

Per California Code of Regulations, title 2, section 548.5, the following information will be posted to CalHR's Career Executive Assignment Action Proposals website for 30 calendar days when departments propose new CEA concepts or major revisions to existing CEA concepts. Presence of the department-submitted CEA Action Proposal information on CalHR's website does not indicate CalHR support for the proposal.

A. GENERAL INFORMATION

1. Date

February 5, 2018

2. Department

Industrial Relations

3. Organizational Placement (Division/Branch/Office Name)

Division of Labor Standards Enforcement (DLSE) - Labor Commissioner's Office

4. CEA Position Title

Chief Counsel, Division of Labor Standards Enforcement

5. Summary of proposed position description and how it relates to the program's mission or purpose. (2-3 sentences)

The CEA, Chief Counsel in the Division of Labor Standards Enforcement (DLSE; and also known as the Labor Commissioner's Office) serves as the principal legal advisor to the State Labor Commissioner for the enforcement of the state's minimum labor standards. The Chief Counsel is responsible for planning, organizing, and directing the work of DLSE's attorneys and support staff handling civil labor law enforcement cases involving wage theft, violation of state labor law requirements, and other regulatory and legal functions within the jurisdiction of DLSE in administrative hearings and the state and federal courts, including courts of appeal. The Chief Counsel also supervises and approves formal opinions and guidance documents setting forth the Labor Commissioner's interpretation of state labor standards.

6. Reports to: (Class Title/Level)

Chief of DLSE - California Labor Commissioner

7. Relationship with Department Director (Select one)

- Member of department's Executive Management Team, and has frequent contact with director on a wide range of department-wide issues.
- Not a member of department's Executive Management Team but has frequent contact with the Executive Management Team on policy issues.

(Explain): Liaison and coordinator with DIR, Labor and Workforce Development Agency (LWDA), and stakeholders to develop and implement policies and to respond to and act as State Labor Commissioner's legal representative on legislative inquiries and labor law policy initiatives.

8. Organizational Level (Select one)

- 1st
- 2nd
- 3rd
- 4th
- 5th (mega departments only - 17,001+ allocated positions)

B. SUMMARY OF REQUEST

9. What are the duties and responsibilities of the CEA position? Be specific and provide examples.

CEA Level C - Chief Counsel

Under the general direction of the State Labor Commissioner:

The Chief Counsel is responsible for planning, organizing, and directing the work of DLSE's Legal Unit, which handles civil labor law enforcement cases, in administrative hearings and before state and federal trial and appellate courts. The DLSE Legal Unit functions in a manner similar to the Attorney General's Office for purposes of enforcing state labor laws and defending regulatory actions by the Labor Commissioner's Office.

Reviews and passes upon difficult and complex legal cases and proceedings. In the most difficult and complex cases, prepares pleadings, petitions, and briefs; and conducts litigation before the trial and appellate courts of California and the United States.

Provides counsel and recommendations to the Labor Commissioner in formulating policy initiatives and determining enforcement priorities, plans, and strategies to vigorously enforce minimum labor standards on behalf of workers, particularly in low wage industries, and to protect employers who comply with the law from competitors who attempt to gain an unfair advantage at the expense of their workers through noncompliance.

Evaluates proposed legislation affecting matters within the Labor Commissioner's jurisdiction and makes recommendations to the State Labor Commissioner.

Provides direction for the development and promulgation of regulations to implement and interpret statutory requirements, and oversees the preparation and issuance of formal opinion letters and guidance documents on the proper interpretation of labor law requirements.

Prepares summaries of court decisions and laws enacted by the Legislature.

Communicates with other state, federal, and local agencies involved in the enforcement of labor standards to determine how to coordinate efforts and keep them abreast of state enforcement policies and the Labor Commissioner's interpretation of state standards.

Suggests procedural changes in methods of operation in DLSE and assists in revising the DLSE enforcement manual.

Selects and trains staff, evaluates performance and takes or recommends appropriate actions.

B. SUMMARY OF REQUEST (continued)

10. How critical is the program's mission or purpose to the department's mission as a whole? Include a description of the degree to which the program is critical to the department's mission.

- Program is directly related to department's primary mission and is critical to achieving the department's goals.
- Program is indirectly related to department's primary mission.
- Program plays a supporting role in achieving department's mission (i.e., budget, personnel, other admin functions).

Description: The Labor Commissioner's enforcement programs are critical and integral parts of the overall mission of the Department of Industrial Relations (DIR) to protect and improve working conditions for California's wage earners and advance opportunities for profitable employment in California. The mission of the Division of Labor Standards Enforcement (DLSE)/Labor Commissioner's Office is to ensure a just day's pay in every workplace in the State and to promote economic justice through robust enforcement of labor laws. By combating wage theft, protecting workers from retaliation, and educating the public, DLSE puts earned wages into workers' pockets and helps level the playing field for law-abiding employers.

