

TO: JIM HAHN FROM: THOMAS F. COLEMAN
RE: Press Conference on Labor Code Sections 1101 and 1102
DATE: October 17, 1991

I am writing to confirm the decisions made at the meeting last week by you and Arlo Smith regarding the enforcement of Labor Code sections 1101 and 1102.

(1) **LETTER TO LABOR COMMISSIONER.** You and Mr. Smith decided to each send a letter to the Labor Commissioner reiterating the section of the governor's veto message in which he referred to Labor Code Sections 1101 and 1102. The letter would remind the commissioner of his department's responsibility to receive and investigate complaints of sexual orientation discrimination and refer cases to local prosecutors when there is probable cause to believe that such discrimination has occurred. Because the Labor Commissioner's staff may not be properly educated to handle such complaints, you decided that you might offer to assist them by participating in a training program. Please send me a copy of your letter to the Labor Commissioner so I can add it to the materials in my written report.

(2) **LETTER TO PROSECUTORS.** You and Mr. Smith decided that you would send a written communication to your fellow District Attorneys and City Attorneys throughout the state to inform them of your plans to enforce the Labor Code and urge them to do likewise.

(3) **PRESS CONFERENCES.** You and Mr. Smith decided to hold press conferences to announce the criminal and administrative process that will be used to prosecute cases of sexual orientation discrimination in employment. You would hold a press conference on October 29, 1991 at 9:30 a.m. in Los Angeles and Mr. Smith would hold one at 1:30 p.m. in San Francisco on the same date. The goal of these press conferences would be to educate the both employers and employees that sexual orientation discrimination is illegal, despite the Governor's veto of AB 101 and to announce that your offices will be prosecuting under Labor Code sections 1101 and 1102, that you have contacted your counterparts throughout the state and urged them to enforce the law vigorously, and that you will be alerting human relations commissions and civil rights organizations of this process. I will attend both press conferences. You may want to mention in your press advisory and press release that you have consulted with me as one of the nation's leading experts in this field and that I will be present at the press conference to answer any technical legal questions about this remedy and its historical background. Please fax me a copy of your press release the day before the conferences so that I can include them in my report.

Please let me know if this summary is inaccurate in any way. Thank you.

PLEASE SHARE WITH: JOHN EMERSON
MIKE QUALLS
MAUREEN SIEGEL

TO: ARLO SMITH
RE: Press Conference on Labor Code Sections 1101 and 1102
DATE: October 17, 1991

FROM: THOMAS F. COLEMAN

I am writing to confirm the decisions made at the meeting last week by you and James Hahn regarding the enforcement of Labor Code sections 1101 and 1102.

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TO: MATT DORSEY

**PLEASE SHARE
WITH ARLO.**

THOMAS F. COLEMAN

ATTORNEY AND COUNSELOR AT LAW

CENTER FOR PERSONAL RIGHTS ADVOCACY
POST OFFICE BOX 65756 • LOS ANGELES, CA 90065 • (213) 258-8955

To: Matt Doprsey
From: Thomas F. Coleman *etc*
Re: Confirmation of Press Conference
& Request for Copies of Documents
Date: October 21, 1991

Press Conference. Please fax me a short memo confirming that Arlo Smith will hold a press conference on Tuesday, October 29, 1991, to announce the criminal law effects of the Governor's Veto of AB 101 (namely, that employers who discriminate on the basis of sexual orientation will face criminal prosecution). The memo should also confirm that Mr. Smith is requesting me to be present at the press conference as a legal expert in sexual orientation discrimination in case the press has technical or historical questions about the legality of criminal penalties for such discrimination. Since I will be attending Jim Hahn's press conference in the morning, it would be helpful to my schedule if the press conference in San Francisco could be scheduled for 1:45 p.m.

Request for Documents. Mr. Smith stated last week that he would be sending a letter to the state labor Commissioner reminding the commissioner of his obligation to investigate and refer criminal cases involving sexual orientation discrimination in employment. Please fax me a copy of that letter as soon as it is sent to the labor commissioner. Also, please fax me copies of your press advisory and your press release as soon as they are available.

I would very much appreciate it if you could call me today so we can discuss these items and so that I can finalize my schedule and travel plans for Oct. 29. Thanks.

