliance over two-year period</li> <li>• Include back wages, liquidated damages, fines, and penalties</li> <li>• Name individuals as appropriate</li> </ul>
<p><b>Ignorance or Misunderstanding</b></p> <ul style="list-style-type: none"> <li>• Employer is very cooperative and tells you how and why they thought the law differed</li> </ul>	<ul style="list-style-type: none"> <li>• Owner receives the notice of investigation (NOI) and calls to report they had no idea of the law; googling only showed the lower state or federal MW</li> <li>• Owner shares news article that misstated the MW and corrects the problem upon receipt of NOI</li> </ul>	<ul style="list-style-type: none"> <li>• Right the wrong swiftly with simple settlement terms correcting the violation</li> <li>• Consider <a href="#">employer training</a> so future oversight does not occur</li> <li>• Include back wages, liquidated damages, fines, and penalties</li> </ul>
<p><b>Limited Mistake</b></p>	<ul style="list-style-type: none"> <li>• Employer shows they switched payroll companies and accrued sick leave hours wiped out</li> </ul>	<ul style="list-style-type: none"> <li>• Resolve the wrong swiftly with simple settlement terms correcting the violation</li> <li>• Contact payroll company to ensure violation does not occur with other transitions</li> </ul>
<p><b>Unsophisticated or Flawed Systems</b></p>	<ul style="list-style-type: none"> <li>• Clock-in system didn't work, so employer paid employees 4 hours per shift worked regardless of hours worked</li> </ul>	<ul style="list-style-type: none"> <li>• Use representative evidence to determine hours worked and remedies owed based on tenure in relation to actual shifts worked</li> <li>• Require employer to obtain and use <a href="#">functioning clock-in</a> and <a href="#">payroll system</a> or an alternative system such as timesheets</li> <li>• Award back wages, liquidated damages, fines, and penalties</li> </ul>

<p><b>Lack of Savvy</b></p>	<ul style="list-style-type: none"> <li>• Employer’s small restaurant prices were too low to comply with the minimum wage. The owner’s strength was cooking, not setting pricing, creating schedules, and making a profit.</li> </ul>	<ul style="list-style-type: none"> <li>• Require use of <a href="#">business consultation</a>, <a href="#">clock-in</a> and <a href="#">payroll system</a></li> <li>• Use <a href="#">community organization</a> to support employer</li> <li>• Consider <a href="#">employer</a> and <a href="#">employee training</a></li> <li>• Include back wages, liquidated damages, fines, and penalties</li> </ul>
<p><b>HR Limitations</b></p>	<ul style="list-style-type: none"> <li>• Employees and employer report no HR staff or written policies</li> </ul>	<ul style="list-style-type: none"> <li>• Require <a href="#">written policies</a>, some resources for HR</li> <li>• Use <a href="#">business consultation</a> terms as appropriate</li> </ul>
<p><b>Problematic People in Power</b></p> <ul style="list-style-type: none"> <li>• Manager won’t permit breaks or use of sick leave contrary to company policy</li> </ul>	<ul style="list-style-type: none"> <li>• Employees were scheduled fewer hours after using sick leave and inform you the manager is the problem. Owners investigated and removed the manager from the store.</li> </ul>	<ul style="list-style-type: none"> <li>• Back pay, interest, and liquidated damages to employees for retaliation; Include fines to the agency</li> <li>• Name manager for personal liability</li> <li>• Require owner to more closely monitor management practices</li> <li>• Consider <a href="#">employer</a> and <a href="#">employee training</a></li> </ul>

Once the investigator sets the essential terms, they can move on to the gray area of negotiability.

### 3. The negotiable

What’s your give? As part of this process, the agency must contemplate what it is conceding to the employer in exchange for the employer’s agreement to settle.

What can the agency offer that does not compromise the three principles of full back wages and interest to workers, long-term compliance, and tiering its use of resources? The agency might offer lesser penalties, a payment plan, soft language regarding an admission of a violation, or less frequent compliance monitoring.

In many jurisdictions, the agency concedes by requiring the employer to pay fewer penalties than if the case were resolved outside of settlement. When lesser penalties are the agency's "give", the investigator must work a generous amount of leeway between the first offer and the minimum amount of penalties the agency will accept. At a minimum, the investigator should ask for 50 percent more than the agency will ultimately accept in settlement. If the overall amount of damages is low, the investigator may want to ask for an additional 100 percent to leave plenty of room to negotiate. As well, keep in mind that reducing penalties might reduce employer deterrence, so ensure the other requirements in the settlement focus on deterring the employer from future violations.

### **Negotiable Terms**

1. Reduced penalties
2. Payment plan
3. Soften violation language
4. Reduce frequency and intensiveness of compliance monitoring.

The agency also has other negotiable terms. It might want to offer some employers the option of paying wages and fines due over time instead of at once. This may be especially important where the payment of a lump sum risks putting the employer out of business. There are many options when it comes to payment plans, which makes it important to know your objectives and be very clear about what is expected in the terms of the settlement agreement.<sup>v</sup> For example, payment plans should be designed to mitigate the impact on workers.

Depending on the circumstances, the agency could order that the amounts due continue to accrue interest throughout the length of the payment plan.

