C A L I F O R N I A
Labor Commissioner
Bulletin
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Labor law compliance programs benefit immigrant workers

When 8,500 Los Angeles janitors reached a contract settlement last year after a three-week strike, a little-known provision of their master agreement required that 15 building maintenance contractors pay a penny per hour each of their janitors worked to finance the Maintenance Cooperation Trust Fund (MCTF).

The MCTF, founded in 1999 and based on labor/management compliance programs in the construction industry, is a watchdog organization that investigates labor law violations in the janitorial industry. The fact that MCTF staff perform field investigations as well as help primarily immigrant janitors complete wage claims and other complaints submitted to the labor commissioner's office, makes MCTF one of a kind in California.

MCTF most recently targeted building maintenance services in the retail market industry, particularly prime contractor Encompass Services Corp., headquartered in Houston, Texas and boasting annual revenues of $4 billion. The corporation's cleaning services are used by southern California's major supermarket chains.

MCTF Executive Director Lilia Garcia, who currently oversees the work of two full-time and two part-time investigators, says Encompass was targeted after they found it was prime contractor of 31 of the 38 subcontractors identified as labor law violators by MCTF staff.

Similarity in violations

"Violations were the same in each store," says Garcia. "What was unusual was that the subcontractors didn't have a proper business place. The janitors didn't know the name of their employer. Most of them didn't

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Janitors get help with wage claims from worker advocates at San Francisco's Instituto Laboral de la Raza.

Undocumented workers in California still protected by state employment laws

Undocumented workers employed in California are still protected by the state's labor laws — particularly minimum wage and overtime laws— despite a recent Supreme Court decision against the National Labor Relations Board in the case of *Hoffman Plastic Compounds v. National Labor Relations Board.*

The state labor commissioner will continue to process claims for unpaid wages without regard to any worker's immigration status, will not question any worker about his or her immigration status and will enforce laws that protect employees against retaliation for going to the government with wage, safety or other complaints.

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have uniforms. The subcontractors were paying in cash, weren't paying overtime and the janitors were working nonstop without being compensated. It's questionable whether some (subcontractors) were paying taxes.

"We felt the similarity in violations were common enough that something systematic was happening with the contracts," says Garcia.

The violations were systematic enough that recently the Department of Industrial Relations served a search warrant on the company's district headquarters for cleaning services in Arroyo Grande to confiscate payroll records and contracts.

Sarah Shaker and Instituto Laboral de la Raza staff process up to 1,200 labor-related cases per year.

MCTF has collaborated with law enforcement officials in the city and county of Los Angeles and investigators from the Division of Labor Standards Enforcement (DLSE), U.S. Department of Labor, Employment Development Department and the California Department of Insurance in protecting workers' rights. MCTF, for example, helped janitors file claims with DLSE, who in turn conducted investigations that revealed evidence the Los Angeles County District Attorney's office used last year to file criminal cases resulting in convictions for underreporting employees against Encompass subcontractors

"Irresponsible employers prey on the fact this workforce is vulnerable due to their immigration status, and use this to intimidate them."

American Unique Services and Cindy's Cleaning. The Los Angeles City Attorney's Office recently won convictions against commercial real estate subcontractor Taj Building Maintenance and Encompass subcontractor Maintenance Solutions. And the Mexican American Legal Defense and Educational Fund (MALDEF) and the Service Employees International Union recently filed a class-action suit against Encompass, its subcontractors and Ralphs, Vons and Albertsons on behalf of any janitor across the state employed by Encompass during the last three years. The suit alleges the contractors and markets, whose supervisors control the work of the janitors according to the suit, systematically violate labor laws. The coalition is asking for back pay and punitive damages.

Worker education is critical

The fact that in developing evidence for the MALDEF lawsuit, attorneys hired teams of janitors who swept through the state to collect testimony while informing janitors of their rights has convinced Garcia that worker education is a first step in protecting immigrant workers' rights.

"Our campaigns primarily focus on worker education," says Garcia. "The majority of these workers are recent immigrants and don't know their rights. Irresponsible employers prey on the fact this workforce is vulnerable due to their immigration status, and use this to intimidate them. By educating the workers about their rights and the enforcement agencies created to help defend these rights, we see them develop more confidence at their worksite and become less fearful of their employers. I don't think that would happen without first letting them know they have rights despite their immigration status."

