

CLASP

Policy solutions that work for low-income people



RUTGERS
School of Management and Labor Relations

Center for Innovation in Worker Organization

Labor Standards Enforcement Webinar: Pre and Post-Judgment Enforcement, Settlement, Collections and Compliance Monitoring

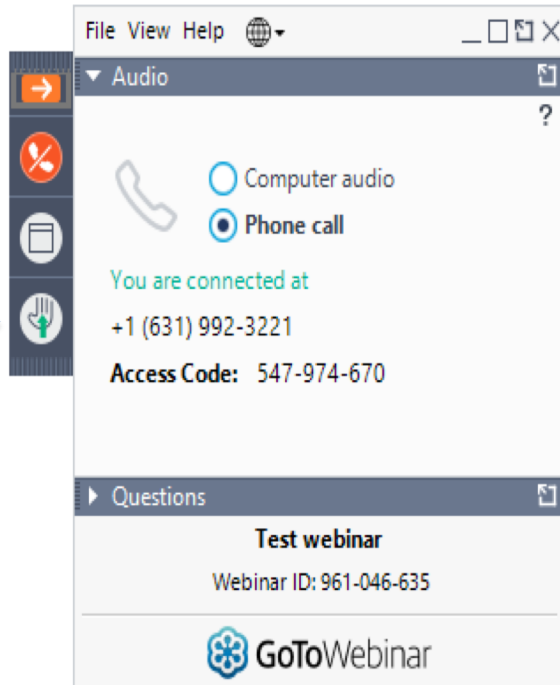
10/2017

Ask Us Questions!

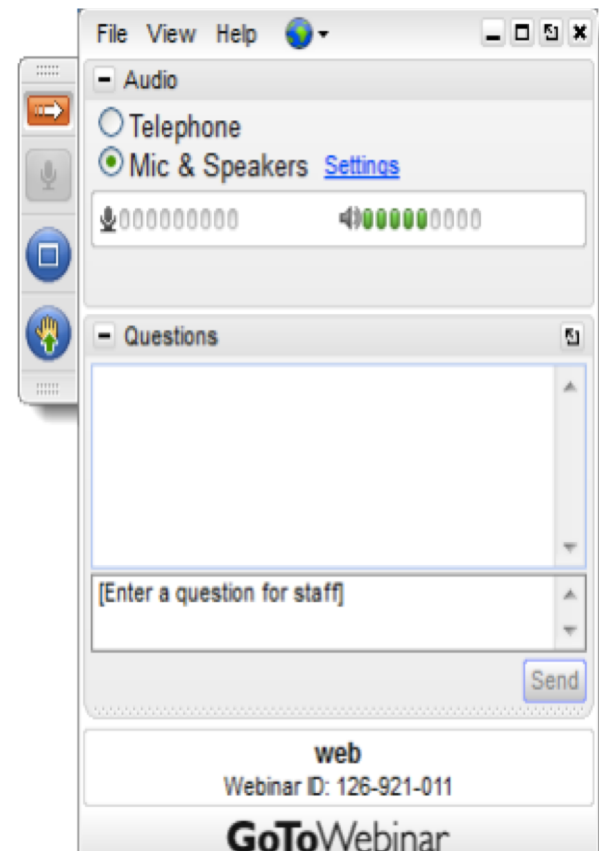


Raise your hand to be unmuted
and ask a question verbally...

Click here
to "raise
your hand"



...or type in your question



Speakers

Laura Fortman, former deputy administrator of US Wage And Hour Division, US Department of Labor

Matthew Sirolly, Attorney, Department of Industrial Relations, California Labor Commissioner's Office

Sarah Leyrer, Senior Labor Standards Investigator, Seattle Office of Labor Standards

Cynthia Mark, Chief of the Fair Labor Division, Massachusetts Office of the Attorney General

Janice Fine, Associate Professor, Rutgers School of Management and Labor Relations and Director of Research and Strategy, Center for Innovation in Worker Organization

Pronita Gupta, Director of Job Quality, CLASP

Participants in Today's Webinar

Cities/Counties

- LA County
- City of Chicago
- New York City
- Oakland
- San Diego
- Trenton, NJ
- District of Columbia
- San Francisco
- City of Los Angeles
- Emeryville
- Seattle
- Pittsburgh