FAX No. is (213) 258-8099 / My Direct Phone No. is (213) 258-5831.

ARLO SMITH
DISTRICT ATTORNEY
SAN FRANCISCO

M E M O R A N D U M

TO: Mr. Thomas F. Coleman
 FR: Matt Dorsey
 DA: October 21, 1991
 RE: October 29 Press Conference and Related Documents

 This is to confirm the press conference which has been scheduled to announce the criminal effects of the Governor's veto of AB 101.

Press Conference
1:45 p.m., October 29, 1991
at the San Francisco Hall of Justice
850 Bryant Street, 3rd Floor Conference Room
San Francisco

I will be faxing a media advisory to all local media outlets approximately 24 hours before the press conference. This advisory will consist of the time and location of the press conference; a contact name and number; and a very brief description of the purpose of the press conference.

Starting at 7:00 a.m., October 29, I will make follow up calls to all local media outlets. Press releases will be available at the press conference and will be faxed out to all media outlets by the District Attorney's Office concurrently with the press conference.

As of now, neither the press release nor the letter from the District Attorney are written. Arlo's letter will be written within the D.A.'s office, while I will work on the advisory and press release myself. I expect both to be completed in the next couple of days, and I'll be in touch with you with a draft of the press release for your perusal and input.

Thanks, Tom. I'll be in touch.

Post-It™ brand fax transmittal memo 7671		# of pages ▶
To <i>Mike Qualls</i>	From <i>Thomas F. Coleman</i>	
Co. <i>City Attorney Office</i>	Co.	
Dept. <i>Communications</i>	Phone # <i>(213) 258-8455</i>	
Fax # <i>(213) 680-3634</i>	Fax # <i>(213) 258-8099</i>	

THOMAS F. COLEMAN

ATTORNEY AND COUNSELOR AT LAW

CENTER FOR PERSONAL RIGHTS ADVOCACY
POST OFFICE BOX 65756 • LOS ANGELES, CA 90065 • (213) 258-8955

To: Mike Qualls
From: Thomas F. Coleman *TFC*
Re: Confirmation of Press Conference
& Request for Copies of Documents
Date: October 21, 1991

Press Conference. Please fax me a short memo confirming that Jim Hahn will hold a press conference on Tuesday, October 29, 1991, at City Hall to announce the criminal law effects of the Governor's Veto of AB 101 (namely, that employers who discriminate on the basis of sexual orientation will face criminal prosecution). The memo should also confirm that Mr. Hahn is requesting me to be present at the press conference as a legal expert in sexual orientation discrimination in case the press has technical or historical questions about the legality of criminal penalties for such discrimination. Since I will be attending Arlo's press conference in the afternoon, it would be helpful to my schedule if the press conference in Los Angeles could be scheduled for 9:15 a.m.

Request for Documents. Mr. Hahn stated last week that he would be sending a letter to the state labor Commissioner reminding the commissioner of his obligation to investigate and refer criminal cases involving sexual orientation discrimination in employment. Please fax me a copy of that letter as soon as it is sent to the labor commissioner. Also, please fax me copies of your press advisory and your press release as soon as they are available.

I would very much appreciate it if you could call me today so we can discuss these items and so that I can finalize my schedule and travel plans for Oct. 29. Thanks.

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DISTRICT ATTORNEY

ARLO SMITH
DISTRICT ATTORNEY



ROBERT M. PODESTA
CHIEF ASSISTANT
DISTRICT ATTORNEY

SAN FRANCISCO

880 BRYANT STREET, SAN FRANCISCO 94103 TEL. (415) 553-1752

October 28, 1991

Victoria L. Bradshaw
State Labor Commissioner
Department of Industrial Relations
Division of Labor Standards Enforcement
455 Golden Gate Ave., Suite 3194
San Francisco, CA 94102

Dear Commissioner Bradshaw:

In the message accompanying his veto of Assembly Bill 101 last month, Governor Wilson stressed that remedies are currently available to redress complaints of employment discrimination against gays and lesbians. The Governor cited Gay Law Students Association v. Pacific Telephone & Telegraph (1979) 24 Cal. 3d 458 for the proposition that the California Labor Code protects from discrimination those workers involved in gay issues or those who identify themselves openly as homosexual.