That too is one of the benefits Sarah Shaker of the 20-year-old Instituto Laboral de la Raza sees resulting from her work in the San Francisco Bay Area. Shaker and her small staff based in San Francisco's Mission District and in Oakland process up to 1,200 labor-related cases per year

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Statewide investigations uncover major violations

Labor commissioner cracks down on San Francisco garment contractor

Acting on a tip that more than $800,000 in wages was owed to approximately 150 employees, agents from the Division of Labor Standards Enforcement (DLSE) and U.S. Department of Labor (DOL) began investigating San Francisco garment contractor Wins of California.

When officials entered the shop in July 2001 and confronted its owner, Anna Wong, they discovered her garment registration had expired. Wong also admitted she hadn't paid her employees since April. A complex investigative process began.

"DLSE had to really function as a cohesive unit to stay on top of this complicated case," says lead investigator Marga Morales. "The Bureau of Field Enforcement, wage claim, licensing and legal units came together to keep the pressure on the owners. Otherwise they would have worked forever not paying their employees."

More than just one company

In addition to Wins of California, Wong, her husband Toha "Jimmy" Quan and other family members own San Francisco garment shops Win Industries of America and Win Fashions. Quan also owns Tomi Inc., a Utah-based manufacturer who contracted with Wins. Other businesses for whom Wins employees sewed garments include K-Mart, JC Penny, Sears, TJ Maxx, Sam's Club, Mervyn's, Bebe, It's my Baby, Kandy Kiss, Cut Loose, Two Star Dog, Flapdoodles, M.B. Sport and the U.S. Army/Air Force Exchange.

Complicating matters further, at the time of the first raid Win Fashions had filed for bankruptcy and Wins of California followed suit in August. Investigation of Win Industries of America resulted in the shutdown of that factory for failing to carry workers' compensation insurance. Their garment registration subsequently expired. All three Wins companies were involved in the investigation because a Wong family member kept accounting records for them, rotating employees between the three.

Federal injunction issued

Following the initial investigation an injunction was issued in federal court prohibiting the company from operating unless they met all state and federal mandates, including proper registration. Limited shipping of finished garments was allowed under federal supervision with all money going into a fund administered by DOL to pay workers' back wages.

Regardless of state and federal injunctions and failure to be registered, Wins of California continued to operate. In September state investigators raided Wong's illegal operation again and confiscated 23 bags of garments.

A team of investigators was needed to unravel the Wins garment case, including (from l to r) Sheila Torres, Marga Morales, Donna Chen, Benny Cheng and Virgil Marcum.

Part of what enabled Wong to continue operations despite her company's circumstances was the bond she forged with her Chinese-speaking employees. Notwithstanding efforts by officials to recover their wages, it wasn't clear to the employees that state investigators were acting on their behalf.

Bridging the language gap

To overcome that challenge investigators enlisted the help of Chinese-speaking DLSE employees and advocate groups who talked with Wins workers over the course of five days, taking their statements, helping them file wage claims and, ultimately, understanding their rights.

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"People came from L.A. to translate," says Morales. "We went through each complaint with the worker to make sure we got it right and that took interpreters from all over the state."

DLSE staff attorney Dave Balter came on to unravel the case's legal ramifications and pursue possible remedies.

"This case represents the largest scandal in the garment manufacturing industry since El Monte," says Balter. "We have a huge unpaid wage liability coupled with the exploitation of Chinese-speaking workers."

Balter subpoenaed records from the manufacturers and retailers who contracted with Wins companies to determine their potential liability for wages as the DLSE and DOL staff neared completion of an audit of Wins records. The sum owed to workers now totals around $1.3 million for wages – a figure that doesn't include penalties, interest or liquidated damages.

State investigators confiscated 23 bags of garments from Wins of California.

Says Balter, "This case is going to once again pose the question as to what the manufacturers and retailers are doing to monitor wage and hour responsibilities of the contractors they are doing business with."

No fairytale for California workers

In a southern California case, the Disney Store volunteered to pay over $900,000 of the more than $1.5 million in back wages owed to employees of KTBA Inc., a manufacturer of toys and accessories producing crowns and wands sold in Disney stores.

As part of an agreement with DLSE, Disney will donate or destroy all merchandise received from the supplier because products made in violation of state labor law can never be sold on the market.

