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14th Annual Advanced Wage and Hour Conference

US Department of Labor and CA Division of Labor Standards Enforcement: An Inside
Look into Enforcement and Litigation Strategies

Thursday, July 18, 2024
2:30 p.m. – 3:30 p.m.

Speakers:

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Conference Reference Materials

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DOL & DLSE – Inside Look into the Agencies' Enforcement and Litigation Processes

Labor & Employment Section, CLA – July 18, 2024



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MEET THE PANELISTS & MODERATOR

AGENDA

Overview of DOL & DLSE Practices

- Enforcement - Deep Dive into Investigation Practices
- Litigation Practices
- Compliance Tips for Practitioners
- Q&A



Enforcement

Overview

DLSE 2023

Reported Complaints



- Received 58,000 (retaliation not included)
 - Private companies - 56,000
 - Public Agencies - 2,000
- **Majority** involved companies with < 1000 employees
- **Most Common Claims**
 - ❖ 40,000 claims for wages (of those 10,000 included claims for overtime)
 - ❖ 10,000 claims for paid sick leave
 - ❖ 9,000 claims for meal period violations
 - ❖ 7,500 claims for rest period violations
 - ❖ Plus, waiting time penalties added



DOL - Overview of Reported Complaints - 2023





Complaints and Investigations? How they Arise?

Division of Labor Standards Enforcement

- § Reports derive from employees, competitors, community-based organizations and other agencies
- § DOL commonly investigates low wage earners, garment industry, agriculture, construction and restaurants
- § Complaints derive from all companies, but primarily from small

DOL

Discussion regarding
Reported Claims



The Investigation – 1st phase

Investigation Tools

Deputy LC is assigned – investigate all matters (wages paid, meal and rest, wage statement, sick leave, licenses, minor’s hours, and coverage for worker’s compensation)

Information obtained *is* subject to the Public Records Act (witness/report) upon completion [redactions as needed]; Employer has No right to discovery at this stage

DLSE may enter and gain access to documents; not subject to Civil Procedure discovery rules (LC 90 & 1174)

Warrants are issued to gain access to the place of employment to carry out duties (review of records, investigation)

Subpoenas are issued to gain access to employer’s records [DLSE provides notice] – Note: employer can be subject to evidence preclusion at the hearing

Interviews and depositions are taken (contact directly)

DLSE Audit – 2st phase – Damage Assessment



Audit the data received



Assigned to Deputy Labor Commissioner and assigned auditors (location, complexity & availability)



Citation issued / 15 days to appeal; Corp. and Indv. cited

If no appeal goes to judgment

Appeal may be assigned to attorneys to prosecute in hearing

Superior court appeal by writ of mandate after bond posted



Further investigation and audit as needed



DEPARTMENT OF
LABOR - THE
INVESTIGATION
DISCUSSION





LITIGATION

WHEN ALL ELSE FAILS



DLSE & Litigation

- Primary issue citations – Lawsuits are less common
 - ✓ Issued to the individual and employer
 - ✓ Prosecuted by DLSE
- *Open* to Mediate; employer pays
- Resolves claims unresolved by the DOL and within DLSE's jurisdiction