The Governor has pointed out that the California Attorney General has concluded that Secs. 1101 and 1102 prohibit an employer from discrimination on the basis of homosexual orientation or affiliation. (69 Ops. Cal. Attorney General 80 1986)

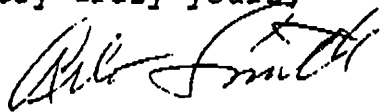
Both the Governor and Attorney General have concluded that complaints of employment discrimination involving gays and lesbians are within your jurisdiction.

Labor Code section 1103 makes it a misdemeanor to violate either Labor Code section 1101 or 1102. This office is prepared to prosecute any employer who violates those sections and requests that your Commission investigate (pursuant to Labor Code section 98.7) all proper complaints and refer them to us.

Victoria L. Bradshaw
State Labor Commissioner
October 28, 1991
Page 2

I look forward to establishing an effective means by which we can deal with the problem of employment discrimination in all forms. I would be pleased to meet with you to discuss this further and to work up a mutually acceptable protocol.

Very truly yours,



ARLO SMITH
District Attorney

AS:jb



1800 CITY HALL EAST
LOS ANGELES 90012
(213) 485-5408

Office of the City Attorney

Los Angeles, California

JAMES K. HAHN
CITY ATTORNEY

October 28, 1991

Honorable Victoria L. Bradshaw
State Labor Commissioner
Department of Industrial Relations
Division of Labor Standards Enforcement
455 Golden Gate Avenue, Suite 3194
San Francisco, California 94102

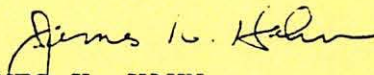
Dear Commissioner Bradshaw:

Governor Wilson noted in his September 30 veto message regarding Assembly Bill 101 that gays and lesbians are protected from discrimination by California Labor Code Sections 1101 and 1102 and that complaints made under these statutes are within your jurisdiction.

Labor Code Section 1103 makes it a misdemeanor to violate Labor Code Sections 1101 or 1102, and as the prosecutor of misdemeanor offenses within the City of Los Angeles, I am prepared to file criminal complaints in cases in which employers violate these laws. Therefore, I request that you forward to my office any cases that you deem appropriate for my review.

I look forward to establishing a working relationship between our two offices to combat employment discrimination. Please do not hesitate to contact me if you have any questions.

Very truly yours,


JAMES K. HAHN
City Attorney

JKH:vei

DISTRICT ATTORNEY

ARLO SMITH
DISTRICT ATTORNEY



ROBERT M. PODESTA
CHIEF ASSISTANT
DISTRICT ATTORNEY

SAN FRANCISCO

880 BRYANT STREET, SAN FRANCISCO 94103 TEL. (415) 553-1752

MEDIA ADVISORY

FOR IMMEDIATE RELEASE
CONTACT: ARLO SMITH 415/553-1741

OCTOBER 28, 1991

NEWS CONFERENCE: 1:45 P.M., TUESDAY, OCTOBER 29

DISTRICT ATTORNEY'S OFFICE
HALL OF JUSTICE
850 BRYANT STREET
3RD FLOOR CONFERENCE ROOM
SAN FRANCISCO

D.A. SMITH TO ANNOUNCE STATEWIDE PROGRAM TO
PROTECT GAYS, LESBIANS IN EMPLOYMENT

Says Wilson's AB 101 veto has left D.A.s no choice
but to prosecute employers.

SAN FRANCISCO--District Attorney Arlo Smith will hold a news conference tomorrow afternoon to announce the launch of a statewide model program to protect gays and lesbians from employment discrimination in the wake of Gov. Wilson's veto of Assembly Bill 101. The model program will be a joint endeavor by Smith and Los Angeles City Attorney Jim Kahn.

In consultation with Los Angeles attorney Thomas F. Coleman, a nationally recognized expert in the field of public policy and law affecting sexual orientation and marital status discrimination, the program will use existing state legal protections in which criminal remedies may be sought against employers who discriminate on the basis of sexual orientation.

Coleman will be on hand at the news conference to discuss the specifics of the statewide model program.