"This agreement allows us to pay the back wages of people who worked hard to manufacture these products," said California Labor Commissioner Art Lujan. "This is money they earned and should receive. We appreciate Disney's cooperation in this matter."

Widespread violations revealed

An investigation of KTBA begun in mid-July culminated in the confiscation of goods in October after it was discovered employees illegally assembling those goods at home typically worked a 48-hour week and received a piece rate averaging $1.35 per hour — far below the California minimum wage — and didn't receive overtime for hours in excess of eight per day as required by state law.

Investigators also found 15 minors between the ages of seven and 15 assembling products for KTBA. California law prohibits minors under 16 from doing manufacturing work and requires minors under 18 to have a valid work permit.

Though no findings were made against Disney in the investigation, they agreed to place almost $903,000 into a special account maintained and administered by DSLE to pay money owed the KTBA employees. ■

Janitorial task force prosecutes violators

Most labor law violators would agree with Los Angeles Deputy District Attorney Barry Gale when he says the threat of jail time is a greater deterrent than the risk of civil penalties. He leads a task force of state, local and federal agencies formed in October 2000 to halt widespread labor law abuses in the janitorial industry through criminal prosecution.

"No one wants to bring a toothbrush and go to jail," says Gale. "Companies are aware that when it gets criminal it gets nasty. They've faced civil fines — they're used to that on a day-to-day basis. When they find out it's criminal it's a real shock … it wakes them up."

Industry changes — from a system where retailers employed the janitors who cleaned their establishments to one where prime and subcontractors employing janitors do the work — allowed unscrupulous companies to set in motion labor law abuses now so prevalent the combined, systematic action of several agencies is needed to combat them.

Janitors work to keep facilities — including Los Angeles International Airport — clean and maintained.

Widespread abuses

Initial task force meetings found that janitorial maintenance workers at supermarkets, department stores and manufacturing companies employed on a contractual basis were not receiving minimum wage or overtime. Many janitorial subcontractors also regularly failed to report correct payroll for workers' compensation insurance, pay unemployment insurance and disability and pay withholdings to the Franchise Tax Board.

In addition to tax fraud, nonpayment of funds to the Employment Development Department affects workers' ability to collect unemployment or disability insurance should they need it.

In order for the task force to correct these problems through criminal prosecution, it made sense to put a prosecutorial agency in the lead.

Barry Gale heads the southern California janitorial maintenance task force.

"To make sure all the investigating agencies come together for a filing, they have to know what they're doing as part of the total package," says Gale, who synthesizes complaints and investigative material to achieve a clear and specific filing.

Grand theft of labor

Successful prosecutions are based on thorough investigations. The interagency team first dealt with complaints from the Maintenance Cooperation Trust Fund (MCTF) and the Mexican American Legal Defense and Educational Fund (MALDEF) concerning janitorial subcontractors working for Encompass Services Corporation, a large conglomerate acting as a prime contractor. The majority of subcontractors employed by Encompass were found in violation of labor laws (see related story on MCTF).

Investigation of those companies brought about the first successful felony cases for grand theft of labor prosecuted in California's janitorial industry.

Alfredo Morales, owner of American Unique Services, Inc. pled guilty to felony theft of labor after he failed to pay four workers $12,000 to $15,000. He owed at least seven other janitors back wages as well, totaling approximately $31,000. Morales cooperated with investigators and was ordered to pay workers who had been cheated out of their money.

"Due to the fine work of the DLSE's criminal investigation unit, we were able to put together an airtight case against Morales and allow him no choice but to own up to his mistakes," says Gale.

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Here to do a service for workers

At age 91, Lillie Daily has been a full-time office worker for Gridley Realty Company since 1975. Though she had always been paid by payroll check, in 1989 the company's owner, Arnold Gridley, began paying her in cash. He also didn't provide her with wage statements reporting her hours of work or deductions.

Despite these shortcomings, Gridley stayed relatively current on his payments to Daily until 1993, when he started to fall behind. The frequency of missed payments gradually escalated until 1999, when Daily was hardly paid at all. She decided to file a wage claim with the state.

Free representation

Daily had kept her own record of the sporadic payments made by her boss. When she filed her claim in August 2000 those records came in handy — they were better than Gridley's, which were non-existent. Her hearing officer, Michael Campbell, issued an Order, Decision or Award (ODA) for back wages in her favor, which Gridley promptly appealed.