DOL & Litigation

Discussion

Representative Actions

Individual Employee is not
the Plaintiff

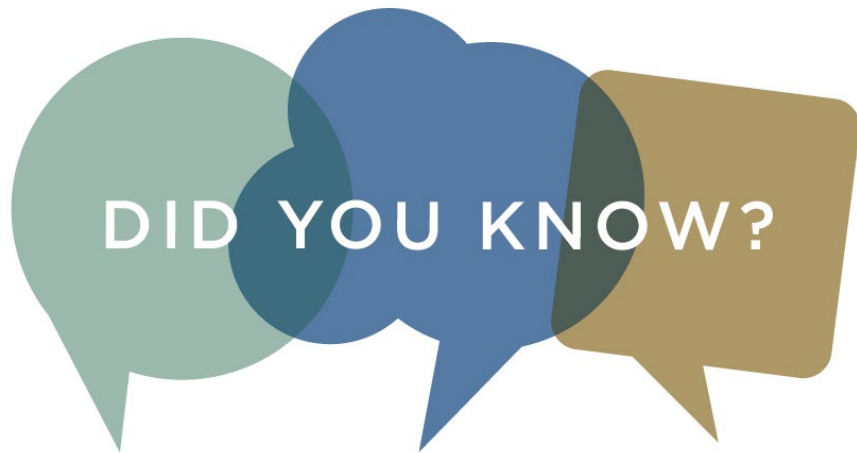
Division of Labor Standards & Enforcement

- No need to certify a class
- Must still prove case; evidence code applies
- Cases filed in superior court; go to Federal court, but not by choice
- Settlement
 - Based on audit findings
 - Disbursed based on individual harm
 - Attorney fees?

A wooden gavel with a dark, polished finish is positioned diagonally across the frame. It rests on a stack of papers that appear to be legal documents or contracts, with some text and lines visible but blurred. The background is a dark, textured surface, possibly a desk or a book cover. The overall lighting is dramatic, with highlights on the gavel's head and handle.

DOL & Representative Actions

Discussion



What You May Wish to Know

DLSE Insights

- Negotiate and adjust/reduce penalties depends on circumstances
- Settlement without the employee; Employee may wish to litigate outside of agency, but unable to receive for same
- Resolution by citation is most common; litigation an option
- Notice to Discontinuance (e.g. fix-it notice for posting, wage theft notice)
- Settlement Agreements
 - ∅ no confidentiality
 - ∅ No Civil Code 1542 general release
 - ∅ No broad settlement



HOT GOODS

DOL DISCUSSION

A photograph of three business professionals in an office setting. Two women are smiling and shaking hands with a man whose face is partially visible on the right. The woman on the left has dark curly hair and is wearing a dark blazer. The woman in the center has light brown curly hair and is wearing a white blazer over a dark top. The background shows office shelves and a computer monitor.

AGREEMENTS/CONTRACTS

AGENCY MAY OR NOT BE BOUND

Division of Labor Standards & Enforcement

Arbitration

Not bound by private agreements

Union Contract

- Conduct a Livadas Review
 - ✓ Reviews the contract to determine if derivative or statutory claim(s)

Contracts

- Can make determination if actual IC; otherwise no jurisdiction over Independent Contractors
- Will not honor waiver of statutory rights (e.g., misclassification)



OUTSIDE AGENCY AGREEMENTS



CONTRACTS
DOL INSIGHTS AND PERSPECTIVES



Legal Impact

Game-changing News



PAGA Reform Agreement

HOW WILL IT AFFECT THE
DLSE



Compliance Tips for Practitioners (DLSE perspective)

Audit your internal employment practices

- Paystubs
- Job Descriptions
- Pay transparency practices (job postings, records)

Maintain Records (statutory)

Train management and employees

Engage experienced counsel

Remind management – No retaliation

Recommend cooperation

No waiver of statutory rights

A close-up photograph of a person's hands holding an open, empty brown leather wallet. The person has light pink manicured nails. The wallet is open, showing its interior compartments. The background is a blurred outdoor setting with a grey wall and a blue and red textured surface.

Questions

- Thank you for joining us

A blurred background image showing two people in a meeting. One person is pointing at a screen or document, and the other is looking on. The scene is brightly lit, possibly by a window or screen, creating a soft, out-of-focus effect.

Thank you

Legal Resources

Code Sections

- o Labor Code Sec.: 96, 98, 200, 201, 202, 203, 213(d), 221, 226, 226.2, 226.7, 2802, 511, 512, 513, 1197
- o Code of Regulations, Title 8, Sec. 11010 et seq. (wage orders)

Case Law

- o *Livadas v. Bradshaw* (1994) 512 U.S. 107, 124 [114 S.Ct. 2068].