In his September 30 veto of AB 101, Governor Wilson cited existing state legal protections for gays and lesbians in employment, including Labor Code sections 1101 and 1102 and "the express right of privacy contained in the California Constitution."

DISTRICT ATTORNEY

ARLO SMITH
DISTRICT ATTORNEY



ROBERT M. PODESTA
CHIEF ASSISTANT
DISTRICT ATTORNEY

SAN FRANCISCO

880 BRYANT STREET, SAN FRANCISCO 94103 TEL. (415) 553-1752

FOR IMMEDIATE RELEASE
CONTACT: ARLO SMITH 415/553-1741

OCTOBER 29, 1991
PAGE 1 OF 2

**D.A. SMITH ANNOUNCES STATEWIDE PROGRAM TO
PROTECT GAYS, LESBIANS IN EMPLOYMENT**

**Says Wilson's AB 101 veto has left D.A.s no choice
but to prosecute employers.**

SAN FRANCISCO--In response to Gov. Wilson's veto of AB 101, which would have specifically protected gays and lesbians from employment discrimination in California, District Attorney Arlo Smith announced today the formation of a program for California law enforcement agencies to prosecute employers as criminals for sexual orientation discrimination.

"Since the governor's veto of AB 101 gives us no choice but to use existing criminal laws to protect lesbians and gays in the workplace, prosecutors throughout California must take the lead to ensure that existing laws are aggressively enforced," Smith said.

In consultation with Los Angeles attorney Thomas F. Coleman, a nationally recognized expert in the field of public policy and law affecting sexual orientation and marital status discrimination, Smith will be heading up the statewide model program along with Los Angeles City Attorney James Hahn.

"It is crucial for employers throughout California to know that discrimination against lesbians and gays in the workplace is a crime that will be prosecuted in the criminal courts," Smith said. "With or without AB 101, with or without local ordinances, existing state law mandates that employers who discriminate on the basis of sexual orientation be prosecuted."

Smith referred to Wilson's September 30 veto message of AB 101, in which Wilson cited Labor Code sections 1101 and 1102 and "the express right of privacy contained in the California Constitution" as adequate protections for gays and lesbians in employment.

According to Coleman, the criminal penalty for violating Labor Code sections 1101 or 1102 is up to one year in jail and a \$1,000 fine for individuals, and up to a \$5,000 fine for corporations. In addition, employers may be required to pay

restitution and enjoined from future discriminatory practices.

Smith announced that he and Hahn have sent letters to State Labor Commissioner Victoria L. Bradshaw informing her of their intention to prosecute sexual orientation discrimination cases within their respective jurisdictions.

Smith also announced that he and Hahn plan to work with District Attorneys and City Attorneys throughout California on standards and procedures to prosecute cases of job discrimination based on sexual orientation under existing state law in the wake of the AB 101 veto. According to Smith, this will allow local agencies in areas without local anti-discrimination ordinances to assist employees under state laws already in place.

Smith said that any employee or job applicant who has been the victim of sexual orientation discrimination may file a complaint with the State Labor Commissioner. There are over 20 Labor Department offices throughout the state.

Additionally, Smith and Hahn plan to notify civil rights organizations and human rights commissions throughout the state to advise them of protections available under state law and the process to be followed.

News

from City Attorney James K. Hahn

FOR IMMEDIATE RELEASE
OCTOBER 29, 1991

MIKE QUALLS (213) 485-6493
TED GOLDSTEIN (213) 485-2065

Hahn vows to protect lesbian and gay employment rights

Responding to the veto of Assembly Bill 101, Los Angeles City Attorney Jim Hahn today announced that he will vigorously enforce existing state and city laws that protect gays and lesbians from employment discrimination.

In making his announcement this morning at a City Hall East news conference, Hahn cited the Los Angeles city ordinance prohibiting sexual orientation discrimination and state Labor Code sections 1101 and 1102 as available enforcement tools.

"I want to get the message out that even though proponents of AB 101 failed to get the bill signed into law, we still can protect basic human rights, and that is precisely what employment discrimination is -- a basic human rights issue," Hahn declared.

Assembly Bill 101 would have specifically prohibited employment discrimination on the basis of sexual orientation. The bill, which was sponsored by Assemblyman Terry Friedman (D-Los Angeles), was vetoed Sept. 30 by Gov. Pete Wilson after being approved by the state Legislature.

