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**A. GENERAL INFORMATION**

1. Date

8/24/2020

2. Department

Justice

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

Public Rights Division/Worker Rights and Fair Labor Section

4. CEA Position Title

Senior Assistant Attorney General, SAAG (CEA B)

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

The new Worker Rights and Fair Labor Section (Section) will centralize the Department of Justice's expertise in protecting the health, safety, and rights of workers, and ensuring fairness in business into one section. This will provide increased focus, efficiency of collaboration and coordination on these increasingly important issues. The Section is charged with authority to implement proactive civil and criminal investigations and litigation, as well as policy and legislative work to increase and enforce worker protection against fraud, wage loss and theft, labor law violations, systemic health and safety violations, and market changes brought on due to the expansion of the gig economy (AB 5). The Section is responsible for leading all work related to worker rights and the labor market. The Senior Assistant Attorney General (SAAG), performs a dual role as both a program administrator and as a highly experienced and specialized attorney. The SAAG implements department-wide policies, advises the department's executive management team, and coordinates the handling of especially complex and sensitive matters with senior leadership of the department, client agencies, and the Governor's Office of Legal Affairs.

6. Reports to: (Class Title/Level)

Chief Assistant Attorney General (CAAG)

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):

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.

Under the administrative direction of the Chief Deputy to the Attorney General, and the administrative and legal direction of the Chief of Legal Affairs and the Chief Assistant Attorney General for the Public Rights Division, the Senior Assistant Attorney General (SAAG) plans, organizes and directs the work of the statewide staff of the Worker Rights and Fair Labor Section within the Division of Public Rights. The Section will handle a wide range of worker rights investigations and litigation, including fraud against both workers and the State, wage loss and theft, labor law violations, safeguarding of worker health and safety, and addressing the changes brought on due to the expansion of the gig economy, including enforcement of AB 5 (2019). The Section will represent the state, the Attorney General, and state agencies before both state and federal courts, and advise the Attorney General, Governor, and other State Agencies on enforcement and legal issues.

The SAAG serves as a technical expert and primary legal advisor to the Attorney General and Chief Deputy to the Attorney General on complex legal issues impacting workers. Many of these issues require legal research, negotiation, and representation in legal proceedings with a duration of several years. The SAAG will provide executive-level oversight of the Worker Rights and Fair Labor Section, including directing the work of attorneys specializing in various areas of worker rights, providing oversight of professional development with the Section, and handling the day-to-day operations of the Section, which includes assisting in policy matters and providing leadership to the Section's attorneys and management team.

The SAAG will supervise staff across the state. The SAAG is responsible for ensuring that the Section is providing effective, efficient, and high-quality cutting-edge legal work to protect worker rights and a fair market in California.

The SAAG consults with the Chief Deputy to the Attorney General, the Chief of Legal Affairs, and the Chief Assistant Attorney General for the Public Rights Division, as well as others in leadership across the Department of Justice, in the development and formulation of legal positions, litigation strategy, policy decisions, program objectives, personnel management, and employee utilization. On a statewide basis, the SAAG provides functional and strategic supervision of Supervising Deputy Attorneys General, Deputy Attorneys General, and paralegals. This position will also work with the Department's administrative staff to develop and review annual budget workplans and approve contractual agreements that include the Section as a party.

**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 Attorney General is the state's top lawyer and law enforcement official, protecting and serving the people and interests of California through a broad range of duties. The Attorney General represents the People of California in civil and criminal matters before trial courts, appellate courts, and the supreme courts of California and the United States.

The Attorney General's responsibilities include safeguarding the public from violent criminals, preserving California's spectacular natural resources, enforcing civil rights laws, and helping victims of identity theft, mortgage-related fraud, illegal business practices, and other economic crimes. Protecting California's economy and the workers that are the backbone of this economy is a critical part of the Attorney General's mission.

Protecting and enhancing the rights of California workers is of the utmost importance to the wellbeing of California, its communities, and its economy. The Worker Rights and Fair Labor Section will expand and elevate the Department of Justice's work to protect worker against civil rights violations, to address wage theft, unsafe working conditions, illegal misclassification and withholding of benefits that harm workers and undermine a fair market, and to protect California's labor laws from preemption by the federal government. While these issues have always been targeted against workers, the federal government's current policy of attacking immigrants, discarding the rights of essential workers amid the COVID-19 pandemic, and attempting to preempt California's state laws makes the consolidation and elevation of this work particularly urgent.

An existing Worker Rights unit within the Civil Rights Enforcement Section has been a successful pilot for the new Section. The unit has handled complex litigation against companies violating California's employee classification laws (AB 5), pursued investigations into health and safety violations amid the COVID-19 pandemic, and defended California's labor laws against preemption by the federal government. The Section would incorporate and build on this work by bringing enforcement actions to redress violations of substantive civil rights and labor laws. The Section will coordinate positions on issues of broad legal or policy significance in the labor market to promote consistency and high-quality advice and representation, working with other Sections throughout the Department, at senior levels of client agencies, and in the Governor's Office of Legal Affairs. The Section will promote excellence in all aspects of the Department's work to protect worker rights and a fair market. These activities are integral to the Department's mission.

**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.

Due to the increasing number and variety of matters being handled by a small unit within the Civil Rights Enforcement Section (CRES) over the past three years, the number of staff needed to handle the workload has increased, and the need to have a Senior Assistant Attorney General focused exclusively on this work has increased. This increase is projected to continue each year as California's workforce continues to face dramatic change as a result of the expansion of the gig economy, the need for the State to step in to protect the health and safety of workers in the face of the COVID-19 pandemic, defense of California laws against preemption, and persistent issues related to wage theft and the underground economy that will be exacerbated in the current economic downturn.

