

New Resource Request Fair Labor Standards Act (FLSA)/Employment Litigation: Outside Counsel Reduction

Office of the City Attorney – Budget Request 2010-11

Request: Provide new in-house staff whose costs are fully offset by a reduction in outside counsel budget

Summary

Over the last decade, the City has faced several large FLSA lawsuits, most notably involving allegations of unpaid wages by the Los Angeles Fire Department and the Los Angeles Police Department. These cases are class action lawsuits and each carries substantial exposure. By way of example, the *Kimpel v. City* lawsuit cost the City \$40 million. More recently, the *Brehm v. City* case settled for \$7 million.

Currently, there are nine FLSA-related mass-plaintiff lawsuits pending against the City, a tenth having just resolved in recent weeks. The City Attorney anticipates the filing of as many as 10 new FLSA lawsuits against the City within the next year.

Generally, because of limitations on staffing and expertise, the City has been forced to hire outside counsel for these cases. In one case alone (*Jones v. City*), the City paid over \$5 million for outside counsel representation. This office has in the past proposed the establishment of an in-house FLSA unit to handle these cases. We believe this would be more efficient than hiring outside counsel. In fact, for fiscal year 2007-08, roughly 80 percent of our outside counsel request was dedicated to FLSA cases and in fiscal year 2008-09 and fiscal year 2009-10, these cases represented a similar percentage. In order to handle a significant number of these cases in-house, we require the following resources:

3 Deputy City Attorney III (0552)
1 Legal Secretary II (0581)
2 Paralegal II (0577)

This staffing request represents a reduction from prior year requests, in an effort to more efficiently cover the same litigation needs.

Background and Rationale

Typically, FLSA overtime lawsuits seek back pay, liquidated damages, post-judgment interest and attorneys' fees. These matters require extensive document review, cause substantial monetary exposure, portend profound operational changes, and almost always involve hundreds of plaintiffs. As a result, these matters require large amounts of attorney time and resources. Currently, the City Attorney has neither the staffing nor the broad expertise necessary to handle such lawsuits.

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In order to competently conduct the defense of the above actions, counsel must possess an expertise in FLSA and California wage and hour laws, as well as sufficient staff to handle a mass-plaintiff action. By way of example, presently, there are 241 plaintiffs in a single case (*Achan*). However, under the FLSA, plaintiffs can “opt in.” Therefore, the actual number of class members could increase significantly in the future. In any case, based upon past experience, we expect that the plaintiff group will often consist of over 100 members.

Each of these plaintiffs must be deposed, and his or her individual claims may ultimately be the subject of time-consuming Motions for Summary Judgment. Additionally, given the nature of the plaintiffs’ claims, counsel must review and analyze voluminous amounts of time and payroll records. Therefore, counsel must have the resources necessary to handle a tremendous amount of paperwork.

As a practical matter, this Office’s Police Employment Litigation Section does not have the resources to handle these cases. The seven attorneys in our Office’s Police Employment Litigation Section are currently handling over 40 cases, and there is simply no way that these attorneys and their support staff could handle additional cases without adversely affecting the quality of representation in other cases.

The hiring of additional in-house City Attorney staff in the form of an FLSA Unit would reduce reliance on outside counsel and develop essential in-house expertise in an area of the law of which the City will have a continuing need. The vast majority of the fiscal year 2010-11 outside counsel request is dedicated to FLSA/employment cases. We are dedicated to working to keep new cases in-house, the less costly alternative to outside counsel. In-house staff would cost approximately \$525,000 (9 months staffing cost), including three attorneys and three support staff. We are confident that a corresponding decrease in the outside counsel budget for next year would cover these new staff costs. In future years, this dedicated staff will result in increased savings and the avoidance of using more costly outside counsel. Accordingly, we believe that establishing an FLSA Unit would be more cost-effective for the City and recommend resources be provided for this purpose.

BUDGET REQUEST/REDUCTION PACKAGE

CAO 696B (Rev. 09-08)

1. DEPARTMENT: City Attorney	1A. BUREAU Civil Liability Management	2. DIVISION/SECTION	3. PACKAGE TITLE FLSA Employment Litigation: Outside Counsel Reduction				
PROGRAM TITLE AND NUMBER: FD1202 Civil Liability Management		5. SERVICE TITLE AND NUMBER:					
7. DESCRIPTION OF WORK OUTPUT AND OBJECTIVE: See attached.			8. Priority Current New Reduction FY 2009-2010 1				
7A. ADDRESSES MAYOR'S BUDGET GOALS:							
9. RESOURCES REQUIRED NEXT FISCAL YEAR							
POSITIONS							
<u>No.</u>	<u>Class Title</u>	<u>Class Code</u>	<u>Total Salary</u>				
3	Deputy City Attorney III	0552	\$306,439				
2	Paralegal II	0577	\$122,799				
1	Legal Secretary II	0581	\$47,150				
FUNDS							
<u>Account No. & Title</u>			<u>Amount</u>				
			\$ 476,387				
1010 Salaries			\$ -				
1020 Salaries Grant reimbursed			\$ -				
1080 Salaries Proprietary			\$ -				
1090 Overtime			\$ -				
2060 State Bar Dues			\$ 1,500				
2120 Printing & Binding			\$ 1,200				
2130 Travel			\$ -				
3040 Contract Services			\$ -				
3310 Transportation			\$ -				
6010 Office & Admin Exp			\$ 25,702				
7300 Equipment			\$ 19,000				
Subtotal			\$ 523,789				
Department Total			\$ 523,789				
Related costs:							
Retirement (20.93%)			\$ 99,708				
Benefits (\$9,204/position)			\$ 55,224				
Total Cost			\$ 678,721				
6	Totals		\$ 476,387.25				
10. LEGAL BASIS							
11. LAYOFFS: Projected number if package is not funded. <u>0</u>							
12. SOURCE OF FUNDS: List all proposed funding sources and basis for use of special purpose funds. If more than one source of funds is proposed for this package, complete the attachment. <table style="width:100%; margin-top: 10px;"> <tr> <td style="width:50%;"><u>Fund Title</u></td> <td style="width:50%; text-align: right;"><u>Amount</u></td> </tr> <tr> <td>General Fund: Offset by a equivalent reduction to the Outside Counsel request</td> <td style="text-align: right;">\$ 678,721</td> </tr> </table>				<u>Fund Title</u>	<u>Amount</u>	General Fund: Offset by a equivalent reduction to the Outside Counsel request	\$ 678,721
<u>Fund Title</u>	<u>Amount</u>						
General Fund: Offset by a equivalent reduction to the Outside Counsel request	\$ 678,721						
13. REVENUE: State the revenue impact of funding or not funding this package and any required ordinance changes.							
14. OUTCOME: Detail quantifiable and non-quantifiable benefits of funding this package, including the impact on service levels, consequences of not funding it. Identify any milestones or measurements of the stated outcomes. See Attached							
Preparer's Name: Michiko M. Reyes		Title: CA Budget Director	Telephone: 978-7020				