The agency should also assure that the plan is a financial necessity. If the employer wants more than a year to pay, the Massachusetts Attorney General Fair Labor Division requests income verification under penalty of perjury and two to three years of tax records for the company and responsible individuals. In practice, this will turn off people who have the ability to pay from pursuing a payment plan. Massachusetts also includes a term that, if the employer pays ahead of schedule, it will receive a discount. Alternatively, in settlements that include a payment plan, the Seattle Office of Labor Standards requires the employer and responsible individuals to sign a confession of judgment, agreeing that they will be liable for the amounts due in court.

Language admitting a violation is an important part of a settlement agreement, especially when penalties increase with future violations. In negotiations, the agency could soften the language by indicating that any future violation will be a second or subsequent violation, with the accompanying penalties, while not forcing the employer

to explicitly admit to a first violation. The language has the same impact as admitting to a first violation – greater penalties in future violations.<sup>vi</sup>

Complete damages to employees, penalties, and fines increase the deterrent impact of an agency's action. Understanding why the violation occurred and assessing tradeoffs when selecting settlement terms is critical to strategic settlement.

Compliance monitoring can effectively prevent future noncompliance. However, it can be very time-intensive for the agency and employer, so the agency may take a tiered approach regarding when it requires compliance monitoring and to what extent. In the least egregious of cases, simply leaving the door open to request documents within a year of resolving the matter may be sufficient. In the most egregious cases, the agency could require the employer to proactively submit specific documents quarterly for two years or more. Starting negotiations with a more aggressive proposal leaves room to use this term as a bargaining chip in some circumstances.<sup>vii</sup>

### ***Framing***

Framing the negotiations is imperative: Make a clear offer. Explain the benefit to the employer of settling. Explain the alternative. Set deadlines for settlement so you swiftly move forward with a finding if the matter does not settle.

## **AGREEMENTS**

Settlement agreements are contracts, and are enforceable as contracts. What's key is that the agency includes the essential terms, the terms are specific and enforceable, and the agency has a plan to enforce them.

As the agency crafts terms for the settlement agreement, imagine what would happen if the agency asked a court to enforce each term. Let's say part of the agreement requires the employer and its management to attend training. If they don't attend training in the span of 6 months, they have to pay \$10,000. If the agency brought the employer to court for failing to attend training, a judge might not order an employer to attend training but might order an employer to pay \$10,000 for failing to attend the training within a 6-month period as ordered. As the agency gets more creative with terms, keep in mind alternatives if the employer fails to comply with the agreement.

## COMMUNITY ORGANIZATIONS

Just as community organizations can be a powerful resource in bringing complaints to an agency and getting workers to come forward through an investigation, they are also a huge asset in settlement conversations and terms.

When an agency embarks on an investigation that involves a community organization, it is important to involve the community organization in settlement discussions. The community organization does not have to be present in interactions with the employer but should be consulted before negotiations commence and throughout the process as the terms are ironed out and finalized. This assures that the terms are appropriate for the business, culture, and workers and that they adequately remedy the violations. The community organization generally has a better pulse on what is actually happening at the workplace than the agency, so its insight is critical.

When an agency turns its gaze to the future, training and compliance monitoring are essential to creating a culture of compliance. Community organizations can make both more effective. They can provide culturally and linguistically appropriate training for employees and employers separately. They can also be responsible for compliance monitoring – reviewing records and workers’ experiences periodically throughout the compliance monitoring period and reporting information to the agency. If independent funding does not exist for community organizations, the agency can require the employer to compensate the community organization for its work as a term of the settlement agreement.

### *Community Organizations at Work*

Community organizations working with enforcement in Texas and Florida illustrate creative ways organizations can help with compliance monitoring and otherwise raise labor standards in an industry. Principles from these examples can be incorporated into settlement terms and negotiations.

The Worker’s Defense Project (WDP)<sup>viii</sup> and the City of Austin, Texas developed a system that could be applied in settlement agreements. The pair instituted “Better Builder Agreements” in 2012 to require safety and labor standards in construction projects and deputize WDP to enforce the agreements through periodic safety walk-throughs. The agreements were narrow at first, applying only to a few large construction contracts with no enforcement mechanism. As the relationship between WDP and the City evolved, “Better Builder Agreements” were incorporated into more contracts. In order to receive expedited permitting, economic development incentives, fee waivers, or purchase or build on City land, a company had to commit to a “Better

Builder Agreement.” Contracts pushed the cost of compliance monitoring to developers, which began to fund WDP’s compliance monitoring. As part of each agreement, workers received contact information for WDP and the general contractor and subcontractor to report issues of nonpayment. The agreements have strengthened labor and safety standards in an industry that lacked them.<sup>ix</sup>

An agency could apply “Better Builder Agreement” principles to settlement, requiring the employer to consent to and fund compliance monitoring by a community organization. With the support of community organizations, agencies can effectively encourage compliance and avoid becoming buried with day-to-day monitoring. Moreover, trusting relationships with community organizations will help the agency to act more strategically as it enforces the laws, focusing on high risk employers. Efforts to empower community groups as beacons of the laws and reach employers and employees on their terms greatly impact the credibility and success of an agency.