That's when DLSE staff attorney Dave Balter came into the picture.

"It's not an issue of profit and loss for the state, it's an issue of vindicating the legal rights of some of the most vulnerable workers in California."

The law compels the labor commissioner to represent claimants who are financially unable to afford counsel, at no cost to them, if they are attempting to uphold the amount awarded by the labor commissioner and are not objecting to any part of the final order.

Once an employer appeals an ODA, the employee is notified of their right to representation. The process essentially starts from scratch in proving liability and the amount owed, and parties have to present their cases in superior court.

Staff attorney Dave Balter resolves a variety of cases for the DLSE.

Standing up for legal rights

In Daily's case Balter saw a situation where a worker was taken advantage of over a long period of time. He spent 60 hours in preparation for trial, many of which were needed to decipher Daily's record keeping. Many working people couldn't afford to pay an attorney for the amount of time it took to make sense of the hand written documents.

"The reality is in private practice you have to pay for light bulbs," says Balter, who came to the labor commissioner's office after 12 years with a firm in San Jose that specialized in representing unions and employees.

"It's not an issue of profit and loss for the state, it's an issue of vindicating the legal rights of some of the most vulnerable workers in California, and recovering money for them — money they worked hard to earn."

Balter — a graduate of Hastings School of Law — was attracted to the variety of work done by the Division of Labor Standards Enforcement and has handled many different cases over the last year, from ODA appeals to discrimination claims and civil actions for large groups of employees.

Claimant gets award

A judgment was issued in June 2001 against Gridley for Daily's wages — to the tune of over $77,000 — and a levy against Gridley's bank accounts in August delivered the money. A second levy was made in November for nearly $15,000 in attorney's fees owed to the state and another $2,000 in interest due Daily.

"It's rewarding to work on a case and get for any employee the money they're owed," says Balter. "We're definitely here to do a service for workers and it's a satisfying feeling." ■

Some basics of the laws governing wages:

Labor Code § 201 -- when an employee is terminated their wages (including vested vacation) earned and unpaid are due and payable immediately.

Labor Code § 202 -- when an employee quits without notice their wages are due and payable within 72 hours; if they've given 72 hours notice they're entitled to their wages at the time of quitting.

Labor Code § 203 -- if an employer willfully fails to pay (pursuant to sections 201 and 202) any wages due an employee who is discharged or who quits, the wages of the employee continue as a penalty from the due date until paid — up to 30 days.

Labor Code § 204 -- wages earned are due and payable at least twice during each calendar month on days designated in advance by the employer as the regular paydays.

Labor Code § 207 -- employers must conspicuously post a notice specifying the regular paydays as well as time and place of payment.

Labor Code § 208 -- every employee who is discharged shall be paid at the place of discharge and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor.

Labor Code § 210 -- any employer who fails to pay the wages of employees on the regular paydays is subject to civil penalties.

Labor Code § 226 -- employers must furnish employees with an itemized statement in writing showing (1) gross wages earned (2) total hours worked (3) the number of piece-rate units earned and any applicable piece rate (4) all deductions (5) net wages earned (6) the inclusive dates for which the employee is paid (7) the name and social security number of the employee (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Employers in violation of this section are subject to civil penalties of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation. Employees who suffer injury as a result of an employer's failure to comply with this section are entitled to recover the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of $4,000, and are entitled to an award of costs and reasonable attorney's fees.

Labor Code § 227.3 -- whenever employers provide paid vacations and an employee is terminated without having used their vested vacation time, all vested vacation shall be paid as wages at the final rate of pay (pursuant to sections 201 and 202).

Note: These are highlights – for the full text go to www.dir.ca.gov and click on California Labor Code. ■

with a personalized service that can demand up to five hours with each client, depending on the complexity of their claim. Their work is so thorough that by the time, for example, a wage claim conference is scheduled with DLSE, the process runs fairly smoothly, says Thomas Margain, an attorney with the Van Bourg, Weinberg, Roger & Rosenfeld law firm who volunteers at the Instituto.