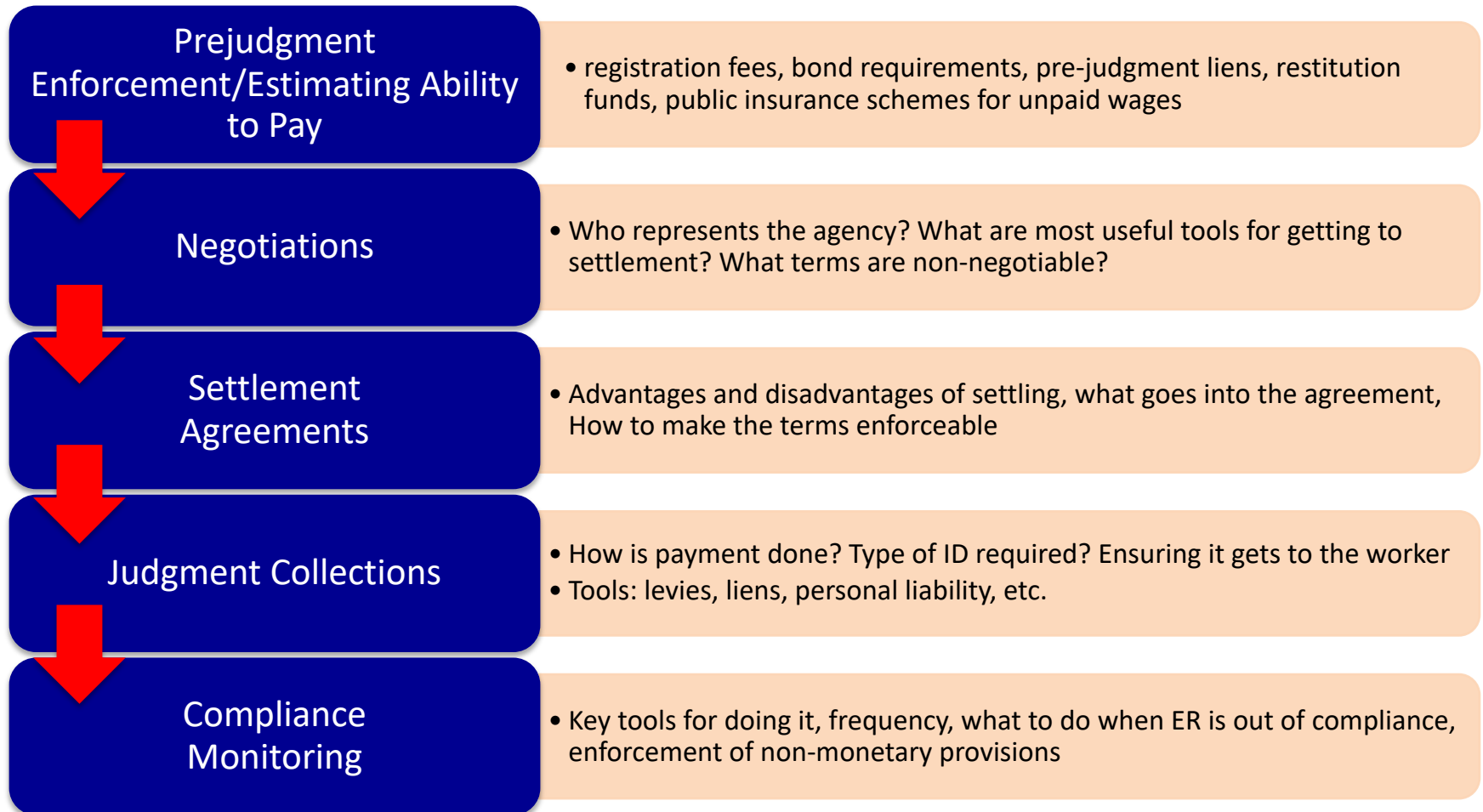
State Agencies

- Washington
- Vermont
- Montana
- New Hampshire
- Minnesota
- Utah
- Ohio
- Hawaii
- Texas
- Tennessee
- Oregon
- Kentucky
- California
- Massachusetts
- Colorado
- Illinois
- U.S. Dept. of Labor