Another successful example of a community organization in enforcement is the Fair Food Program in Florida. The Coalition of Immokalee Workers (CIW) created the Fair Food Standards Council (FFSC) to establish baseline employment rights for tomato industry workers. It entered into agreements with about 30% of food retailers and restaurant chains that purchased Florida tomatoes, asking for an additional penny per pound of tomatoes and promising that money directly to workers as premium wages. As part of the agreements, the buyers require the growers to provide water, toilets, and shade in the fields; health and safety committees; direct employment; compensation for waiting time; and rules against abuse and sexual harassment. The buyers must agree to permit an intensive enforcement regime through FFSC and worker education by the CIW. If a grower fails to comply with the terms of the agreement between FFSC and the buyer, the grower is suspended, which means buyers cannot purchase their tomatoes. As well, the supervisor that caused the violation may be fired. The foundation of the CIW is that it is tailored to the linguistic needs, cultural expectations, and legal status of the workers. Based on the efforts, workers are now guaranteed baseline employment and safety rights and empowered to complain and receive a remedy when they are not paid for their work.<sup>x</sup>

The tools the CIW uses can translate to enforcement agencies as well and will require efforts outside of direct settlement conversations with the employer. If an agency encounters an industry like the tomato growers that refuses to comply with labor standards, as part of its strategic efforts, the agency can look up the ladder to the companies that purchase products or services from the noncompliant industry. Additional efforts may include gathering cohesive evidence and presenting it to buyers, considering whether buyers are liable for the violations, and making the

argument that bad apples in the supply chain are bad for the brand and bad for business. The agency will then have a solid position to ask the buyers to nominally increase their payments and voluntarily agree to purchases products and services only from companies that pay baseline wages and provide certain standards for the workers providing the product or service. When the action impacts the employer's ability to participate in the market, things become real and compliance with labor standards is essential. If community organizations are engaging with the workers regularly, providing culturally and linguistically appropriate services, the workers will feel more empowered to make better working conditions an imperative.

## EXAMPLES OF TAILORING SETTLEMENT TERMS BASED ON THE NATURE OF THE VIOLATION

It is possible to maximize and tailor agreements based on the circumstances of each employer and the agency's resources. Here are a handful of alternative terms that might be relevant or provide additional ideas about how to tailor a settlement.

### 1. DIFFICULT TO QUANTIFY DAMAGES

Issue: Difficulty assessing economic impact on workers

Settlement Goal: Where the agency can assess civil penalties and fines of set dollar amounts for specific violations, e.g. failure to provide employees with notice of their rights, consider leveraging that power to redirect the remedy that the law would otherwise send to the agency to impacted employees.

Sample Term: Within 10 days of the execution of the Agreement by the Director, Respondent shall pay a civil penalty of \_\_\_\_ (amount) per employee to each employee listed on Attachment A. Respondent shall make payment directly to current employees. For former employees, Respondent shall send checks to \_\_ (Agency Name) for distribution. With the checks, Respondent shall include an excel spreadsheet with last known personal email, home address, and phone number for each former employee.

### 2. REST BREAK VIOLATION

Issue: No breaks

Settlement Goal: Respondent composes and follows a rest break policy. Agencies may wait to settle until receiving a final policy, incorporating the policy into the agreement.

Alternatively, agencies might give the employer a timeline for composing the policy after settlement.

Sample Term: Within 30 days of the execution of the settlement agreement by the Director, Respondent shall compose a rest break policy requiring Respondent to educate employees about the law, provide specific instructions about when employees should take breaks, and proactively direct employees to take meal and rest breaks throughout their shifts. At that time, Respondent shall provide the policy to \_\_\_ (agency name) and incorporate \_\_\_ (agency name) feedback within 10 days of receipt. Within 30 days of receiving \_\_\_ (agency name) feedback, Respondent shall incorporate agency feedback, distribute the policy to employees, and incorporate it into new hire materials.

### **3. TIP VIOLATION**

Issue: Business owner does not distribute tips

Settlement Goal: Employer composes and follows a tip tracking and distribution policy.<sup>xi</sup>

Sample Term: Within 30 days of the execution of the Agreement by the Director, Respondent shall compose a tip policy and share it with \_\_\_ (agency name). Within 30 days of receiving \_\_\_ (agency name)'s feedback on the policy, Respondent shall accept the feedback, distribute the policy to current employees, and incorporate the policy into onboarding materials. The policy shall indicate who has a right to tips, the timeline the employer will follow in distributing tips, whether tips will be pooled, if pooled, how the tips will be shared among staff (by percentage), people in which positions receive tips, and what records employees will receive.

### **4. NO RECORDS**

Issue: Employer pays employees for a six-hour shift regardless of the number of hours worked and does not keep records.

Settlement Goal: Employer implements a time-tracking system and policy, requiring employees to clock in and out for their shift and lunch, and pays employees for the hours logged into the system. Employer begins to use a payroll and recordkeeping system in which a payroll provider receives information from the time tracking system and makes payments to employees based on it. Payroll records are maintained for three years. If the agency requests payroll information, the employer must get it from the payroll provider and provide it to the agency.