Hahn formulated his enforcement posture after consulting with Los Angeles attorney Thomas F. Coleman, one of the nation's

MORE

leading experts on public policy and the law governing sexual orientation and marital status discrimination. Coleman also participated in today's news conference with Hahn.

"I know there is a great deal of rage over the veto of AB 101 and that beneath the rage there is a terrible sense of abandonment by the political process," said Hahn. "It is important for gays and lesbians to know we have not abandoned them and will not abandon them. And it is important for them to know they still have protection from employment discrimination under existing laws and that I intend to vigorously enforce those laws in Los Angeles."

"It also is important for employers to know and understand that the veto of AB 101 is not authorization for discrimination," Hahn added. "Such discrimination will not be tolerated."

In outlining his enforcement program, Hahn noted that a Los Angeles city ordinance (Los Angeles Municipal Code sections 49.70 through 49.80) adopted in July 1979 prohibits sexual orientation discrimination in employment, real estate transactions, housing, business establishments, city facilities and services, and educational institutions.

"Our ordinance has not been burdensome or disruptive to the city," Hahn said. "Rather, it has served to assist the citizens of Los Angeles to understand that all members of the community stand equal before the law and are entitled to dignity and respect."

Hahn is empowered by the city anti-discrimination ordinance to seek injunctions in discrimination cases to force

MORE

Hahn vows to protect lesbian and gay employment rights
Page 3

offenders to cease violating the law. The ordinance also contains provisions under which victims can file private lawsuits and seek monetary damages.

Hahn also cited Labor Code sections 1101 and 1102 as potential legal weapons against sexual orientation discrimination. Those laws were enacted to protect workers from employment discrimination based on their political activities or affiliations. Gays and lesbians were specifically recognized as being covered by the laws in a 1979 California Supreme Court decision.

The criminal penalty for violating either of the Labor Code sections is up to one year in jail and/or a \$1,000 fine for individuals and up to a \$5,000 fine for corporations. In addition, employers may be required to pay restitution and injunctions can be issued to force employers to refrain from discriminatory acts.

Persons who feel that they have been the victim of sexual orientation discrimination can file complaints with any of the 20 state Labor Department offices around the state.

In announcing his enforcement posture today, Hahn said he has sent a letter informing state Labor Commissioner Victoria L. Bradshaw that he stands ready to handle sexual orientation discrimination cases inside the city limits of Los Angeles.

Court Bars Psychological Tests in Hiring

■ **Workplace:** Appellate justices say questions on religion, sex violate job-seeker's right to privacy. Ruling also upholds ban on employer bias against gays.

By PHILIP HAGER
TIMES LEGAL AFFAIRS WRITER

SAN FRANCISCO—In the first ruling of its kind in California, a state appeals court has prohibited an employer from requiring job applicants to take psychological tests, finding that personal questions about religion and sexual orientation violate the right to privacy.

In the decision, the three-judge panel also held that state law prohibits private employers from discriminating against homosexuals. Some state officials, including Gov. Pete Wilson, had already concluded that the law bars such bias. Last month, in vetoing a bill prohibiting job discrimination against gays, Wilson said new legislation was unnecessary because of existing laws.

The appeals court, in a decision made public Monday, unanimously ordered that a preliminary injunction be issued to bar Target Stores, a department store chain, from administering the psychological tests to people seeking employment as security guards.

The state constitutional guaran-

tee of privacy protects both a job applicant and a jobholder from being forced to answer questions about religious, sexual and other personal views, the court said. Target had failed to show that the questions asked were sufficiently related to the job, it said.

"While Target unquestionably has an interest in employing emotionally stable persons to be [security guards], testing applicants about their religious beliefs and sexual orientation does not further this interest," Appellate Justice Timothy A. Reardon wrote for the court.

The ruling came in one of the first legal challenges in the country to psychological testing in the workplace. Federal law bars the use of polygraphs, or lie-detectors, and some employers have turned to psychological tests to screen employees.

The panel did not flatly bar all psychological tests, but said questions of a personal nature must be justified by a "compelling interest" by employers—a highly difficult legal standard to meet. The court suggested, but did not declare, that such an interest might be found in testing for police, pilots and nuclear power plant operators.

