

***Dealing With California Employment Agencies
or
What Could Possibly Go Wrong?***

*Presented by:
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Breadth. Depth. **Results.**

OUR PRESENTERS



Jeffrey Berman

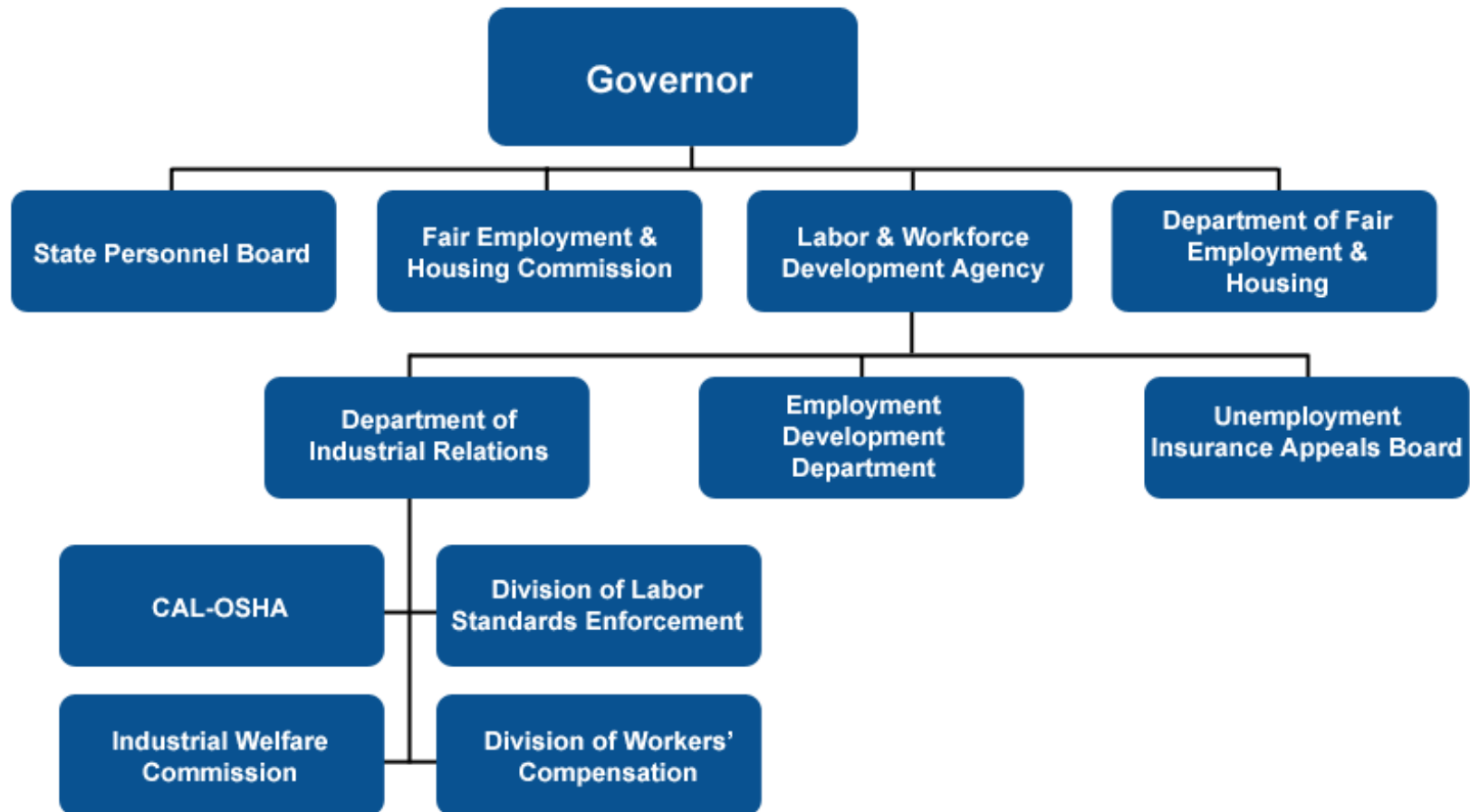


Colleen Regan



Joan Smiles

THE PRINCIPLE CALIFORNIA EMPLOYMENT AGENCIES



LABOR & WORKFORCE DEVELOPMENT AGENCY

- Created in 2002
 - ▶ California was the only industrialized state without a cabinet level labor agency
- Organized to
 - ▶ Simplify and strengthen programs that protect and provide services to workers and employers
 - ▶ Eliminate duplication, achieve cost efficiencies and promote accountability
 - ▶ Ensure there is a cabinet-level voice for workforce-related issues raised for the Governor's consideration and decision

