

Oct. 17, 2011

To: Christine Baker, Acting Director DIR
Fr: Ellen Widess, Chief DOSH
Re: Urgent DOSH Hiring Needs

This memo describes the urgent need to fill vacancies in Cal/OSHA's staff to enable us to meet statutory duties and deadlines for our mission critical enforcement work: investigating workplace fatalities, serious injuries, and complaints and inspecting the most hazardous workplaces to prevent future worker deaths, injuries and illnesses.

The Division has no flexibility or discretion in responding to worker deaths, serious injuries and illnesses and complaints whenever and wherever they occur. They occur 24/7, all year long, everywhere in the state.

We are *not* having a deterrent effect on most employers, who know we're so short staffed. They are cutting corners with safety. On the other hand, our concerted, enhanced staffing for heat illness prevention has paid off—we see a dramatic increase in compliance with the heat standard.

Background Facts:

- Cal/OSHA currently has 1 inspector for approximately 99,000 workers. California is worse than 45 states, only better than Arkansas, Georgia, Louisiana and Florida.
- We are down to 190 inspectors, and expect many more retirements of experienced field staff, given the age of our inspectors.
- Fed OSHA's ratio for inspectors to worker is one inspector to 60,000 workers. Fed/OSHA's latest EFAME report calls for at least 48 new field inspectors, just to be "at least as effective" as the Feds.
- There are more than one million workplaces in California, and most workers are employed in small businesses. 83% work for employers with less than 10 employees; 91% of employees work for employers with less than 20 employees. These small businesses are less likely to have good safety and health programs than larger companies, so effective worker protection requires more activity and attention by both Compliance and Consultation.
- Without additional staff, Consultation cannot meet the demand of many smaller, high hazard employers who request assistance, and Compliance will not have the time to conduct programmed inspections when it is swamped with accidents and complaints.

- Most workers are injured and killed working for these smaller employers in these smaller businesses.
- A disproportionate number of workers killed, injured or made ill are immigrants, and mostly Latino, often non-English speaking and undocumented. They are unlikely to work for employers who provide safety and health training, protective equipment, workers' compensation or any information about workers' rights. The fear and reality of retaliation for contacting Cal/OSHA is profound. Without additional compliance inspectors, we will not be able to conduct targeted inspections to reach these workers who will not reach out to us.
- Only 32 compliance field inspectors speak another language (just 25 speak Spanish) for a non-English speaking immigrant workforce estimated to be 4.5 million workers.
- The rapid and pervasive growth of temporary staffing agencies and labor contractors in industries like agriculture and construction have enabled employers who contract for labor to evade their responsibilities to protect workers' health and safety and have made Cal/OSHA enforcement efforts more difficult.
- Speed-up in all industries and fewer workers mean more injuries and deaths.
- High profile, complex cases like the Dept of Mental Health's workplace violence incidents, the SF PUC's Hetch Hetchy project (85 high hazard projects) require long term staffing

Deaths on the Job

- *Fatal Occupational Injuries in California continue to be high*
 2009: 419 fatalities (mostly male, half Latino)
 2010: 302 fatalities (mostly male, over half Latino)- CA employment shrank by 130,000 workers
 2011: 394 so far this year, with 2.5 months left in the year

Recent Cases: many, but not all, are workers in the underground economy, and occur all over the state. Employers include public and private sector, many kinds of work, union and non-union, small and large, permanent and temporary workforces. A small sample of fatalities:

- Baxter Bioscience (*a Fortune 500 company in LA*): death of 1 worker, second worker in permanent vegetative state, third worker seriously injured working in confined space
- Community Recycling (a company that uses a farm labor contractor for labor in Lamont): 2 deaths of workers aged 16 and 22 working in confined space
- Davey Tree Company (company with bad safety record all over the state): death of IBEW worker, falling 40 feet from an aerial device to the ground
- C. Clunn (farm labor contractor in Blythe): farmworker death due to heat stroke

- KCI Environmental: suspected heat illness death of worker doing erosion control in Nipomo)
- Morrow Meadows (electrical contractor): death of IBEW apprentice electrician at LAX.
- Napa State Hospital: Death of nurse in October 2010 as result of workplace violence by patient
- Kleen Harvest: a foreman became caught between a tractor and a harvesting machine, and died of his injuries
- Chevron Technology and Exploration : death of geologist consumed in a 30 foot sinkhole while investigating for safety hazards in an oil field in Bakersfield.
- Moore Brothers: a farm supervisor was electrocuted while working on an electrical box

Statutory deadlines missed: Staffing vacancies make it difficult, often impossible to meet our statutory deadlines. We are even further from being at least as effective as Fed/OSHA's standards.