Sample Term: Within 30 days of the Director's execution of the settlement agreement, Respondent shall implement a time-tracking system and policy and distribute it to employees. The policy shall require employees to clock in and out for their shifts and lunch breaks and require the employer to pay employees for hours logged into the system. The system shall permanently flag any changes made to the information originally logged by employees. Employees shall have access to the system at work and receive reports upon request. The policy shall be distributed to all new employees upon hire.<sup>xii</sup>

Respondent shall maintain all payroll records required by \_\_\_\_ (law), including but not limited to \_\_\_\_ (e.g. an accurate and contemporaneous record of hours worked and actual pay received for such hours, required notices and notifications, employee manuals and acknowledgement of receipt thereof, weekly schedules)<sup>xiii</sup>

## 5. WORKER EDUCATION

Issue: Workforce unaware of rights or highly vulnerable to labor standards violations

Settlement Goal: Train workers on their rights on company time but outside the workplace and management's presence .<sup>xiv</sup>



Sample Term: Within six months of the execution of the Agreement by the Director, Respondent's employees shall attend training on labor standards laws. \_\_\_\_\_ (agency name or community org name) shall provide the training at \_\_\_\_\_ (location outside workplace). Respondent shall compensate employees for the training as hours worked. Respondent and anyone acting on behalf of the employer, including individuals who supervise employees, shall receive separate training and not attend this training.

## 6. WORKER NOTICE OF VIOLATION

Issue: Workers are unaware of violation and reason for receiving money

Settlement Goal: Require the employer to distribute a notice of violation to the workers with the check resolving the matter, explaining why the workers are receiving the money, that retaliation is unlawful, with contact information for the agency. Provide the notice in English and any other language spoken by employees and require distribution of the notice to each employee in the employee's primary

language. Work with a community organization to include language that workers are familiar with as opposed to terms of art.

Sample Term: Within 10 days of the execution of the Agreement by the Director, Respondent shall distribute the following notice to employees:

\_\_\_ (Agency name) investigated \_\_\_ (employer name) for alleged violations of \_\_\_ (ordinance names) between \_\_\_ (date) and \_\_\_ (date). \_\_\_ (Agency name) found the following violations: \_\_\_ (e.g. workers were not paid the minimum wage of \$\_\_ per hour in \_\_\_ (year), did not receive paid 10-minute rest breaks or unpaid 30-minute lunch breaks.). \_\_\_ (employer name) agreed to fix the problem and pay employees the money they should have earned, interest on that money, and additional amounts to compensate the employees for having suffered the violations.

Retaliation for asserting one's rights under \_\_\_ (ordinance names) is illegal. If you experience retaliation, contact \_\_\_ (Agency name) at \_\_\_ (phone, email).<sup>xv</sup>

## **7. BUSINESS SUPPORT CONSULTATION**

Issue: Employer has difficulty navigating the laws and applying them to its business model

Settlement Goal: Include a term requiring a business support consultation. Involve parties outside of the agency with expertise in the particular business model and needs. Engage community organizations for a business-needs assessment and training and assistance that is culturally and linguistically appropriate. Clearly delineate parties' responsibilities in the agreement or an addendum. Use fines paid to agency to distribute money to other parties for their services.<sup>xvi</sup>

Sample Term: Within 30 days of the execution of this Agreement by the Director, Respondent shall contact \_\_\_ (entity) to set up a business support consultation and \_\_\_ (community organization) to set up a business-needs consultation. Within six months of the execution of this Agreement by the Director, Respondent shall complete the business support consultation with \_\_\_ (entity) and business needs consultation with \_\_\_ (community organization) and implement changes to promote future compliance with labor standards. Upon Respondent's completion of the consultations, \_\_\_ (agency name) shall compensate \_\_\_ (entity) and \_\_\_ (community organization) for their services in the amount of \_\_\_, diverting Respondent's payment of fines to the organizations.

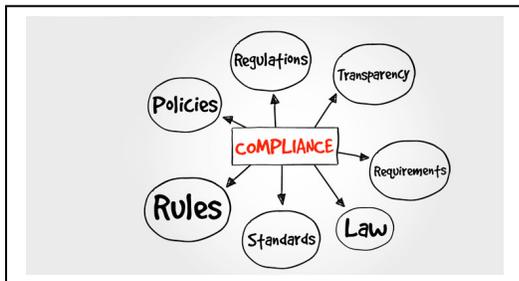
## 8. DEBARMENT

Issue: Government contractor violates the laws

Settlement Goal: Where the law in an agency's jurisdiction permits debarment, ensure the settlement is clear that it counts as a violation for debarment purposes. Include how many violations may happen in a specific time period before debarment and how long the debarment lasts.

Sample Term: This violation is the \_\_\_\_ (first, second, etc.) violation that counts toward debarment. After \_\_\_\_ (number of violations) in a \_\_\_\_-year period, Respondent will be prohibited from contracting with the \_\_\_\_ (list jurisdiction) government for \_\_\_\_ years.<sup>xvii</sup>

## 9. COMPLIANCE OFFICER



Issue: Nationwide employer has not focused resources on compliance in jurisdiction or employer has a highly fissured workforce (temp workers, subcontractors)