□ www.labor.ca.gov

DEPARTMENT OF INDUSTRIAL RELATIONS

- Industrial Welfare Commission (IWC)
 - ▶ Promulgates industry wage orders
- Division of Labor Standards Enforcement (DLSE)
 - ▶ Enforcement of wage laws and adjudication of wage claims
 - ▶ Home of the “Labor Commissioner”
- Cal-OHSA
 - ▶ Protects workers and the public from safety hazards
 - ▶ Injury & Illness Prevention Plan (IIPP)

– www.dir.ca.gov

INDUSTRIAL WELFARE COMMISSION (IWC)

- What does this agency do?
 - ▶ Investigates hours, working conditions, and employee health, safety & welfare
 - ▶ Promulgated industry and occupational wage orders
 - ▶ Spent first 60 years focused on the wages, hours, and working conditions of women and children
 - ▶ Although the IWC was defunded by the California Legislature in 2004, the IWC wage orders remain in effect

DIVISION OF LABOR STANDARDS ENFORCEMENT (DLSE)

- What does this agency do?
 - ▶ Enforces and interprets industry wage orders and the Labor Code
 - ▶ Processes claims of unpaid wages
 - ▶ Conducts wage and hour audits
 - ▶ Process complaints of retaliation
 - ▶ Inspects employer wage records
 - ▶ Issues DLSE Manual and opinion letters, and maintains a web site

□ www.dir.ca.gov/dlse

Wage Claim Form

PRINT

CLEAR

FOR OFFICE USE ONLY - NO ESCRIBA EN ESTA SECCION		
Taken by	Wage Adjudication	
Date filed	Action	SIC Number

Initial Report or Claim/ Reporte Inicial O Reclamo

PLEASE PRINT ALL INFORMATION / POR FAVOR ESCRIBA CON LETRA DE MOLDE TODA LA INFORMACIÓN

If interpreter needed, what language?/Si necesita un interprete, que idioma? :

Your name / Su nombre	Interpreter needed / Interprete requerido <input type="checkbox"/> Yes <input type="checkbox"/> No	Social Security Number / No. de Seguro Social	Date of birth / Fecha de nacimiento
Your address - Number and street, apartment or space no. / Su domicilio - No. y calle, apartamento o no. de espacio	Home phone no. / Teléfono - casa ()	Work phone no. / current / No. de teléfono de su trabajo actual ()	
City, State, Zip Code / Ciudad, Zona Postal	California Driver's License No. / CA. LD. Number / No. de Licencia de Conducir o Identificación de California		

AGAINST / EN CONTRA

Name of business / Nombre del negocio	<input type="checkbox"/> Corporation	<input type="checkbox"/> Sociedad anonima	
Employer's vehicle license no./Numero de licencia del vehiculo del empleador:	<input type="checkbox"/> Sole owner	<input type="checkbox"/> Propietario	
Address of business, City, State, Zip Code / Dirección del negocio, Ciudad, Zona Postal	<input type="checkbox"/> Partnership	<input type="checkbox"/> Sociedad	
	<input type="checkbox"/> LLC-LLP	<input type="checkbox"/> LLC-LLP	
	<input type="checkbox"/> Bankruptcy	<input type="checkbox"/> Bancarota	
	<input type="checkbox"/> Business sold	<input type="checkbox"/> Negocio vendido	
<input type="checkbox"/> Business closed	<input type="checkbox"/> Negocio cerrado		
Name of person in charge / Nombre de la persona a cargo	Telephone no. / No. de teléfono	Type of business / Tipo de negocio	No. of employees / No. de empleados
Type of work performed / Ocupación, tipo de trabajo hecho	Date of hire / Fecha de empleo	Public Works Project? / ¿Proyecto de Obras Públicas? <input type="checkbox"/> Yes <input type="checkbox"/> No	Was your job union? / ¿Pertenece Ud. a un sindicato? <input type="checkbox"/> Yes <input type="checkbox"/> No
Location where work performed - Number and Street, City, County, Zip Code / Lugar donde trabajó - No. de Calle, Ciudad, Condado, Zona Postal			