Mandatory duty to investigate all accidents that are fatal to 1 or more workers or that results in a serious injury or illness, or serious exposure-- must go out immediately to conduct investigation, ensure no tampering with evidence, do appropriate monitoring, interview witnesses.

Mandatory duty to investigate all formal complaints (from employee, employee's representative, other government agency) that allege serious violation within 3 working days of receipt of complaint, and not later than 14 calendar days after receipt of complaint alleging a non-serious complaint. (LC 6309)

- Immediate need to issue Order to Prohibit Use or Order to Take Special Action upon finding imminent hazard at worksite
- DOSH not in compliance with Fed OSHA benchmark of 5 days for time to open inspections- DOSH average is 21.3 days. This violates Labor Code requirement that inspections be opened within 14 calendar days, 3 days for serious complaints, and within 24 hours for imminent hazards.
- Time to close inspections: Fed OSHA average is 42 days for safety and 54 days for health cases. DOSH average is 74.1 days for safety and 85.1 days for health cases.

High Priority Hiring Needs:

Legal Unit: need at least 3 more attorneys—3 current attorneys due to take medical/maternity leave for 1-6 months

- Have only 8 attorneys for entire state. DOSH has much higher rate of cases where field staff has to defend citations than other agencies. As result, most cases are handled by District Managers who lack legal training. More appeals filed by employers who are usually represented by counsel.

- Cannot sustain as many citations as should, especially serious and willful. Many cases are settled, penalties and citations reduced, either because of flaws in investigations or lack of skill in appeals process (another serious criticism by Fed/OSHA on this)
- Handle complex cases like *Bautista*, civil cases, writs of mandate plus administrative appeals and field support
- *3 attorneys will be out for medical/maternity leave for 1-6 months*

Medical Unit: need at least 1 more physician and 1 more nurse

- Currently have only .5 FTE Occupational physician and 1 FTE occupational nurse for entire state, 18 million workers.
- Our half time physician has to review all suspected heat illnesses (59) and deaths (13 , , and many other cases; assist field staff on real-time basis during investigations; assist field and serve as expert witness at Appeals Board hearings, and support Research and Standards Unit in setting health and safety standards and variances.
- Nurse plays similar role and is also crucial in heat illnesses and deaths, issues like ergonomic injuries

District Offices: need at least 5 new District Managers, minimum of 48 field inspectors and 25 administrative staff to meet statutory deadlines

- Current District Manager vacancies in 3 offices (High Hazard, Torrance, San Bernadino)—means other managers must cover in addition to their own districts
- Some districts like Van Nuys cover huge territory—including Kern, Ventura, Santa Barbara--- investigations require hundreds of miles of travel
- Urgent need to open new office in Bakersfield--- huge demand of cases, need for bilingual staff to heat illness and other cases
- Urgent need to open field office in El Centro—to handle many cases in Imperial Valley
- Need to fill vacancies in field staff, administrative -- Now, District Managers and inspectors are doing own administrative work, taking time away from urgent inspections
- Complex cases like DMH workplace violence, SF PUC Hetch Hetchy, Baxter Bioscience can take months, even a year, often requiring multiple staff with different expertise

Tower Crane Unit: Need at least 3-5 inspectors for current and future construction growth

- Statutory mandate to issue permits and inspect all tower cranes, certify private certifiers, and do safety inspections of all cranes twice a year. Not meeting current demand, and expect substantial increase in demand when construction picks up.
- Currently have only 5 inspectors, with only 1 devoted full time to tower cranes (others have other full time responsibilities)
- Imminent retirements- one inspector retiring in December 2011, another soon (he's over 70 years old). No ability to have hired and trained new inspectors to fill these voids
- *Need to hire on TAU basis, drawing on skilled, trained people from outside industry who can step in immediately and not need 2-3 years training*

Consultation Program: Need 1 senior inspector and at least 3 new inspectors to meet demand for trainings, inspections, outreach, recognition programs

- Cannot keep up with current demand for Consultation inspections (2-3 month wait now and 6 month wait for VPP recertification), technical assistance, outreach, trainings, and all the recognition programs
- *Investment in Consultation means greater prevention, reach to smaller, high hazard employers who want to do the right thing but lack the technical knowledge to prevent workplace injuries, illnesses and deaths.*

Staff Service Managers and Administrative Staff: Need 31 OT's and SSM's for field and headqtrs to support field

- Deputy Chiefs for Health and Enforcement have no support, so spend time needed for urgent policy and programmatic work on clerical tasks
- Public Safety Unit has no support, causing service backlogs and lawsuits for fee increases; high industry demand that needs constant attention
- No capacity for research, analysis and data management for reports, responses to Legislature, press, employers and labor
- Attorneys need secretaries so can devote time to legal work, including handling appeals, assisting field staff to ensure proper citations and successful appeals, litigation