Settlement Goal: Require business to create a compliance officer responsible for compliance with your jurisdiction's labor standards laws and

report to your agency on compliance regularly.<sup>xviii xix</sup>

Sample Term: Within 30 days of the execution of the settlement agreement by the Director, Respondent will create a compliance officer position, which must be filled by a person who has human resources experience and familiarity with this Agreement and the laws applicable in \_\_\_\_ (jurisdiction), including but not limited to \_\_\_\_ (applicable laws). Respondent shall make all efforts to fill the position within six months of its creation. Respondent shall make the compliance officer responsible for implementing all requirements referenced in paragraphs \_\_\_\_ of this Agreement and compliance with \_\_\_\_ (jurisdiction)'s labor standards laws and make \_\_\_\_ (time period - quarterly or less) reports to \_\_\_\_ (agency name) regarding Respondent's compliance with \_\_\_\_ (jurisdiction)'s labor standards laws.<sup>xx</sup>

## 10. EMPLOYER TRAINING

Issue: Management does not have information about labor standards laws or know how to follow them

Settlement Goal: Employer training including frontline managers up to employer ownership. For a small company, the agency or a community partner might facilitate. A larger company should cover the cost of its own training, whether the agency, a community partner, or an attorney facilitates it.

Sample Term: Within six months of the execution of the Agreement by the Director, Respondent's management shall attend training on labor standards laws. Management includes all employees with supervisory authority; positions include: \_\_\_\_\_. (adjust definition as appropriate). \_\_\_\_\_ (attorney name, agency name or community org name) shall provide the training. Respondent shall compensate management for the training time as hours worked.

## **11. ADDRESS SUBCONTRACTING OUT LABOR**

Issue: Employer is subcontracting or outsourcing labor to avoid complying with or liability for worker protection laws

Settlement Goal: Have the employer agree not to use staffing agencies unless there is a surge in workload that cannot be performed by regular employees. Other terms might include a regular audit by the employer of the staffing agency's payroll, maintenance of independent time records, and per se liability for any future violations by the staffing agency as it relates to people who worked for the employer.<sup>xxi</sup>

Sample Term: Respondent shall not use staffing agencies unless a surge in the workload requires it. If Respondent uses a staffing agency, Respondent shall require the staffing agency to comply with labor standards laws, including payment of the minimum wage and overtime, maintenance of accurate payrolls and time records, and use of a payroll company for payment of wages. Respondent shall maintain independent time records and conduct a monthly audit of the staffing agency's payroll, and direct the staffing agency to rectify any failures to pay wages in accordance with \_\_\_\_\_ law. Should the staffing agency violate labor standards with respect to any of Respondent's employees, Respondent agrees it is per se jointly liable for the violation.<sup>xxii</sup>

## **12. WAIVERS**

Issue: Employer wants employees to be precluded from filing a law suit about the same issue the agency investigated.

Settlement Goal: Waivers – Very few employers request that employees receiving money through an investigation sign a waiver of all possible claims. The request

usually comes from a resourced employer with legal representation. The agency might decide to agree to offer employees a narrow waiver that clearly outlines the time period of the investigation and the topics that the employee is barred from pursuing. The agency could leave in the employee's hands whether the employee signs the waiver, rather than requiring it in order for the employee to receive compensation. Still, the agency cannot advise the employee of the legal consequences of signing a waiver or not, so it may be best to err on the side of caution and refuse to offer a waiver, allowing the court to decide whether a claim is precluded in the future. Moreover, since more resourced employers are likely to request them, agreeing to them as requested may result in inequity such that employees of large employers sign waivers and employees of small employers do not sign them.

Sample Term: The agency shall provide a waiver with the following language to employees when it distributes payment to them. "I, \_\_\_\_\_ waive my rights to pursue a further remedy regarding the allegations in case number \_\_\_\_\_, which occurred between [list date range] and include [list allegations]. The remedy I am receiving in this case, \$\_\_\_\_\_, fully remedies the allegations." The waiver will be accompanied by the following language for employees: upon receipt of payment, you have the option to complete this waiver and submit it to Respondent at \_\_\_ (contact information).

Sample Term 2: Employer understands that the \_\_\_\_\_ (Agency Name) cannot waive any statutory rights provided to individuals to pursue additional remedies, but nothing in this Agreement is intended to or shall prohibit Employer from asserting in a private action that Employer shall be entitled to a set-off for amounts accepted as a result of this Agreement.<sup>xxiii</sup>

Sample Term 3: With the payment distributed pursuant to this settlement agreement, Employer shall distribute a separate check in the amount of \$1,000 to each employee with the following language and notice:

"Upon receipt of payment, you have the option to complete the following waiver and submit it to Respondent at \_\_\_ (contact information). Employer is providing an additional \$1,000 for you to consult with an attorney about whether to sign and submit the waiver.

I, \_\_\_\_\_ waive my rights to pursue a further remedy regarding the allegations in case number \_\_\_\_\_, which occurred between [list date range] and include [list allegations]. The remedy I am receiving in this case, \$\_\_\_\_\_, fully remedies the allegations."<sup>xxiv</sup>

### **13. PENALTY FOR NON-COMPLIANCE**

Issue: Agency calls out what will happen in case of non-compliance.

Settlement Goal: Include specific monetary remedy for each aspect and time-period of noncompliance.

