Labor Leaders,

This email is to provide clarity on the City's recent "Information Notice of Changes to COH FLSA OT Calculation" dated July 14, 2025, and to explain the lawsuit we've already filed on behalf of all our firefighters and all other City employees who earned cash-in-lieu of health benefits (CIL).

The "offer" proposed by the City is another inadequate attempt to avoid liability for their systemic underpayment of overtime by offering a fraction of what they owe. They have been willfully excluding CIL (Cash In Lieu of medical) for almost a decade since the Ninth Circuit ordered its inclusion in overtime. The only way your members will receive what they are owed is to join us in fighting for what we're entitled to under the FLSA.

Background on the Lawsuit:*Ghali et al. v. City of Hayward*

In February 2025, my entire membership and I filed a collective action lawsuit in federal court (Case No. 4:25-cv-01116-YGR) after repeated efforts to correct the City's illegal pay practice went nowhere. The suit addresses the City's longstanding failure to properly calculate overtime pay.

Specifically, the City has excluded cash-in-lieu of health benefits (CIL) from employees' "regular rate" of pay, which is used to compute overtime. This has resulted in underpayments for overtime hours worked.

Under the FLSA, overtime must be paid at 1.5 times your regular rate, and the regular rate must include all forms of compensation like CIL—unless explicitly excluded by law. This isn't a new rule; it's been established since the Ninth Circuit's decision *in Flores v. City of San Gabriel* in 2016, which required cities to include CIL in overtime calculations.

Flores also mandated three years of backpay (due to "willful" violations) and liquidated damages (an additional amount equal to the backpay owed). Despite this clear precedent, the City has ignored *Flores* and continued to underpaid all city employees receiving CIL for nearly a decade.
Our lawsuit seeks:

- **Proper overtime calculation**: Using the full 1.5 times multiplier on the regular rate (including CIL).
- **Three years of backpay**: From December 2021 to present, based on the City's willful violation of the FLSA.
- **Liquidated damages**: An equal amount to the backpay, as awarded in Flores.
- **Attorney fees and costs**: Paid by the City, not out of your recovery.

We're also challenging the City's improper "hourly" methodology for calculating overtime on incentives and add-on pays, which reduces your overtime rate by more than two-thirds compared to the correct "salary" method. This affects firefighters specifically, but the core CIL issue impacts all non-exempt employees who opt out of City health benefits and work overtime.

Addressing Misrepresentations in the City's Notice

The City's notice claims this was an "error" they "recently became aware of," and that they'll start including CIL in overtime calculations effective August 11, 2025. This is misleading at best. Here's the truth:

- **Not an "error"—a willful violation**: *Flores* has been the law of the land since 2016. The City's law firm, Liebert Cassidy Whitmore (LCW), represented the losing side in *Flores* and has been providing training on its requirements ever since. Despite this, the City continued excluding CIL from overtime for years, underpaying employees across all units.
- **We tried to fix this in 2024**: Local 1909 raised this issue with the City well before the lawsuit, including through grievances and negotiations. The City dragged its feet, leading us to file suit to protect our rights.
- **No mention of full backpay or damages**: The notice vaguely says the City will "assess its obligations" for retroactive payments but doesn't commit to the three years of backpay or liquidated damages

required under *Flores* for willful conduct. They're hoping to minimize liability, but we're fighting for the maximum recovery.

The City has known about this for years and chose not to act—costing you money on every overtime hour worked. Now the city proposes a "fix" that applied a .5 multiplier, i.e. less than 1/3 of the proper calculation. Additionally, the City has never acknowledged liability for a three year recovery period or liquidated damages. My union quickly discovered the only path to a full recovery or even a fair compromise is through litigation. After proposing tolling agreements, mediation and making a reasonable settlement offer that was rejected, we commenced our FLSA lawsuit.

Your Eligibility to Join the Lawsuit

If you're members are a non-exempt City employees (from any bargaining unit) who received cash-in-lieu of health benefits and worked overtime in the last three years (since July of 2022), your members are eligible to join as an "opt-in" plaintiffs. This includes members from HPOA, SEIU Local 1021, IFPTE Local 21, HAME, and others. Joining means you could recover:

- Backpay for underpaid overtime.
- Liquidated damages (doubling your backpay).
- No out-of-pocket costs—our firm (Mastagni Holstedt) handles everything on a contingency basis, and the City pays our fees if we win.

We've already rejected the City's lowball settlement offer of just $150,000 for firefighters alone—far below the actual liability, which could exceed $1 million when including three years of backpay, liquidated damages, and all affected employees. By joining, we strengthen our position and increase the pressure for a fair resolution that gets you full compensation.

How Easy It Is to Join and Fight for Full Backpay

Joining is simple and risk-free. Our Local will host a zoom meeting to explain how to participate in the lawsuit. Your members simply need to complete some short paperwork to be filed with the Court. There no upfront costs, and your members' participation is protected under the FLSA—they can't be retaliated against for joining.

If you have questions, feel free to reach out to me directly. Together, we can hold the City accountable and secure the fair pay we've earned.

In solidarity,
Andrew Ghali
President, IAFF Local 1909