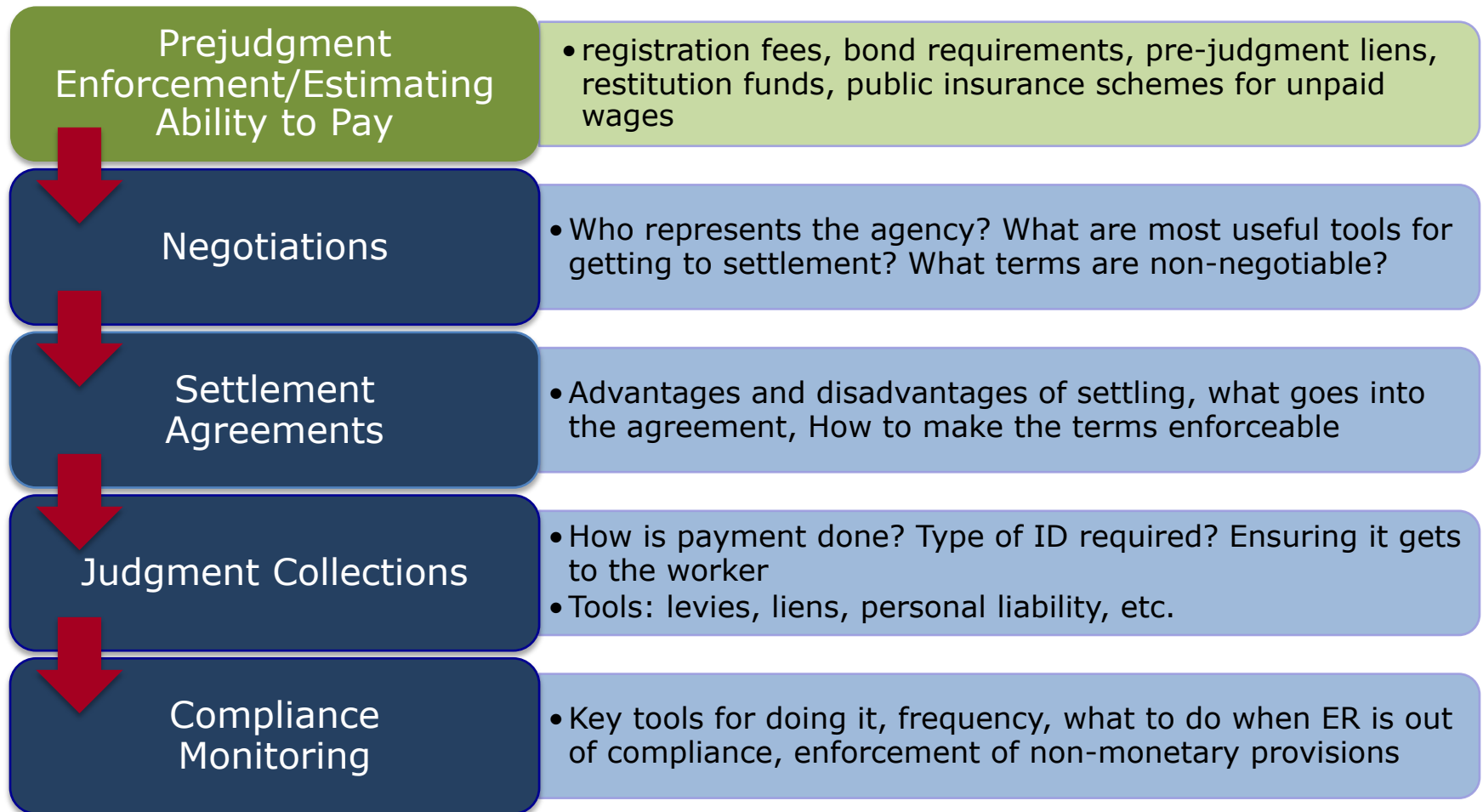
Advocacy Groups, Funders, Research Orgs

- Public Justice
- Arise Chicago
- NELP
- Fair Worker Center
- ROC United
- Economic Policy Institute
- KIWA
- Neighborhood Funders Group
- The Lift Fund
- Pacific Resource Partnership
- Center on Policy Initiatives

The flow of the webinar will follow the flow of a typical case



The Flow Of The Webinar Will Follow The Flow Of A Typical Case



Company

- Copy of the three most recent years' **Audited Annual Financial Statements**
- Financial Statements (unaudited) **as of today**
- Copy of the three most recent years' **income tax** returns
- Copies of most recent **bank statements** for all company accounts

Individual

- Copy of the three most recent years' **income tax** returns
- Copies of most recent **bank statements** for all personal accounts

What is “Collection”?