Nobody is turned away

"Nobody is turned away," says Margain. "There is a full-time receptionist who takes walk-ins. The worker is seen by a bilingual counselor. The counselor helps fill out a wage claim, fills out a calendar, the wage claim is filed and the counselor explains the initial conference with the employer. The labor commissioner investigators know that when someone is coming from the Instituto, the details of the claim are complete. The investigator doesn't have to tease the story out of the worker."

All workers in California, regardless of immigration status, are protected by most California labor laws.

The Instituto is funded by construction trades unions, the service employees and longshoremen unions.

"Almost all our clients are unorganized workers," says Shaker, who first approached the Instituto in 1993 when as a wholesale bakery worker she and her co-workers were denied payment after the owners sold the facility. "Some of them work for unlicensed contractors who don't play by the rules. They don't have workers' compensation insurance. They don't offer health and safety training. It's a formula for disaster.

"We help make employers more accountable for what they do," she says.

The work of the Instituto and MCTF, which are now collaborating across the state to compound protection of immigrant workers, also results in a sometimes unrecognized benefit: that of creating a level playing field between employers who obey the state's labor laws and those who once profited at the expense of their workers. ■

Labor Front Lines
New Laws 2002

California's minimum wage is $6.75 per hour.

Farm labor contractor (FLC) license requirements: AB 423 requires that whenever growers use FLCs they must get a copy of the FLC license, inspect it and verify its validity, and keep it for three years after the work is done. When failure to pay minimum wages leads to FLC license revocation, the revocation is one year for the first offense, two years for a second offense and permanent for a third. The new law requires the labor commissioner to establish a FLC enforcement unit to assist district attorneys, and to set up a new license verification unit in the Division of Labor Standards Enforcement (DLSE) by July 2002.

SB 1125 amends Labor Code Section 1684 so that surety bonds and funds in the farm worker remedial account can be used to pay civil penalties.

Displaced janitors: When a janitorial contract expires or terminates and a new contractor or subcontractor is hired, SB 20 requires the successor to retain, for 60 days after getting the job, employees of the former contractor or subcontractor who've worked at the site for four or more months. The only exception is if the successor employer has cause not to retain the employees because of performance problems.

New moms at work: Break time now required for nursing mothers is enforceable through citations issued by the labor commissioner that carry a $100 civil penalty per violation. AB 1025 adds Labor Code Sections 1030 - 1033, which provide an employee who is breast feeding a child with break time to express milk. To the extent possible, this break time should be concurrent with the paid break time, and if not possible, the employer provides additional unpaid break time. Employers must also provide suitable privacy. An employer is not required to provide this break time if doing so would seriously disrupt their operation.

Domestic partner benefits: Labor Code Section 233, which says that employers who provide sick leave for employees must allow them to use one half of their accrued leave per year to attend to the illness of a child, parent or spouse, has been expanded by AB 25 to include attending the illness of domestic partners and their children.

Discrimination: AB 1015 extends anti-discrimination protections under Labor Code Section 96(k) to job applicants, giving the labor commissioner authority to accept claims filed by applicants -- in addition to claims from employees discharged, demoted or suspended in retaliation for engaging in lawful conduct during non-work hours away from the employer's premises. Exceptions to 96(k) allow fire departments to prohibit fire fighters from using tobacco products on or off the job and allow employers to prohibit employees from engaging in off duty

"As employees of DLSE we must rededicate ourselves, our resources and our efforts to protecting the wages and working conditions of the people of California. Although change is hard, change is needed."

—Chuck Cake, DIR chief deputy director

conduct that is "actually in direct conflict with the essential enterprise related interests of the employer if such conduct would actually constitute a material and substantial disruption of the employer's operations."

AB 1015 also amends Section 98.6, making it illegal to retaliate against job applicants and employees who've filed a claim or asserted rights under the labor commissioner's jurisdiction. The remedy for discrimination against job applicants in these cases is that they be hired with back pay extending to the original date they would have been hired.

Business licenses: Cities and counties that charge businesses for licenses to open are prohibited under AB 205 from requiring anyone who is an employee of that business to obtain either a business license or a home business occupation permit for services they perform as an employee.