The ruling was hailed by Laurence F. Pulgram of San Francisco, a cooperating attorney for the American Civil Liberties Union. "This tells employers they can't inquire willy-nilly into private affairs that are not related to the job," he said.

Robert F. Millman of Los Angeles, an attorney for Target Stores,

said the ruling would be appealed to the state Supreme Court.

George Hite, a vice president for the Minneapolis-based firm, said the tests are widely used by police agencies to detect emotional instability.

Target Stores required the tests for 300 security posts among 20,000 California employee positions to eliminate guard applicants who might pose risks, Hite said.

The tests involved 700 true or false questions, among them:

- I believe in the second coming of Christ.
- I believe there is a devil and a hell in afterlife.
- I am very strongly attracted by members of my own sex.
- I have never indulged in any unusual sex practices.

The case arose from a lawsuit filed by Sibi Soroka of Lafayette and other applicants required to take the tests for security guard jobs with Target in 1989.

Reardon took issue with another decision by an appellate panel in a separate case that approved drug tests for job applicants to the Times Mirror Co., which publishes the Los Angeles Times. In that decision, the panel upheld such tests, in part because they were administered as part of a screening procedure. But Reardon concluded that privacy protections apply to both applicants and jobholders.

In Monday's decision, the appeals court also pointed to a 1979 ruling by the state Supreme Court barring public employers from bias against homosexuals.

THOMAS F. COLEMAN

ATTORNEY AND COUNSELOR AT LAW

CENTER FOR PERSONAL RIGHTS ADVOCACY
POST OFFICE BOX 65756 • LOS ANGELES, CA 90065 • (213) 258-8955

October 30, 1991

Honorable Victoria L. Bradshaw
State Labor Commissioner
Department of Industrial Relations
Division of Labor Standards Enforcement
Fax number (415)703-3730

Dear Ms. Bradshaw:

We are receiving numerous inquiries as to whether your office will accept and process complaints of sexual orientation discrimination under California Labor Code Sections 1101 and 1102 as interpreted by the California Attorney General. (69 Ops. Cal. Atty. Gen. 80 (1986)) As you are probably aware, in his veto message for AB 101, Governor Wilson cited the Attorney General's opinion with approval. Only a few days ago, the Attorney General's opinion and interpretation of the scope of Labor Code Sections 1101 and 1102 was adopted by the First District Court of Appeals in *Sibi Soroka v. Dayton Hudson Corporation*, (Oct. 25, 1991, C.A.1st A052157) ___ Cal.App.3d ___.

According to Governor Wilson:

"California *should* and *does presently* treat sexual orientation as a private matter, protected by the express right of privacy in the California Constitution, and entitled to legal protection in several specific areas: . . .

"Under current case law, Labor Code sections 1101 and 1102 protect manifest homosexuals from employment discrimination based on gay or lesbian political activities or affiliations. (*Gay Law Students Association v. Pacific Telephone and Telegraph* (1979) 24 C.3d 458.)

"Further, an Attorney General's opinion has concluded these provisions prohibit a private employer from discriminating on the basis of sexual orientation or affiliation, private as well as manifest." (AB 101 Veto Message of the Governor to the Members of the Assembly, Sept. 30, 1991.)

In effect, the Court of Appeal has now ratified both the Attorney General's opinion and the Governor's declaration. In *Soroka*, the court concluded:

"Labor Code sections 1101 and 1102 protect an employee's fundamental right to engage in political activity without employer interference (citation omitted). The 'struggle of the homosexual community for equal rights, particularly in the field of employment, must be recognized as a political activity.' (citation omitted) **These statutes also prohibit a private employer from discriminating against an employee on the basis of his or her sexual orientation. (69 Ops. Cal. Atty. Gen. 80 (1986)).**" (emphasis added)

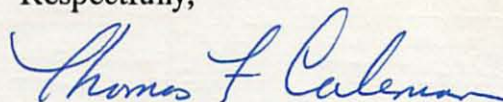
Please note that the *Soroka* case involved no disclosure of the plaintiffs' sexual orientation, nor any overt political activity. Private sexual orientation was at issue in that case.