What is “Judgment Enforcement”?

Collections

- We are always trying to collect in the wage cases.
- “Collections” begins the moment the worker asks her boss for unpaid wages
- Workers = commercial creditors, engaged in a credit transaction. Services offered on credit.

Judgment Enforcement

- Judgment enforcement is the last, imperfect, step in the collections process.
- Like the legal system itself, judgment enforcement consists of a set of imperfect tools used to pressure people to do things they don’t want to do.

Three Basic Ways to Collect a Debt (Wages or Not)

(1) Scare debtor into paying

- Criminal penalties, treble damages, etc.

(2) Seize the assets/income of debtor (or guarantor)

- Liens, levies, etc.

(3) Get someone else besides the debtor to pay

- Classic examples: insurance, bonds, and guarantors
- More important for wages: up-the-chain contractors, corporate principals, and successor businesses.

Collecting from Someone Other than Employer: “Insurance”

– Restitution Funds

- California has wage restitution funds for carwash workers, garment workers and farm laborers.
- Money comes from registration fees.

– Bonds

- Surety (insurance company) agrees to pay the debt if the employer can't or won't. The risk of getting the money back from employer given to surety.
- California requires bonds in certain industries: carwashes, farm labor contractors, construction contractors.
- California also requires bonds to appeal administrative decision/wage-citations to court, and for employers with outstanding judgments.

Collecting from Someone Other than Employer: Related Businesses/People

– The Idea

- People or companies who should be liable, even if they are not technically the employer

– Types

- Up-the-chain customers/contractors
- Individual owners/directors of companies
- Successor businesses
- Fraudulent conveyance recipients

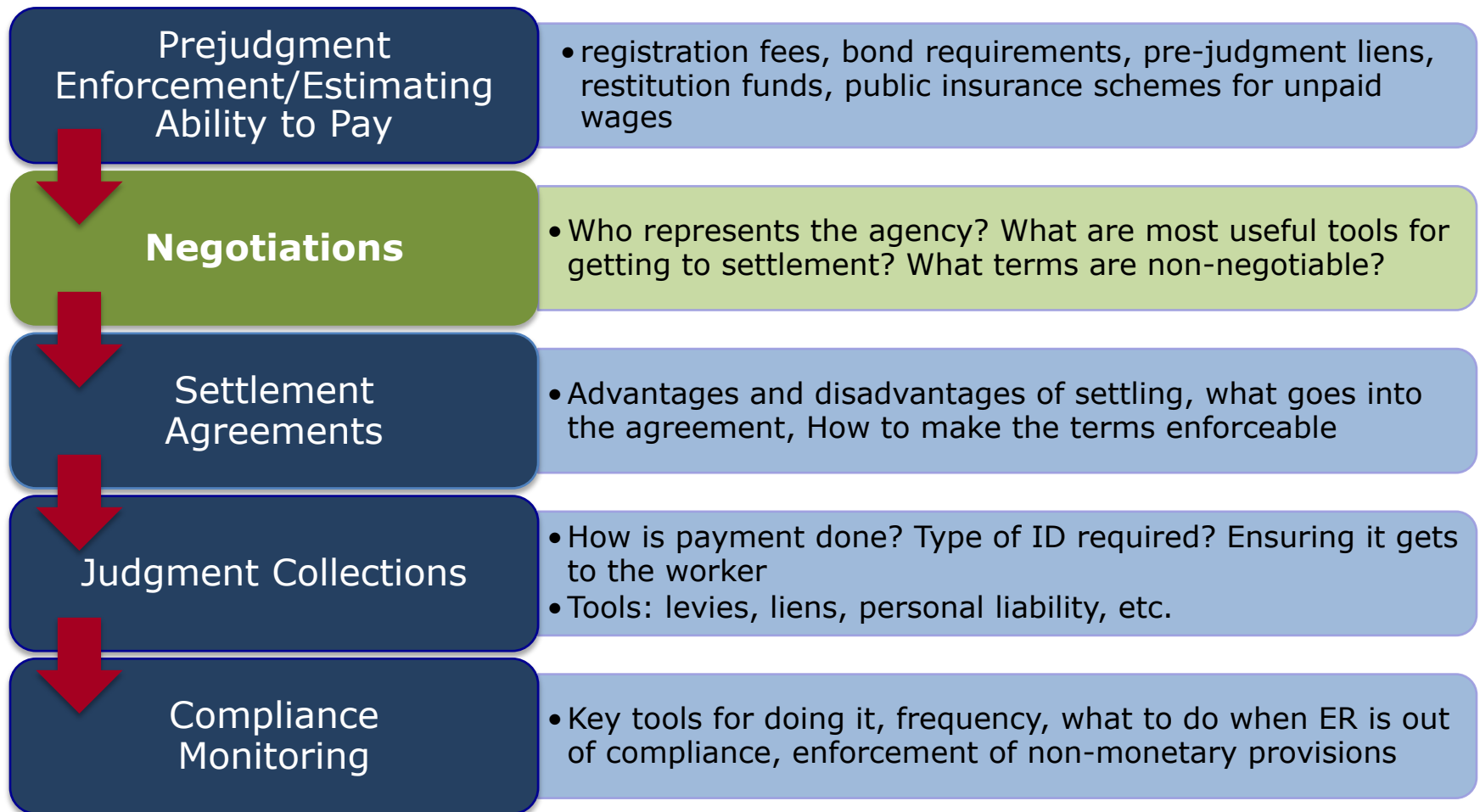
Seizing Assets and Income (Pre-Judgment)