Legal decision -- tipping exotic dancers: C.B. & D.M. Entertainment Inc. filed a federal civil rights action in March 2001 challenging the constitutionality of the "dancer tip provision" added to Labor Code Section 350 by AB 2509, which provides that any amount paid directly by a patron to a dancer is a gratuity and the dancer's property. C.B. & D.M. Entertainment's lawsuit alleged the provision was unconstitutional and a violation of their due process, equal protection and free speech rights. DLSE's view was that C.B. & D.M. Entertainment's claims were frivolous and the legislation was intended to protect dancers and regulate their employment. The case was decided on summary judgment, a procedure used when both sides of a lawsuit agree on the important facts and are wrangling over legal issues. C.B. & D.M. Entertainment said they were entitled to summary judgment because, as a matter of law, the statute was unconstitutional. DLSE also requested summary judgment, contending that the statute was constitutional and the theater's case should be thrown out of court. In October 2001 the judge agreed with DLSE's position, dismissed C.B. & D.M. Entertainment's request and upheld the validity of the provision. ■

Helping young workers stay safe this summer

The California Department of Industrial Relations is distributing bookmarks containing tips to help keep young workers safe to high schools, DLSE offices and teacher groups for "Safe Jobs for Youth Month" in May. The bookmarks, which also contain labor law information, focus on the most common jobs held by young workers such as food service, grocery clerk, movie theater host, customer service, coffee host, construction and agriculture. Three of these industries (construction, agriculture and food service) are available in Spanish. For more information contact Courtney Silva at (916) 324-4163.

Work it out
will provide information, solutions

Work it out, the Department of Industrial Relations' new workers' portal, will premiere in late June at the department's 75th anniversary celebration in San Francisco.

DIR's new workers' portal will make labor, safety and workers' compensation information easy to access.

The portal can either be reached through the department's home page at **www.dir.ca.gov** or at its new address, **http://workitout.ca.gov**. It features useful information about labor and workplace safety and health laws, including frequently asked questions on such topics as apprenticeship, workers' compensation, overtime, minimum wage, ergonomics, bloodborne pathogens and Cal/OSHA inspections and complaints. Key to the site is information that allows workers to remedy problems they view in their workplaces, whether it's a lack of personal protective equipment or required state postings (like wage orders) or a problem with their paycheck.

Work it out offers viewers an opportunity to send their friends, colleagues and family e-cards from the site that include its URL and information about labor law. In addition, the department encourages viewers to respond to the site by completing a brief survey that will provide department staff with information about what works and what doesn't work on the site. ■

DIR celebrates
75th anniversary

SAVE THE DATE! The Department of Industrial Relations will celebrate its contribution to California's evolving labor history and the well being of its working people in a series of events kicking off June 27 in San Francisco.

The 75th anniversary kickoff event will feature State Librarian and acclaimed author Kevin Starr along with workshops designed to provide employees, employers, unions and worker advocates with a meaningful opportunity to learn about the department. Topics include conflict in the workplace, health and safety training for advocates, labor law compliance, workers' compensation, the new Labor and Workforce Development Agency and much more.

Contact DIR information at (415) 703-5050 to be placed on the mailing list for this historic event. ■

Over $1 million
in overtime wages recovered

When deputy labor commissioner Gina Hester met wireline operator Christopher Slayton she had no idea his wage claim would result in a settlement of more than $1.4 million in back wages — or that it would involve 78 of Slayton's co-workers.

That $1.4 million represented Hester's largest settlement ever and resulted in payments ranging from $40 to $71,000 for Slayton and his colleagues.

DLSE deputy Gina Hester presents David Blythe with a check for $71,203.35

Slayton filed a wage claim against Schlumberger Wireline Service with the Bakersfield office of the Division of Labor Standards Enforcement (DLSE) in November 2001. With his claim Slayton brought his employer's policy and procedures manual, which detailed a method for computing overtime that was illegal in California.

Hester contacted the company's personnel manager in Colorado and faxed him a copy of Slayton's claim, along with information that showed how the company's practice was in violation of California's overtime laws. The personnel manager then contacted their legal office.

Audit of hours requested

"Schlumberger's defense attorney called and I requested an audit of Slayton's hours," says Hester. "And when they were finished with his, I wanted an audit of all California workers in the same position."

Slayton's employer used a fluctuating workweek method to calculate overtime. Under this system, the more employees worked the lower their overtime rate. If, for example, an employee worked 100 hours one week, the overtime rate would be determined by dividing that employee's salary by 100. If in the following week the same employee worked 60 hours, the overtime rate would be based on dividing the salary by 60.