Governor Wilson's deputy press secretary Franz R. Wisner was quoted by the *New York Times* as stating that the *Soroka* ruling affirmed the Governor's position in vetoing Assembly Bill 101, namely, that existing laws such as the labor code prohibited sexual orientation discrimination. (Bishop, *California Ruling Protects Homosexuals From Job Bias*, N.Y. Times (Oct. 29, 1991) p. A10). Additionally, the *San Francisco Examiner* also cited Wisner as declaring that the ruling confirmed the governor's judgment (Rosenfeld, *Gay job applicants protected*, S.F. Examiner (Oct. 29, 1991) p. A-10).

Due to this recent ruling and the actions of the Governor, I would appreciate clarification of your department's policy. It is my understanding that both Los Angeles City Attorney James Hahn and San Francisco District Attorney Arlo Smith have expressed their intent to prosecute sexual orientation discrimination cases under the Labor Code. But they can only do so if they receive cases from your department. Both prosecutors have advised victims to file complaints with your office.

Effective enforcement of Labor Code Sections 1101 and 1102 depends on the adoption of policies and procedures by your office that are responsive to the Governor's position and the Court of Appeal ruling. Please advise us of your plans to protect victims of sexual orientation discrimination in employment.

Respectfully,



Thomas F. Coleman

TFC:zz

cc: Governor Pete Wilson

are not protected by a state-run guarantee fund.

Garcia's ruling shocked some industry experts.

"Good lord, this little-known office is running amok," said Norm Levine of the California Insurance Wholesalers Association. "If there is no prohibition for coming in to do business in this state without some

"He won't have a . . . (good companies) any more.

Garamendi's top officials meet today in San Francisco, Stern said. She said the department would consider asking Gov. Wilson to overturn the Garcia ruling and reinstate the emergency regulation.

State orders acceptance of job-bias complaints

Labor officials must hear cases based on sexual orientation

By Bob Egelko
The Associated Press

SAN FRANCISCO — A state official on Tuesday ordered the California labor commissioner's offices to start accepting complaints of job discrimination based on sexual orientation, one day after a court ruling declaring such discrimination illegal.

The complaints can be filed with Division of Labor Standards and Enforcement offices around the state, said John Duncan, a deputy director of the Department of Industrial Relations. He said the order had come from department Director Lloyd Aubry, an appointee of Gov. Pete Wilson.

"This court ruling is a significant development," Duncan said. "The director today has said that we will accept this responsibility. . . . Effective at this time, all our district offices are being informed of it."

He also said Labor Commissioner Virginia Bradshaw, who heads the affected division, is forming a task force "to train people for the uniqueness of these circumstances." Duncan said Bradshaw

hopes to work with all concerned.

The labor commissioner and her division spend most of their time enforcing state wage-and-hour laws. But they also enforce a law forbidding employer interference in political activity by employees or job applicants — the law cited in Monday's gay-rights ruling by the San Francisco-based 1st District Court of Appeal.

A 1979 state Supreme Court ruling had cited the same law in prohibiting discrimination against openly declared homosexuals by government agencies and public utilities, likening a declaration of homosexuality to political advocacy.

Since then, the labor commissioner has received a few complaints of discrimination based on gay-oriented political activity, Duncan said.

But when Wilson vetoed a gay-rights bill in September and declared that current law already banned such discrimination, there was no established state agency that regularly accepted complaints of discrimination against homosexuals.

Then the appeals court issued its ruling, interpreting the principles in the Supreme Court's 1979 case to cover any employer who discriminates because of sexual orientation.

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DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
455 Golden Gate Avenue, Suite 3194
San Francisco, CA 94102



ADDRESS REPLY TO:
P.O. Box 603
San Francisco, CA 94101

In Reply Refer To:

(415) 703-4750

October 31, 1991

Thomas F. Coleman, Esq.
Center for Personal Rights Advocacy
Post Office Box 65756
Los Angeles, CA 90065

Dear Mr. Coleman:

I received your letter of October 31, 1991, which was faxed to my office late yesterday afternoon.

In response to your inquiry, the Division of Labor Standards Enforcement (DLSE) is currently taking complaints from applicants and/or employees, who feel that they have been discriminated against by employers because of their sexual orientation in violation of Labor Code Sections 1101 and 1102.