Sample Term: If an inspection or subsequent investigation by the (agency) shows a breach of any paragraph of this Agreement, including the failure to (e.g. arrange for employer training as required by Paragraph X), Respondent agrees to pay (agency) \$2,500 in fines for each violation of law or this agreement per week, per violation, for each week such violation remains uncured, beginning as of the date of the first documented violation, separate and apart from any other penalty or damages associated with the violation provided by law. Each unique violation of any provision of the (law) or this agreement shall be considered a separate violation for purposes of this section, and accordingly fines for each violation shall be due to the (agency) under this paragraph.<sup>xxv</sup>

### **14. COMPLIANCE MONITORING**

Issue: Continued compliance.

Settlement Goal: Include details of compliance monitoring, possibly deputizing a community organization.

Sample Terms: Options depending on employer's likelihood of continued compliance.

#### 1. Keep the Door Open

For \_\_\_\_ years following the execution of this Agreement by the Director, Respondent shall provide (agency) access to Respondent's place(s) of business, records necessary to establish compliance with the (law) and this Agreement, and contact information for employees upon request. Respondent shall submit records to (agency) within \_\_\_\_ days of a request for records under this Paragraph.

#### 2. Self-Monitoring and Reporting (See also Compliance Officer)

On \_\_\_\_ (date) of each year for \_\_\_\_ years following the execution of this Agreement by the Director, \_\_\_\_ (employer/compliance officer) shall conduct an audit of Respondent's compliance with (law/s). Based on the review, (employer/compliance officer) shall provide written certification sworn under the penalty of perjury to (agency), which shall summarize the steps taken to audit Respondent's compliance with (law), and (i) if Respondent is in compliance, certify Respondent's compliance; or (ii) if Respondent is not in compliance, identify all employees affected by Respondent's

noncompliance, outstanding wages and interest owed to each employee, and the actions Respondent has taken to remedy the non-compliance.

### 3. Proactive Submissions (See also Compliance Officer)

For \_\_\_ (number) years following the execution of this Agreement by the Director:

A. Respondent shall provide (agency) access to Respondent's place of business, and records necessary to establish compliance with the (law) and this Agreement, and allow (agency) to interview employees;

B. (Employer/Compliance Officer) shall submit the documents set forth in this paragraph to (agency) twice a year for two years or until Respondent no longer does business, whichever is first. The submission of documents shall be no later than \_\_\_\_ (dates). The documents shall include:

- i. An employee roster with personal phone numbers and addresses for each employee;
- ii. A payroll summary covering the preceding six months;
- iii. Etc.

### 4. Co-Enforcement Model

For \_\_\_ (number) years following the execution of this Agreement by the Director:

A. Respondent shall provide (agency), and/or any entity or person designated by (agency), access to Respondent's place of business, and records necessary to establish compliance with (law) and this Agreement, and allow (agency) or its designee to interview employees;

B. Respondent shall submit the documents set forth in this paragraph to (agency) twice a year for two years or until Respondent no longer does business, whichever is first. The submission of documents shall be no later than \_\_\_\_ (dates). The documents shall include:

- i. An employee roster with personal phone numbers and addresses for each employee;
- ii. A payroll summary covering the preceding six months;
- iii. Etc.

## CONCLUSION

In sum, agencies have flexibility when preparing for, negotiating, and composing settlement agreements. They can powerfully harness that flexibility, setting a floor and consistent principles that apply in every matter and being more creative about how to address the nuances involved in each case with each employer. When used

strategically, settlement can set up an agency to have a ripple effect, encouraging compliance throughout an industry and jurisdiction.

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<sup>i</sup> The primary exception to the preparation requirement is in cases that are very limited in scope or only affect a single individual. In low priority, quick resolution enforcement actions, like last paycheck cases, it may not be worth the agency's resources to conduct a full investigation into the matter, so facilitating a resolution may occur from the outset. Early settlement may also be appropriate in retaliation investigations in which the worker and the employer both want to settle prior to the agency finishing an investigation (or even establishing a violation). However, when the case involves only one worker, the worker must have a seat at the negotiating table, and approve the settlement amount before the agency agrees to settle. If the worker does not agree and negotiations fail, the agency should move forward and conduct a full investigation.

<sup>ii</sup> The Seattle Office of Labor Standards includes the following language in settlement agreements: "There shall be no discrimination or retaliation of any kind against any person because of opposition to any practice prohibited under SMC 14.16, 14.17, 14.19, 14.20, or 14.22, or because of the filing of a charge or notice of investigation, giving of testimony or assistance, or participation in any manner in any investigation, proceeding or hearing thereunder. Respondent shall distribute notice of this prohibition on discrimination and retaliation and management's responsibilities under the laws, to each of Respondent's management employees."

<sup>iii</sup> 29 U.S.C. § 216(b).

<sup>iv</sup> Matthew S. Johnson, *Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws*, *American Economic Review*, revised and resubmitted, 3, (2019) <https://drive.google.com/file/d/1HcKpGXZuFWNNLa1YTl0A4Hte1BiJabT-/view>.