Before January 2000, Schlumberger, part of a conglomerate headquartered in Houston, Texas, was free to calculate overtime using this method because federal law allows it and it wasn't clear whether employees working in on-site construction, drilling, mining and logging occupations were covered by California's Industrial Welfare Commission (IWC) wage orders.

AB 60 and order 16 clear away doubts

Assembly Bill 60, which restored the eight-hour workday in January 2000, removed any such doubts and the IWC adopted specific provisions in a wage order to cover those employees. Though IWC order 16 became effective January 2001, the requirement to pay workers in those occupations time-and-a-half after eight hours per day went into effect a year earlier.

"Schlumberger never changed the way they calculated overtime," said Hester. "As a result, employees like Slayton, who test and maintain oil wells all over California, had not been properly paid for two years."

Although Schlumberger demonstrated a commitment to making reparations to employees, they initially told Hester they didn't have the money to pay for both years and wanted employees to accept overtime owed for year 2000 only. Hester educated them about their responsibilities and provided incentive to work out a settlement quickly in cooperation with employees by informing Schlumberger about the cost of penalties if the cases went to hearing.

"They knew they owed the money and they knew we were going to pursue it," said Hester.

Schlumberger workers (from l to r) David Blythe, Daniel Zamora Jr., Robert Rodriquez, Ronnie Richards and James Balli (front) received overtime wages they were owed from DLSE Deputy Gina Hester.

Schlumberger settles with workers

After meeting with employees, who were unhappy with Schlumberger's original proposal, the company agreed to pay the full amount.

"The attitude you portray to employers makes a big difference," Hester says. Schlumberger sent her the audits and checks and Hester delivered them to employees.

"I wanted to do this job so I could help people," says Hester of her work for the DLSE. "When I got those checks I was so happy." ■

Continued: ***Undocumented workers in California still protected by state employment laws***

"All California workers, whether or not they are legally authorized to work in the United States under immigration laws, are covered by state labor laws and regulations that protect payment of wages due and set limits on maximum hours," says Stephen J. Smith, director of the Department of Industrial Relations. "And all workers are encouraged to file claims with the state Division of Labor Standards Enforcement for wages owed and unpaid."

The Division of Labor Standards Enforcement, or the state labor commissioner's office, is responsible for enforcing California's labor laws including minimum wage laws, overtime laws, penalties for late payment of wages and the requirements of Industrial Welfare Commission wage orders. ■

Continued: ***Janitorial task force prosecutes violators***

Violators receive jail time

In another case, task force operations resulted in substantial jail time for brothers Esteban and Fecundo Mendoza, owners of Cindy's Cleaning Service, who pled guilty to 10 counts including insurance fraud, and eight counts of felony theft of labor. Esteban Mendoza received one year in county jail and three years probation, in addition to paying $10,000 in restitution to workers. Fecundo Mendoza received 10 days in county jail, 150 hours of community service and three years probation.

"It was very satisfying to participate in these prosecutions because this office, and specifically L.A. District Attorney Steve Cooley, doesn't believe people should be taken advantage of. We want to see a fair playing field and make sure all workers have an opportunity to earn a decent wage and support their families," says Gale.

Extending the effort

"It's like stealing bread from these workers' mouths — cheating them out of minimum wage, which is not a living wage to begin with," Gale says. "To end up paying them $3 or $4 an hour when they should be getting $6.75 at minimum and $9 at a living wage scale … the difference without the overtime adds up to considerable amounts of money … and that's grand theft on a felony level."

The success of recent efforts provides promise, yet the problem persists. The task force is expanding to areas outside Los Angeles where janitorial workers aren't receiving minimum wage, overtime or the rest and meal periods they've earned and is focusing its attention on the prime contractors.

"It's our job now to go after the big banana and attempt to show the prime contractor's responsibility for creating this system that affects at least one-third of all the manufacturing, supermarket and department store janitorial jobs in southern California. And if we can bring them down, let them see the error of their ways, correct it and make a difference in the future, then we'll be making some major inroads. And that's the goal of my office — to make an inroad — and we won't stop until we do." ■

Members of the janitorial maintenance worker task force include California's Division of Labor Standards Enforcement (DLSE), Franchise Tax Board, Employment Development Department and Department of Insurance, the Los Angeles County District Attorney, the Los Angeles City Attorney and the United States Department of Labor.

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