The Labor Commissioner is the state's principal labor standards enforcement officer (other than for occupational safety and health). DLSE programs are responsible for investigating violations of labor laws by battling wage theft and the underground economy, educating employers on their responsibilities to workers, and investigating complaints made by workers against employers. When violations are discovered, DLSE programs are responsible for issuing citations, orders, decisions, or awards, and in some cases, prosecuting violators or assisting other law enforcement agencies with prosecutions.

DLSE's specific responsibilities include presenting and defending individual and collective claims and citations for unpaid wages and penalties for violations of minimum wage, overtime, sick pay, and other legal requirements pertaining to working conditions; adjudication of individual wage claims; monitoring and enforcement of prevailing wage and apprenticeship requirements on public works; investigation and enforcement of discrimination/retaliation/whistleblower claims under more than 40 statutes; certification of electricians; issuing work permits for minors; licensing and registration of farm labor contractors, foreign labor contractors, public works contractors, employers providing janitorial services, child performer service providers, talent agents, garment manufacturers, employers of industrial homeworkers, car wash and polishing firms, and sheltered workshops. DLSE's Judgment Enforcement Unit helps recover and distribute unpaid wages owed to workers, and DLSE also administers restitution funds for workers in specific industries.

DLSE participates in the multi-agency Labor Employment Task Force (LETF) that focuses on the "underground economy" of employers who avoid taxes, insurance, and other legal requirements at the expense of workers and the state. DLSE also works collaboratively with the Labor and Workforce Development Agency (LWDA) and DIR to evaluate claims filed under the Labor Code Private Attorneys General Act (PAGA) and accepts some of those claims for investigation and enforcement by the state.

Attorneys in DLSE's Legal Unit represent the Labor Commissioner and employees in administrative hearings, and serve occasionally as hearing officers in more difficult cases. DLSE attorneys also represent the Labor Commissioner and employees in individual and collective actions to recover wages and penalties, defend citations, and enforce retaliation determinations in trial courts throughout the state. DLSE attorneys handle appeals from state court orders and judgments and appear occasionally in federal court actions in which the Labor Commissioner is a party or involving the Labor Commissioner's legal rights or authority.

B. SUMMARY OF REQUEST (continued)

11. Describe what has changed that makes this request necessary. Explain how the change justifies the current request. Be specific and provide examples.

The passage of recent legislation requires overall leadership for the development of legal policies and procedures necessary to ensure full implementation and compliance across programs within DLSE. Additionally, as new legislation that impacts the Labor Code is passed, the division is tasked with presenting civil cases at both the trial and appellate level for violations under the new legislation. The CEA will strategically develop the most effective plan for doing this.

The following are examples of recently adopted legislation having a direct impact on DLSE operations:

SB 96 (Stat. 2017, Chap. 28) - Public Works (and other) - This Budget Trailer bill amended public works laws to authorize the Labor Commissioner to issue penalty citations against contractors and public agencies who violate public works contractor and project registration requirements.

SB 306 (Stat. 2017, Chap. 460) - Retaliation - Revised and expanded Labor Commissioner's authority in retaliation cases, including by providing new independent authority to cite employers for unlawful retaliation.

AB 450 (Stat. 2017, Chap. 492) and SB 1001 (Stat. 2016, Chap. 782) - Document Abuse Protections for Immigrant Workers - SB 1001 expanded protections for immigrant workers seeking employment by making it unlawful for employers to request more or different pre-employment documents than required by federal law. AB 450 added employer notice requirements and requires Labor Commissioner to develop template.

SB 3 (Stat. 2016, Chap. 4) - Phased-in Minimum Wage Increases - Provided for increase of state minimum wage to \$15 per hour over a five to six year period (with different steps based on employer size and authority for Governor to delay increases for specified reasons).

AB 1066 (Stat. 2016, Chap. 313) - Phase-In Overtime for Agricultural Workers Act of 2016 - Removed less protective overtime requirements (i.e. 10 hour day) for agricultural employees to bring them into alignment with 8 hour day requirement for other employees over a four year period.

AB 1978 (Stat. 2016, Chap. 373) - Property Service Workers Protection Act - Established specific standards and protections for property service workers (i.e. janitors) to combat wage theft, ensure compliance with existing labor laws, and also lower instances of sexual harassment, sexual violence, and human trafficking in the industry. DLSE is required to propose biennial in-person sexual violence and harassment prevention training requirement for employees and employers with the assistance of an advisory committee established by the DIR Director.

SB 1063 (Stat. 2016, Chap. 866) - Equal Pay Protection for Race and Ethnicity - Expanded equal pay protections to prohibit employers from paying a lesser wage to employees based on race or ethnicity.

AB 219 (Stat. 2015, Chap. 739) - Public Works Ready-Mixed Concrete Delivery - Expanded public works requirements, including contractor registration, submission of certified payroll records, and payment of prevailing wages, to employers engaged in the "hauling and delivery of ready-mixed concrete to carry out a public works contract."

AB 621 (Stat. 2015, Chap. 621) - Motor Carrier Employer Amnesty Program - Following the filing of over 500 wage complaints by truck drivers for wage theft violations arising out of their misclassification as "independent contractors" rather than "employees," this legislation provided a limited amnesty through which the employers could settle claims with the Labor Commissioner by paying all back wages and benefits plus taxes owed to the state and convert their drivers to employee status in exchange for relief from liability for penalties due to misclassification.