- Two purposes of seizing assets/income:
 1. Can be applied to pay debt;
 2. Creates negotiating leverage because debtor wants access to income/assets (or credit) to run business
- If asset properly encumbered, protects you in bankruptcy
- This is usually most powerful collections strategy. In conjunction with up-chain/guarantor liability.

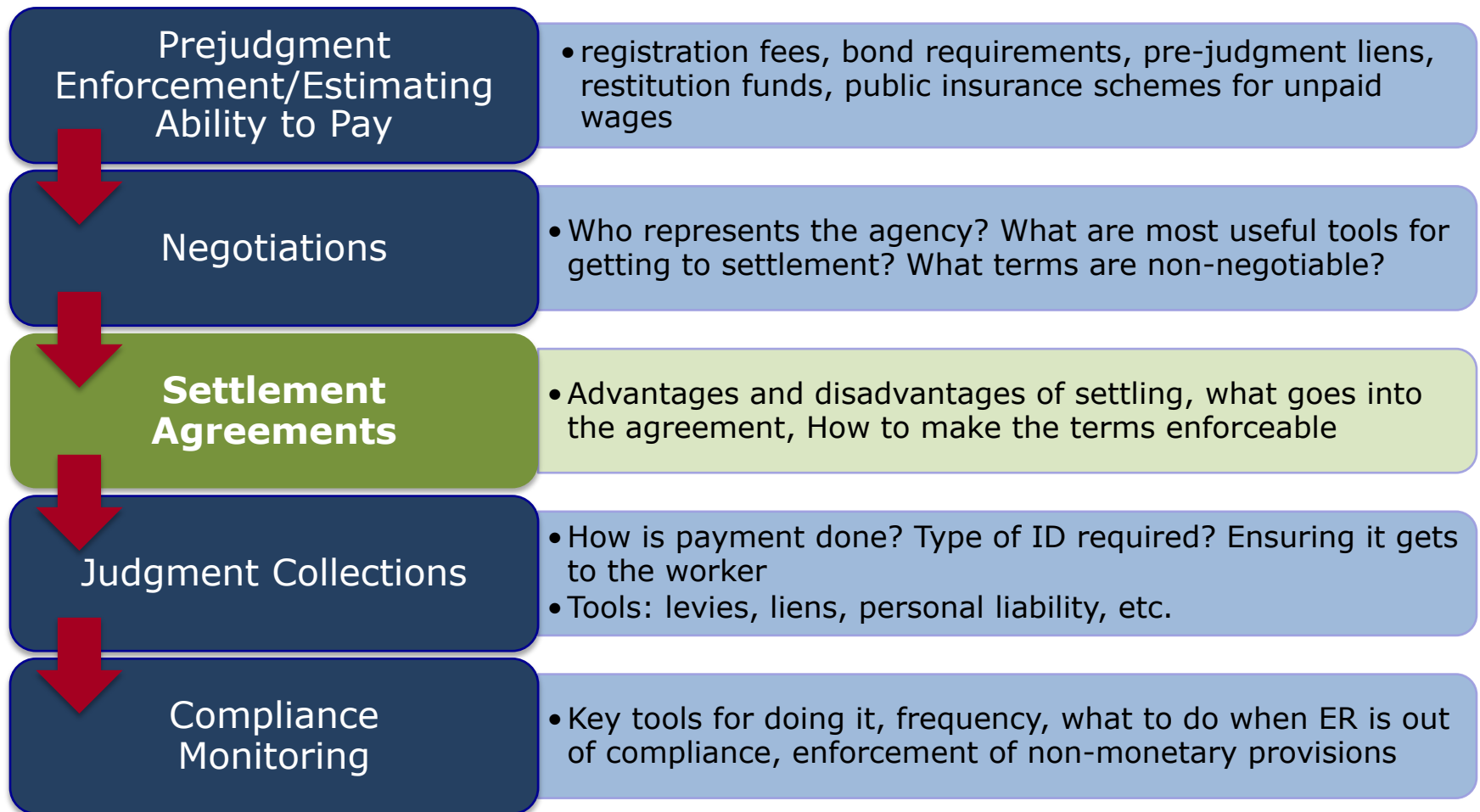
Seizing Assets and Income: Prejudgment Mechanisms