According to our established procedures for handling discrimination complaints, any individual alleging discrimination because of sexual orientation must file such a claim with the local district office of the DLSE within thirty (30) days of the alleged discriminatory action. The investigation of the complaint will be conducted pursuant to the provisions of Labor Code Section 98.7. At the time of the filing of the complaint, the individual will be asked to complete a questionnaire to obtain information necessary to conduct an investigation. The investigation will be handled by a Discrimination Complaint Investigator (DCI) who will conduct the field investigation. The investigation would include not only interviewing both the individual alleging the discrimination and the employer, but also any appropriate witnesses.

Additionally, the DCI may contact the parties and ask them to meet to explore the possibility of a settlement. If no settlement is reached by the parties, the DCI will prepare a written Summary of Facts and Conclusions and will forward those documents to the Labor Commissioner for review.

The Labor Commissioner may adopt the Facts and Conclusions prepared by the DCI and, in that case, a Decision will be issued by the Labor Commissioner to that effect. If the Decision finds that the individual has been discriminated against, the employer will

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be given ten (10) days to comply with the Decision. Failure to comply will result in the Division initiating court action to enforce compliance with the Labor Commissioner's Decision.

If the Decision finds that there is insufficient evidence to establish that the individual has been discriminated against, he or she will be contacted regarding any alternative rights he or she may have.

Within ten (10) days after service of the Decision, either party may seek review of that Decision by writing to the Director of the Department of Industrial Relations (DIR). A timely filed appeal will, of course, stay enforcement pending a decision by the Director.

The Labor Commissioner, instead of adopting the DCI's Conclusions, may decide that a hearing is necessary to fully establish the facts surrounding the complaint. Although the hearing in these cases is informal, both the employer and the employee will be entitled to representation by an attorney, union representative, or other persons of their choice. The hearings will be conducted by a Hearing Officer. Both the employer and the complainant will be entitled to subpoena witnesses to the hearing.

After the hearing, the Hearing Officer will file his or her Findings of Facts and Conclusions with the Labor Commissioner. The Labor Commissioner will issue a Decision. If the Decision finds that the employee has been discriminated against, the employer will be given ten (10) days to comply with the Decision to remedy the situation or face court action to enforce the Decision. In the event it becomes necessary to enforce a Decision of the Labor Commissioner, the attorneys for the Labor Commissioner will prosecute the action.

If the Decision finds that there has not been discrimination, the DCI will contact the individual concerning his or her alternative rights.

Once again, either party may seek review of the Labor Commissioner's Decision by filing an appeal with the Director of the DIR within ten (10) days of the date of service of the Decision.

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The remedies available under Labor Code Section 98.7(c) include the Labor Commissioner directing the employer to cease and desist from the violation and take such action as is deemed necessary to remedy the violation, including, where appropriate, rehiring and reinstatement, recovery of back wages, reimbursement of reasonable attorney's fees associated with any hearing held by the DLSE in investigating the complaint, and the posting of notices to employees.

The district offices of the DLSE are prepared to take complaints from gay and lesbian employees as well as applicants for employment who feel they have been discriminated against. We are currently making some revisions in our "Initial Report or Claim" form so that it is more responsive to the information required to do such an investigation. Although our DCI's and Hearing Officers are trained to investigate and hear discrimination complaints, we will be giving them additional training to ensure that they are sensitive to the issues involved on both sides of these types of complaints.

I hope this is responsive to your inquiry and thank you for writing with your concerns.

Very truly yours,



Victoria L. Bradshaw
State Labor Commissioner

VLB:oa

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
455 Golden Gate Avenue, Suite 3194
San Francisco, CA 94102



ADDRESS REPLY TO:
P.O. Box 603
San Francisco, CA 94101

In Reply Refer To:

(415) 703-4750

November 1, 1991

Thomas F. Coleman
P.O. Box 65756
Los Angeles, CA 90065
Attention: Zeke

Dear Mr. Coleman:

Enclosed is the information recently requested from this office.

We hope this information will be of assistance to you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jose Millan".

Jose Millan
Sr. Deputy Labor Commissioner

JM:oa

encl: Memo dated 10/30/91 re. L.C. Sections 1101-1102