AB 970 (Stat. 2015, Chap. 783) - Indemnification and Local Wage Standards Enforcement - Gave Labor Commissioner direct authority to cite employers for failing to reimburse employees for business related expenses and also authorized Labor Commissioner to investigate and enforce local wage and hour requirements under specified conditions.

SB 358 (Stat. 2015, Chap. 546) - Equal Pay and Retaliation - Expanded scope of equal pay protections to address gender wage gap issue in California and also prohibited employers from discriminating against employees who share wage information.

AB 1509 (Stat. 2015, Chap. 792) - Retaliation Complaints - Extended anti-retaliation protections to family members of persons engaged in protected activity or who file a retaliation complaint.

SB 588 (Stat. 2015, Chap. 803) - Nonpayment of Wages and Judgment Enforcement - provided the Labor Commissioner with additional enforcement tools against employers who fail to satisfy a final judgment for unpaid wages, including authority to levy bank accounts, accounts receivable, and real and personal property.

2014 legislation included, among other things, the establishment of a new Public Works Contractor Registration program with expanded project registration and certified payroll reporting and monitoring requirements (SB 854 (Stat. 2014, Chap. 28)), all administered by the Labor Commissioner, and the Healthy Workplaces, Healthy Families Act of 2014 (AB 1522 (Stat. 2014, Chap. 317)) which extended sick leave benefits to most California employees, and is enforceable by the Labor Commissioner.

C. ROLE IN POLICY INFLUENCE

12. Provide 3-5 specific examples of policy areas over which the CEA position will be the principle policy maker. Each example should cite a policy that would have an identifiable impact. Include a description of the statewide impact of the assigned program.

The DLSE Chief Counsel will act as the primary authority and expert for interpreting California's wage and hour requirements, including relevant parts of the Labor Code and Wage Orders adopted by the Industrial Wage Commission. This will be accomplished through the issuance of formal opinion letters to interested parties, through the approval and issuance of guidance documents on the interpretation of labor requirements for both internal and external use, and through determining which positions and arguments to advance in court litigation. As the officer and agency with responsibility to enforce these laws, the Labor Commissioner's interpretations are often given considerable deference by other officials and the courts. How ever-changing minimum wage, overtime, meal and rest breaks, and other workplace requirements are interpreted and applied have a pervasive impact on employment practices in every industry subject to state regulation throughout California.

The legislation identified in Item 23 all require the Labor Commissioner to develop interpretive and guidance documents to explain new requirements to workers, employers, and the public, clarify uncertain terminology, and establish enforcement protocols and procedures. For example, the recent phased-in minimum wage increase required the Labor Commissioner to provide guidance on how to determine an employer's size (in terms of number of employees) for purposes of determining which minimum wage rate applies, as well as on related notice requirements and the potential applicability of higher local minimum wage requirements.

The DLSE Chief Counsel will largely determine where to focus the Labor Commissioner's court enforcement efforts, including which industries and practices to target, which types of cases and employers to pursue, and how strenuously to pursue them in order to ensure overall maximum effectiveness. These determinations must be made in the context of an overwhelming volume of complaints and demands for enforcement in all parts of the state that far exceed the resources and capacity of the Legal Unit. The Labor Commissioner's court successes and failures tend to have a heightened impact on how employers adjust litigation strategies and workplace practices. Areas that the Labor Commissioner decides not to pursue may result in private litigants filling the breach (often through the Private Attorneys General Act) or may be left without effective enforcement.

For any major case in litigation, DLSE must decide and make a recommendation to the Labor Commissioner on when the state's enforcement interests will be best served through some form of compromise and settlement, and then how to settle in a way that best preserves the interests of the workers and enforcement policy of the state. Related considerations include the ability to provide meaningful relief to workers, the employer's willingness and financial capacity to provide that relief, and the precedential effect of that settlement on other major cases.

C. ROLE IN POLICY INFLUENCE (continued)

13. What is the CEA position's scope and nature of decision-making authority?

The Chief Counsel, DLSE, will report directly to the State Labor Commissioner and will be a key advisor to the Labor Commissioner's internal management Leadership Team. The Chief Counsel will have full authority to execute the Labor Commissioner's policies and speak to all members of the public and government regarding labor laws and to act in the Labor Commissioner's absence. The Chief Counsel will be the lead authority in providing instruction, strategic planning, and implementation of legal policy and ensuring that the work of programs and staff is in compliance with the law and the missions of DLSE and DIR.

14. Will the CEA position be developing and implementing new policy, or interpreting and implementing existing policy? How?

The Chief Counsel will develop and implement new policy as well as review and interpret existing policy to ensure full and proper enforcement of labor laws as they relate to DLSE's jurisdiction and enforcement responsibilities. Ongoing reviews of existing policies are required to determine their overall efficiency and effectiveness. This practice will allow the Labor Commissioner's Office to remain proactive in enforcement efforts and outreach to educate and inform the public.