- **Prejudgment liens and attachment**
 - Mechanic's lien; some states have general wage liens
 - Writ of attachment
 - New California law for repeat offenders (Lab. Code sec. 238.2 and 238.3)
 - Distinguish: lis pendens and TRO/TPO
- **Escrow claims under the UCC (Bulk Sales Act)
(and in CA liquor license sale proceeds)**
- **Bankruptcy proofs of claim**

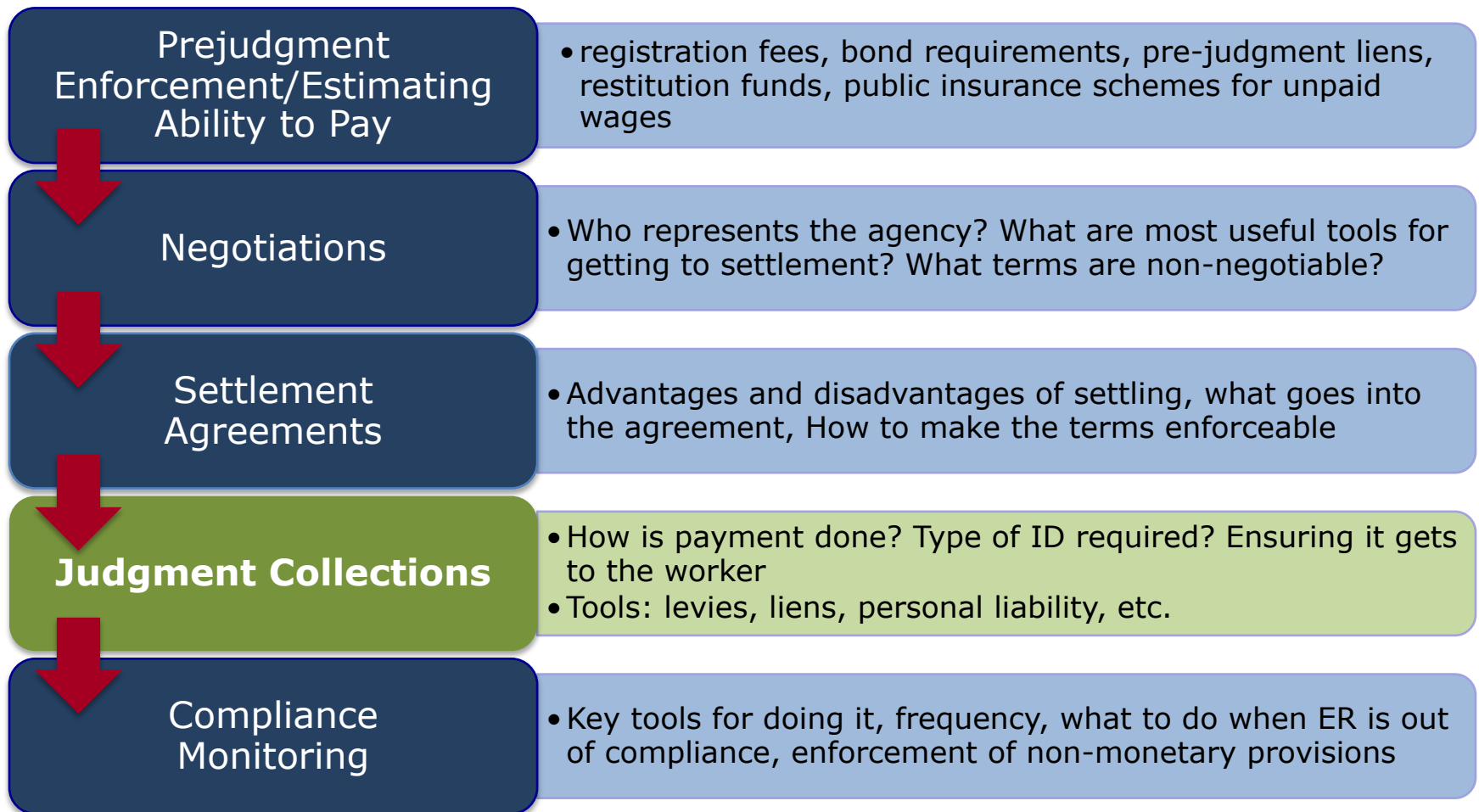
The Flow Of The Webinar Will Follow The Flow Of A Typical Case