<sup>v</sup> The California Labor Commissioner has used the following language in settlement agreements with a payment plan:

"a. Settlement Amount. Defendants shall pay to Plaintiff the total principal sum of \$\_\_\_\_\_ ("Settlement Principal") and additional interest as provided in paragraph 2.b.

b. Interest on Settlement Principal. Interest shall accrue on the unpaid balance of the Settlement ("Settlement Interest") at the rate of five (5) percent per annum beginning July 1, 2018 and continuing until all amounts due under this Agreement are paid in full. If Defendants pay the Installment Settlement Payments in accordance with the payment schedule attached to this Agreement, the total interest paid shall be \$\_\_\_\_\_. Defendants may prepay, in part or in whole, the amounts due to Plaintiff at any time prior to the scheduled payment date without penalty. Such a pre-payment will reduce the total amount of interest Defendants pay on the Settlement Principal. Plaintiff shall provide a payoff demand for the entire amount then-due under this Agreement within 15 days of receiving a written request from Defendants.

c. Initial Settlement Payment. Within ten (10) days of the Parties' execution of this Agreement, Defendants shall pay to Labor Commissioner an initial payment of \$\_\_\_\_\_ in certified funds. These funds will be delivered personally to the \_\_\_\_\_ (Agency Name) at \_\_\_\_\_ (Address). At the same time that this check is provided, Defendants and Trust Defendant shall receive an original request for dismissal with prejudice in the form of the stipulation attached as Exhibit B. Defendants shall provide at

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least two-day's notice to Plaintiff's counsel by email or telephone regarding the date and time that this delivery will occur.

d. Installment Settlement Payments by Defendants. Defendants shall deliver to Plaintiff 60 monthly payments of \$\_\_\_\_\_, due and payable on or before the fifteenth of each month commencing October 15, 2018 and terminating on September 15, 2023. The schedule of payments is attached as Exhibit A to this Agreement. . . .

g. Default. If the Installment Settlement Payments required by this Agreement are not received by the Labor Commissioner within ten (10) days of the dates called for by this Agreement, or the Defendants otherwise commit a material breach of its terms, Plaintiff may declare the entire remaining balance, including all interest, costs, and attorney's fees authorized by this Agreement, due by Defendants and payable on fifteen (15) days' written notice to Defendants. Defendants shall have the right to cure the default by paying any outstanding amount (and any additional late fees and penalties required by this Agreement), or otherwise coming into compliance with the Agreement, during the fifteen (15) day period after the Labor Commissioner declares a default. Labor Commissioner will give written notice of default to Defendants, specifying that Defendants have fifteen (15) days from the date of mailing of the notice of default to cure the default. If the default is not timely cured, Defendants shall be liable for interest on the full unpaid balance due under this Agreement from the date of breach at the statutory rate of ten (10) percent per annum. Additionally, if any Defendant is adjudicated a bankrupt or seeks relief under the bankruptcy laws of any jurisdiction, a default will automatically be deemed to occur and the entire remaining balance of payments, including all interest, costs, and attorney's fees authorized by this Agreement shall become due and payable.

h. Late Payments and Dishonored Checks. If any payment is received by the Labor Commissioner more than ten (10) days after the date called for by this Agreement or any payment is dishonored by the Labor Commissioner's bank, Defendants shall pay a late-fee/dishonored-check-fee of \$100 that will be due and payable on the date of the next Installment Settlement Payment. If this late-fee/dishonored-check-fee is not paid within ten (10) days of this date, the Labor Commissioner may declare a default in accordance with the procedures specified by this Agreement. Defendants shall provide a replacement for any dishonored check within ten (10) days after being notified in writing by the Labor Commissioner that a check has been dishonored. If the replacement check is dishonored, the Labor Commissioner may declare a default in accordance with the procedures specified by this Agreement."

<sup>vi</sup> Seattle offers alternate language stating, "This Agreement represents a settlement and compromise between OLS and Respondent. A future determination by OLS under SMC 14.XX that Respondent has violated the Ordinance, or a future settlement agreement between OLS and Respondent addressing any violation of the Ordinance, shall be considered a second violation of the Ordinance."

<sup>vii</sup> Seattle's most-conservative language would look something like this:

"For **[SPECIFY PERIOD FOR COMPLIANCE MONITORING]** after the execution of this Agreement by the Director:

- a. Respondent shall permit OLS to visit Respondent's place of business, review records and interview employees;
- b. Respondent shall submit the documents set forth in this paragraph to OLS twice a year for two years or until Respondent no longer does business, whichever is first. The submission of documents shall be no later than **[Select four dates over the two-year period]**. The documents shall include:

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- i. An employee roster with personal phone numbers and addresses for each employee;
  - ii. A payroll summary covering the preceding six months; and
  - iii. A declaration with a personal certification under penalty of perjury by Respondent stating: (include assertions necessary to show compliance);
  - iv. **Add terms/docs necessary to show compliance with issues throughout investigation.**

<sup>viii</sup> The Worker’s Defense Project is a community organization that uses education, direct service and strategic partnership to empower low-income workers to achieve fair employment.

<sup>ix</sup> Janice Fine, *Enforcing Labor Standards in Partnership with Civil Society: Can Co-enforcement Succeed Where the State Alone Has Failed?*, 45:3 Sage Journals, 359, 370-372 (2017).

<sup>x</sup> Janice Fine and Tim Bartley, *Raising the Floor: New Directions in Public and Private Enforcement of Labor Standards in the United States*, 69:2 Journal of Industrial Relations, 252 (2018).

<sup>xi</sup> Example from Seattle OLS.

<sup>xii</sup> Example from Seattle OLS.