WAGES - CONDITIONS OF EMPLOYMENT / SUELDO - CONDICIONES DE EMPLEO

Rate of pay - per hour, day, week or month or piece rate (specify) / Tasa de pago - por hora, día, semana, mes o por pieza (especifique) \$	Total hours worked / Total de horas trabajadas By day / Por día By week / Por semana	Paid Overtime? / ¿Le pagaban el sobretiempo? <input type="checkbox"/> Yes <input type="checkbox"/> No
Are you still working for this employer? / ¿Aún sigue trabajando para este patrón? <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Discharged / Despedido <input type="checkbox"/> Quit / Renunció	On what date? / ¿En que fecha?
If quit, did you give 72 hours notice? / ¿Si renunció, dió Ud. 72 horas de aviso? <input type="checkbox"/> Yes <input type="checkbox"/> No	Have you asked for your wages? / ¿Ha solicitado su sueldo? <input type="checkbox"/> Yes <input type="checkbox"/> No	Were you paid at time of discharge? / ¿Le pagarón cuando lo despidieron? <input type="checkbox"/> Yes <input type="checkbox"/> No
How were you paid? / ¿Cómo le pagaban? <input type="checkbox"/> By check / con cheque <input type="checkbox"/> In cash / en efectivo	Given a deduction slip? / ¿Le dieron un talón de deducciones? <input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, on what date? / Si es que si, ¿en que fecha? <input type="checkbox"/> In person / En persona <input type="checkbox"/> By mail / Por correo
		Did you keep a record of hours worked? / ¿Tiene récord de las horas trabajadas? <input type="checkbox"/> Yes <input type="checkbox"/> No

GROSS WAGES CLAIMED / GANANCIAS EN BRUTO RECLAMADAS

From (date) / De (Fecha) mo. / date / yr.	To (date) / A (Fecha) mo. / date / yr.	Number of hours, days, weeks or months (Specify: vacation, commission, expenses, overtime) / No. de horas, días, semanas o meses reclamados (Especifique: vacaciones, comisión, gastos, sobretiempo)
At the rate of - per hour, day, week or month (specify) / Al pago de - por hora, día, semana o mes (especifique) \$	Gross amount claimed / Cantidad en bruto reclamada	\$
Brief explanation of issues (use additional sheet if necessary) / Breve explicación de los hechos (use papel adicional si es necesario)	Less amount paid: / Menos la cantidad recibida	\$
	Amount claimed: / Cantidad o saldo reclamado:	\$

I hereby certify that this is a true statement to the best of my knowledge/ Por el presente, que esta es una declaración verídica conforme a mi conocimiento.

Signed: _____ Date: _____

DLSE: WAGE CLAIM HEARING PROCESS

- What happens if I receive a “wage claim”?
 - ▶ The Conference:
 - Can the claim be resolved without a hearing? Parties bring evidence to support their position, but do not testify under oath.
 - If not resolved, the Deputy Labor Commissioner decides whether to dismiss the claim or set a hearing.
 - ▶ The Hearing:
 - Testimony under oath. Proceedings are tape recorded.
 - Hearing officer has wide discretion to accept evidence and decide whether to assess penalties.
 - Order, Decision, or Award served within 15 days.

DLSE: WAGE CLAIM HEARING PROCESS

▶ Appeal to the Civil Court

- May seek judicial review by filing an appeal to the court within 10 days.
- Undertaking required by appealing employer.
- Interest continues to accrue.
- De novo hearing.
- Attorneys' fees against appealing party who loses.

DLSE: OTHER FUNCTIONS AND RESOURCES

- Wage and Hour Audits
- Complaints for Retaliation
- Records Inspection
- The DLSE Manuel, Opinion Letters & the Website

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

- What does this agency do?
 - ▶ Protects workers from safety hazards
 - ▶ Conducts workplace inspections based on worker complaints, accident reports, and high hazard industries
 - ▶ Occupational Safety and Health Appeals Board

CLE Verification Code

EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD)

- What does this agency do?
 - ▶ Collects employment **taxes** and pays **benefits**
 - ▶ General Administration
 - Job Service
 - **Unemployment Insurance**
 - **State Disability Insurance**
 - Workforce Investment Act
 - Welfare-to-Work Program
 - ▶ Payroll Tax Audits

www.edd.ca.gov

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD (CUIAB)

- What does this agency do?
 - ▶ Hears unemployment and disability benefits appeals
 - Appeals from the EDD go to AJL
 - Appeals from ALJ go to CUIAB
 - ▶ Hears taxpayers assessments

□ www.cuiab.ca.gov

EDD : PAYROLL TAX AUDITS

- What is a Payroll Tax Audit?
 - ▶ Auditors demand inspection and conduct on-site visits
 - ▶ Frequently challenge independent contractor status
 - ▶ Assess compliance and penalties

FEHA ENFORCEMENT AGENCIES

- Two California administrative agencies enforce the California Fair Employment and Housing Act (FEHA)
 - ▶ Fair Employment Housing Commission (FEHC)
 - ▶ Department of Fair Employment and Housing (DFEH)

FAIR EMPLOYMENT AND HOUSING COMMISSION (FEHC)

- A rule-making, adjudicatory and regulatory agency.
 - ▶ New proposed regulations – pregnancy and disability.
- Hears complaints of employment discrimination brought by the DFEH.
- Can order reinstatements, levy fines and award damages.
 - ▶ \$150,000 limit per aggrieved person for actual damages, emotional distress and administrative fines.
- Can order implementation of written anti-harassment policies and notice posting.
- Authority to issue precedential decisions
 - www.fehc.ca.gov

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING (DFEH)

- What does this agency do?
 - ▶ Enforces the FEHA and other civil rights laws, including the Unruh Civil Rights Act and the Ralph Civil Rights Act.
 - ▶ Investigates and prosecutes allegations of discriminatory practices in employment, housing and public accommodations, and discriminatory practices involving “hate violence.”