7. RESOURCES REQUIRED

SALARIES - GENERAL (1010)					Recurring	Non Recurring
No.	Class Title	Class Code	Salary	Total Salary		
3	Deputy City Attorney III	0552	102,146	\$306,439	\$306,439	
2	Paralegal II	0577	61,400	\$122,799	\$122,799	
1	Legal Secretary II	0581	47,150	\$47,150	\$47,150	
				\$0	\$0	
				\$0	\$0	
				\$0	\$0	
				\$0	\$0	
6	SUBTOTAL SALARIES - GENERAL			\$476,387		
SALARIES - GRANT (1020)						
No.	Class Title	Class Code	Salary	Total Salary		
0	SUBTOTAL SALARIES - GRANT			\$0	\$0	
SALARIES - PROPRIETARY (1080)						
No.	Class Title	Class Code	Salary	Total Salary		
0	SUBTOTAL SALARIES - PROPRIETARY			\$0	\$0	
SALARIES - OVERTIME (1090)						
No.	Class Title	Class Code	Amount	Amount		
0	Non-salaried employees			\$0	\$0	
0	SUBTOTAL SALARIES - OVERTIME			\$0	\$0	
STATE BAR DUES (2060)						
No.	Class Title	Class Code	Amount	Amount		
3	State and County Bar dues	500		\$1,500	\$1,500	
3	SUBTOTAL - STATE BAR DUES			\$1,500		
PRINTING AND BINDING (2120)						
No.	Item Description	Class Code	Amount	Amount		
6		200		\$1,200	\$1,200	
	SUBTOTAL PRINTING AND BINDING			\$1,200		
TRAVEL (2130)						
No.	Item Description	Class Code	Amount	Amount		
	Legislative and governmental meetings	0		\$0	\$0	
	SUBTOTAL TRAVEL			\$0	\$0	
CONTRACTUAL SERVICES (3040)						
No.	Item Description	Class Code	Amount	Amount		
				\$0	\$0	
				\$0	\$0	
	SUBTOTAL CONTRACTUAL SERVICES			\$0	\$0	
TRANSPORTATION (3310)						
No.	Item Description	Class Code	Amount	Amount		
	Mileage	400		\$0	\$0	
	SUBTOTAL TRANSPORTATION			\$0	\$0	
OFFICE AND ADMINISTRATIVE EXPENSE (6010)						
No.	Item Description	Class Code	Amount	Amount		
6	Office Supplies (SMS, Library Materials, Training, Fingerprinting)	1,200		\$7,200	\$7,200	
6	Standard Software Package	525		\$3,150	\$3,150	
6	Standard Desktop PC	1,300		\$7,800	\$7,800	
	Standard Laptop Computer	1,400		\$0	\$0	
	Standard Laser Printer	194		\$0	\$0	
1	Workgroup Laser Printer	2,200		\$2,200	\$2,200	
3	Office Desk with Hutch	550		\$1,650	\$1,650	
3	Credenza	350		\$1,050	\$1,050	
6	Chair, Office	300		\$1,800	\$1,800	
6	Chair, Guest	142		\$852	\$852	
				\$0	\$0	
				\$0	\$0	
				\$0	\$0	
	SUBTOTAL OFFICE AND ADMINISTRATIVE EXPENSE			\$25,702		
EQUIPMENT & OFFICE FURNITURE (7300)						
No.	Item Description	Class Code	Amount	Amount		
1	Modular furniture set up 8 x 8	5,000		\$5,000	\$5,000	
2	Modular furniture set up 8 x 12	7,000		\$14,000	\$14,000	
				\$0	\$0	
				\$0	\$0	
	SUBTOTAL EQUIPMENT & OFFICE FURNITURE			\$19,000		
TOTAL FUNDING NEEDS - BY ACCOUNT TITLE						
ACCOUNT TITLE				Amount		
Salaries - General (1010)				\$476,387		
Salaries - Grant (1020)				\$0		
Salaries - Proprietary (1080)				\$0		
Salaries - Overtime (1090)				\$0		
State Bar Dues (2060)				\$1,500		
Printing and Binding Expense (2120)				\$1,200		
Travel (2130)				\$0		
Transportation (3310)				\$0		
Contractual Services (3040)				\$0		
Office and Administrative Expense (6010)				\$25,702		
Equipment & Office Furniture (7300)				\$19,000		
TOTAL				\$523,789	\$488,287	\$36,650