<sup>xiii</sup> Sample term adapted from USDOL/NY AG Papa John’s case [https://ag.ny.gov/sites/default/files/star\\_fine\\_-\\_executed\\_aod\\_ex.\\_a\\_0.pdf](https://ag.ny.gov/sites/default/files/star_fine_-_executed_aod_ex._a_0.pdf).

<sup>xiv</sup> Image from: <https://socialworklicensure.org/types-of-social-workers/child-family-school-social-workers/>

<sup>xv</sup> Example from Seattle OLS.

<sup>xvi</sup> Example from Seattle OLS.

<sup>xvii</sup> Example from Seattle OLS.

<sup>xviii</sup> Image from: <http://p2pcompliance.com/7-attributes-effective-compliance-officer-2/>

<sup>xix</sup> Idea from Massachusetts Attorney General.

<sup>xx</sup> Adapted from USDOL/NY AG Papa John’s case [https://ag.ny.gov/sites/default/files/star\\_fine\\_-\\_executed\\_aod\\_ex.\\_a\\_0.pdf](https://ag.ny.gov/sites/default/files/star_fine_-_executed_aod_ex._a_0.pdf). More complete suggestion here:

Within NUMBER days of the Director’s execution of this Agreement, EMPLOYER shall designate an employee or agent, who must have human resources experience and familiarity with this Agreement and the laws applicable in JURISDICTION, including but not limited to LAWS and the Fair Labor Standards Act, as the “Compliance Officer.” This designation is subject to the prior approval of the AGENCY. The Compliance Officer must have managerial responsibility over all of EMPLOYER’S current establishments and report directly to EMPLOYER. Should there be additional future establishments, the Compliance Officer must also have managerial responsibility over them.

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EMPLOYER agrees that the Compliance Officer will be responsible for implementing all requirements referenced in paragraphs NUMBERS, including but not limited to: [EXAMPLES: (a) drafting, updating, and disseminating the Handbook in accordance with paragraph NUMBER, designing and conducting the trainings in accordance with paragraph NUMBER, instituting and implementing complaint procedures in accordance with paragraph NUMBER, and ensuring that all postings are appropriately placed in conspicuous areas in all workplaces and updated as needed; and (b) obtaining and maintaining all acknowledgments, and creating and maintaining all required records and providing the same to the AGENCY upon request.]

Within NUMBER days of approval by the AGENCY of such designation of the Compliance Officer, EMPLOYER agrees that it shall provide a written description of the Compliance Officer's job responsibilities to the Compliance Officer, subject to approval of the AGENCY, and the Compliance Officer shall sign a written certification that they have read and understand the Agreement and their job responsibilities as they relate to the Agreement, including but not limited [EXAMPLES: to (a) drafting, reviewing and updating all relevant documents, including but not limited to employee payroll records, notices for employees, Handbook acknowledgment forms and complaint records, and weekly revenue records, and (b) upon receipt of a complaint of a violation of the Agreement or any law enforced by AGENCY, conducting confidential interviews with employees outside of the presence of other employees, managers, or owners.]

Every calendar quarter beginning DATE and ending three (3) years after the Director's execution of this Agreement, the Compliance Officer shall prepare and submit to the AGENCY, a report describing EMPLOYER'S compliance with the terms of this Agreement. The Compliance Officer's report shall include: [EXAMPLES: a. an executive summary describing the steps taken by EMPLOYER to comply with this Agreement, and any violations and efforts to cure such violations identified by the Compliance Officer during the calendar quarter; b. a description of all documents prepared and reviewed by the Compliance Officer; c. copies of all documents created during the calendar quarter concerning compliance with the Agreement, including but not limited to all employment documents as defined by this Assurance and Agreement; d. a signed certification from EMPLOYER that the payroll records attached to the report are true and correct copies of all original payroll records created during the calendar quarter, and that they personally reviewed such records and found them to be accurate, contemporaneous statements of the hours worked by and wages paid to all EMPLOYER'S employees; and e. identification of specific actions or internal policies or procedures that the Compliance Officer determines are necessary for EMPLOYER to take or adopt in order to comply and assure its ongoing compliance with this Agreement, the laws of JURISDICTION, and all other applicable local, state, and federal laws.]

<sup>xxi</sup> Example from Massachusetts Attorney General.

<sup>xxii</sup> Adapted from Massachusetts Attorney General:

<https://static1.squarespace.com/static/577e9d93b3db2b9290cd7005/t/5a5d4ee071c10bc0942cc41f/1516064481065/Massachusetts+joint+employer+Katz+settlement+agreement.pdf>

<sup>xxiii</sup> Adapted from Massachusetts Attorney General:

<https://static1.squarespace.com/static/577e9d93b3db2b9290cd7005/t/5a5d4ee071c10bc0942cc41f/1516064481065/Massachusetts+joint+employer+Katz+settlement+agreement.pdf>

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<sup>xxiv</sup> Example from Equal Opportunity Employment Commission.

<sup>xxv</sup> Sample term adapted from USDOL/NY AG Papa John's case  
([https://ag.ny.gov/sites/default/files/star\\_fine\\_-\\_executed\\_aod\\_ex.\\_a\\_0.pdf](https://ag.ny.gov/sites/default/files/star_fine_-_executed_aod_ex._a_0.pdf))