□ www.dfeh.ca.gov

DFEH: EMPLOYMENT COMPLAINT PROCESS

- Initial inquiry to DFEH Communication Center
- Intake interview
- Complaint filed, registered, and served
- Can elect mediation
- Pre-determination resolution explored
- DFEH case grading system
 - ▶ standard or priority
- Investigation
 - ▶ Special Investigation Unit (SIU) – priority cases

DFEH: EMPLOYMENT COMPLAINT PROCESS

- If investigation shows a provable violation, resolution attempted
- Formal conciliation if resolution effort unsuccessful
- Accusation issued and administrative hearing or lawsuit
- After service of accusation, within 30 days employer can opt out of administrative hearing process by electing to go to court
- Civil action remedies
 - ▶ Make-whole remedies, actual damages, compensatory damages, punitive damages and attorneys fees.

DFEH Complaint or “Charge”

*** EMPLOYMENT ***

**COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT**

DFEH # _____

EEOC # _____

If qualified with EEOC, this form may be affected by the Privacy Act of 1974.

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING and EEOC

COMPLAINANT'S NAME (Indicate Mr. or Ms.) _____

ADDRESS _____ TELEPHONE NUMBER (INCLUDE AREA CODE) _____

CITY _____ STATE _____ ZIP _____ COUNTY _____ COUNTY CODE _____

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:

NAME _____

ADDRESS _____ TELEPHONE NUMBER (INCLUDE AREA CODE) _____

CITY _____ STATE _____ ZIP _____ COUNTY _____ COUNTY CODE _____

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOXES)

RACE SEX DISABILITY RELIGION NATIONAL ORIGIN ANCESTRY GENITAL OR FAMILIAL MEDICAL LEAVE SEXUAL ORIENTATION

COLOR AGE MARITAL STATUS MEDICAL CONDITION (cancer or genetic characteristic) OTHER (specify) Retaliation

NO. OF EMPLOYEES/MEMBERS _____ DATE MOST RECENT OR CONTINUING DISCRIMINATION _____ RESPONDENT CODE _____

TOOK PLACE (month, day, and year) February 1, 2007 85

THE PARTICULARS ARE:

- I. On February 1, 2007, my hours were changed and I was constructively discharged (forced to resign) from my position of Radiologic Technologist/Radiology Information Systems Coordinator earning \$29.72 per hour. I was hired September 1, 2001.
- II. The reason given by _____ for the change in hours was because the doctor was coming in later and leaving later and I needed to be there in case the doctor had questions.
- III. I believe my hours were changed and I was constructively discharged in retaliation for filing a complaint with DFEH complaint.
 - A. On October 11, 2006, I filed a disability complaint with DFEH.
 - B. On February 1, 2007, my hours were changed for the reasons stated in II above. Investigation will reveal that prior to my filing a complaint, they had no problems with me not being present when the doctor worked late. Investigation will also reveal that less senior employees did not have their hours or schedules changed.
 - C. On February 1, 2007, I was constructively discharged (forced to resign) because of the discriminatory treatment.

Mailed for signature April 3, 2007 Re-mailed for signature April 6, 2007

I also want this charge filed with the Federal Equal Employment Opportunity Commission (EEOC).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe to be true.

Dated 4/19/07
 City _____

COMPLAINANT'S SIGNATURE _____

DATE FILED: APR 10 2007
 STATE OF CALIFORNIA

RESPONDING TO THE DFEH

- Thorough investigation and analysis of allegations by employer
- Respond or resolve through mediation or settlement through the DFEH
- Position Statement
 - ▶ provide sufficient information to show no discrimination
 - ▶ attach documentation

DFEH RECENT DEVELOPMENTS

- Goal: Attorney-run agency
- Fewer DFEH offices
- Procedural regulations
- Streamline the process
- Legal analysts

THE NEXT CALIFORNIA EMPLOYMENT WEBINAR PROGRAM

November Program

Employee Privacy Rights

*Additional information will follow soon at
www.seyfarth.com*

HOW TO CONTACT US

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