Other Sources of Law

- o Division of Labor Standards Enforcement at https://www.dir.ca.gov/dlse/DLSEManual/dlse_enfcmanual.pdf
- o Wage Orders at [IWC | \(ca.gov\)](#)





Federal Legal Resources

Code Sections

- 29 USC Ch.8, section 11(a)
- 29 USC Ch. 8: FAIR LABOR STANDARDS

Case Law

- Walsh v. Arizona Logistics, Inc. (9th Cir.) F.3d 393, 395 - 396 (Sec. of Labor. not bound by private arbitration)
- Scalia v. ESSG (9th Cir.) 951 F.3d, 1097, 1103 - 1104
- EEOC v. Waffle House () 534, US 279, 289

Other Helpful Resources

- Interpretive Guidance - [Field Operations Handbook | U.S. Department of Labor \(dol.gov\)](#)
- Request an Opinion : [How to Request an Opinion Letter | U.S. Department of Labor \(dol.gov\)](#)

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Linked 

Maribel has been practicing law for 16+ years. The first 10 as a labor and employment litigator, and in the last 6 years, she has served a Corporate Counsel for local and global companies.

Maribel worked in HR for approximately 12 years before transitioning to practice law. She gained comprehensive experience in HR operations and strategy, including significant involvement in the startup phase of Gap Inc.'s Old Navy Distribution center.

Today, Maribel is the General Counsel for ABA Logistics. As GC, she provides strategic legal advice to cross-functional teams and leadership. Her focus areas include governance, litigation management, labor and employment, contracts, benefits, HR strategy, and a broader scope of corporate matters.

Maribel is actively involved in the legal community:

- She is a frequent speaker on employment law topics, sharing her expertise and insights with others in the field.
- Serves as an Advisor on the Executive Committee (Labor & Employment section) for the California Lawyers Association.
- Leads the Section's Core Competencies Employment Program, which aims to enhance the skills of HR professionals and in-house counsels, enabling them to navigate complex legal challenges and promote diversity and inclusivity in workplaces.

INDUSTRY LEADERSHIP

Executive Committee Member & Advisor: California Lawyers Association, Labor & Employment Section | 2013 – present

- Leader and Chair of Core Competencies Employment Program (HR/Inhouse) - current
- Chair/Co-Chair/Panelist: New Employment Practitioner Conference | 2013 – 2022
- Chair: Annual Public-Sector Employment Conference | April 2016
- Co-Chair: Annual Public-Sector Employment Conference | April 2015 & April 2017
- Committee Member: Advanced Wage & Hour Conference | July 2015, 2016 & 2024

DEBORAH GRAVES, ATTORNEY, DEPARTMENT OF INDUSTRIAL RELATIONS, DIVISION OF LABOR STANDARDS ENFORCEMENT

Deborah Graves is a lead attorney with the Department of Industrial Relations, Division of Labor Standards Enforcement. Ms. Graves works with the Division's Bureau of Field Enforcement providing legal advice and assistance on enforcing the state's labor laws governing wages, hours and working conditions of employees and workers compensation coverage of employers. Ms. Graves prosecutes complex citation assessments and represents the Labor Commissioner in legal actions against businesses for the collection of wages, penalties and other moneys payable to employees or to the state arising out of an employment relationship or order of the Industrial Welfare Commission. Ms. Graves has also represented the Department of Industrial Relations in injunctive actions to prevent uninsured employers from continuing to employ labor without securing workers' compensation insurance. Ms. Graves has represented the DLSE on several task forces focused on combating the underground economy and employer fraud. On behalf of the DLSE, Ms. Graves provides training on California's laws governing working conditions and wages to employer groups and associations, DLSE staff, and to partner agencies' investigators and personnel. Before joining the DLSE in 2005, Ms. Graves practiced private sector labor and employment law for approximately 12 years.