Within just the last year, the unit within CRES has been called upon to engage in affirmative enforcement of the Legislature's 2019 enactment of AB 5, which sought to protect workers in the gig economy. This has included bring suit against two of the companies that engage in significant misclassification of workers, a lawsuit in which the unit has assumed a leading role of a number of City Attorneys in order to bring statewide relief in a coordinated and collaborative manner.

The unit within CRES has also engaged in numerous confidential investigations focused on worker health and safety in the face of the COVID-19 pandemic, reviewing the conditions for workers in the agricultural meat processing, and warehousing industries, seeking to ensure that employers are cognizant of and effectuating best practices for ensuring the health and safety of their workers. With the current economic downturn, the Department of Justice anticipates an increase in underground economy activity and additional risks to workers across the state.

This is in addition to this team's ongoing work in the areas of wage theft, unfair competition, rebutting federal preemption of California's labor laws, and fair and lawful business licensing.

### 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.

Enforcement of AB 5: The SAAG will have the responsibility of managing litigation and investigations enforcing California's 2019 AB 5, charging the Attorney General with enforcing the rights of workers who have been misclassified as independent contractors, rather than employees, especially in the gig economy. The ability to have a dedicated manager focused on this issue, as well as additional resources, will increase the Attorney General's capacity to engage in more work in this area.

Wage theft: The SAAG will be responsible for coordinating with senior staff at other state agencies and others in focusing efforts on seeking out and stopping wage theft and other activity in the underground economy that poses a sharp risk to workers and law-abiding businesses in California.

Enforcement of worker health and safety: The SAAG will be able to more efficiently authorize subpoenas and initiate investigations into worker health and safety issues, especially those that have arisen as a result of the current public health crisis, including in the agricultural, meat processing, and warehousing industries.

Coordinating with other state agencies to advance the State's interests: The SAAG will work directly with the Labor Commissioner and other state agencies and representatives to advance the State's position in courts of appeal, such as recent Ninth Circuit appellate briefing that the current unit within the Civil Rights Enforcement Section engaged in on the subject matter of federal preemption of state labor laws.

Policy implementation takes place not only via litigation, but also through investigations and comments filed with administrative and legislative agencies on behalf of the Attorney General and letters sent to market participants expressing concern about workplace policies. The SAAG will direct comments on proposals relevant to worker rights issues by developing legislative testimony, reviewing amicus briefs, and submitting comment letters and response to petitions to administrative agencies on behalf of the Attorney General. For example, the existing Worker Rights unit within CRES has written comment letters alleging violations of the federal Administrative Procedure Act and other legal policies, including on the federal joint employer rule, petitions to preempt California labor laws applicable to truck drivers, and improper use of the Defense Protection Act to force workers back to meat processing plants without adequate health and safety protections. The unit has also issued letters to large employers with essential workers in light of COVID-19 related to paid sick leave policies and to fast food companies to bring an end to no-poach agreements in franchise contracts.

The SAAG will often be the senior department official most familiar with the work being done on significant healthcare cases, while at the same time having a department-wide perspective on both the issues being litigated and the appropriate allocation of staff resources. The SAAG is expected to bring an executive-level perspective to legal policy issues and how they relate to the programs and priorities of the Attorney General. The SAAG will be centrally involved in decisions and help to ensure that the Department provides high-quality, legally sound, and carefully considered representation in its broadly important, often precedent-setting litigation on behalf of the People, the State, the Attorney General in his or her independent capacity, and other public agencies and officials.

**C. ROLE IN POLICY INFLUENCE (continued)**

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

The SAAG has both administrative and policymaking authority. Thus, the SAAG of the Worker Rights and Fair Labor Section will have decision-making authority with respect to the professional staff within the section, consisting of both attorneys, and paralegals, and their areas of assignment. The SAAG will often exercise final delegated authority over investigations, litigation, or the content of briefs or other materials in significant cases or as to organizational actions, policies, or procedures. The SAAG will make decisions or provide perspectives and counsel to the Worker Rights and Fair Labor Section's staff, the CAAG of the Division of Public Rights, and other members of the Executive Management Team on issues that arise in especially significant cases or that have far reaching implications. The SAAG will frequently coordinate consultation processes, and lead or actively participate in consideration and decisions with senior lawyers and policymakers, including other CEAs and exempt appointees, both within the Department of Justice and in other agencies or offices. For example, the SAAG will often be called upon to decide whether and how to present difficult legal arguments that could affect the work of other sections or departments in state government. The SAAG will also often serve as a liaison between the Executive Management Team and the leadership of particular litigating sections in high-profile cases, ensuring that the section understands and implements executive direction and that the management team is kept apprised of significant developments.

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

The SAAG, in consultation with the Chief Deputy to the Attorney General, Chief Assistant for the Public Rights Division, and others in senior leadership within the Department of Justice is responsible for the development, implementation, and interpretation of new and existing policies, working with State or Federal agencies, the Legislature and the Governor's Office. The SAAG will work within the existing Department's structure to comment upon, propose, or implement policy pertaining to the labor market and California's laws that protect workers and law-abiding businesses. The SAAG is also responsible for ensuring that both existing policy and implementation of any new or amended policy is complied with by Section staff, by overseeing the distribution of work, reviewing staff's work product, developing legal strategies for case litigation, and planning for necessary training and development to ensure the Section's goals are met. He or she reports regarding these issues and their impact to the Department's executive level management, the CAAGs, and the Chief Deputy to the Attorney General. He or she may also communicate and consult with the Director of Industrial Relations, Cal-OSHA, and other state and federal agencies to enforce labor laws that cross over into these agencies.