The Flow Of The Webinar Will Follow The Flow Of A Typical Case



The Flow Of The Webinar Will Follow The Flow Of A Typical Case



Statutory Authority

M.G.L. Ch.149, § 27C(b)

- *... the attorney general may issue a written warning or a civil citation. For each violation, a separate citation may be issued requiring any or all of the following: that the infraction be rectified, that restitution be made to the aggrieved party, or that a civil penalty... be paid to the commonwealth.*

Penalty Range:

- Intentional/subsequent: \$25,000 per violation
- Intentional/not subsequent: \$15,000 per violation
- Unintentional/not subsequent: \$7,500 per violation



Statutory Lien Language

M.G.L. Ch.149, § 27C(b)(7)

...if any civil penalty imposed by a citation ... remains unpaid beyond the time period specified for payment...such penalty amount and any restitution order, together with interest thereon at the rate of 18 per cent per annum, shall be a lien upon the real estate and personal property of the person who has failed to pay such penalty.



*Such lien shall take effect by operation of law on the day immediately following the due date for payment of such fine, and, unless dissolved by payment, shall as of said date be considered a tax due and owing to the commonwealth, **which may be collected through the procedures provided for by chapter 62C...***

MA Department of Revenue

M.G.L. Ch. 62C

Recovery methods include:

- File a tax lien on a taxpayer's property and individual's social security number
- Levy an asset, such as a bank account, accounts receivable or wages
- Suspend, non-renew or revoke the professional license or certificate of any licensee
- Suspend a driver's license
- Suspend automobile registration
- Publicly disclose the names of delinquent taxpayers
- Intercept or offset refunds
- Seize assets, such as cars or businesses

Other Possible Partners

- Other state agencies (labor, insurance, licensure, public safety authorities)
- Cities/Towns
- General contractors/lead employers



MA Alcoholic Beverages Control Commission (ABCC)

In cases where the employer serves/distributes alcohol as part of the business, refer to the state alcoholic beverages control commission to consider liquor license revocation.



Local Wage Theft Ordinances

Partner with local cities/towns that have wage theft ordinances

- Engage interested staff
- Share enforcement information
- Include city/town where violation occurred in public enforcement data



General Contractors/Lead Employers

Leverage GC/Lead Employers, especially if work still ongoing.

- Recent FLD enforcement against multiple sub contractors on a long term/large construction project. GC on project 'encouraged' cited employers to pay.



Contact MA AGO/FLD

www.mass.gov/ago/fairlabor

Cyndi Mark

617-963-2626

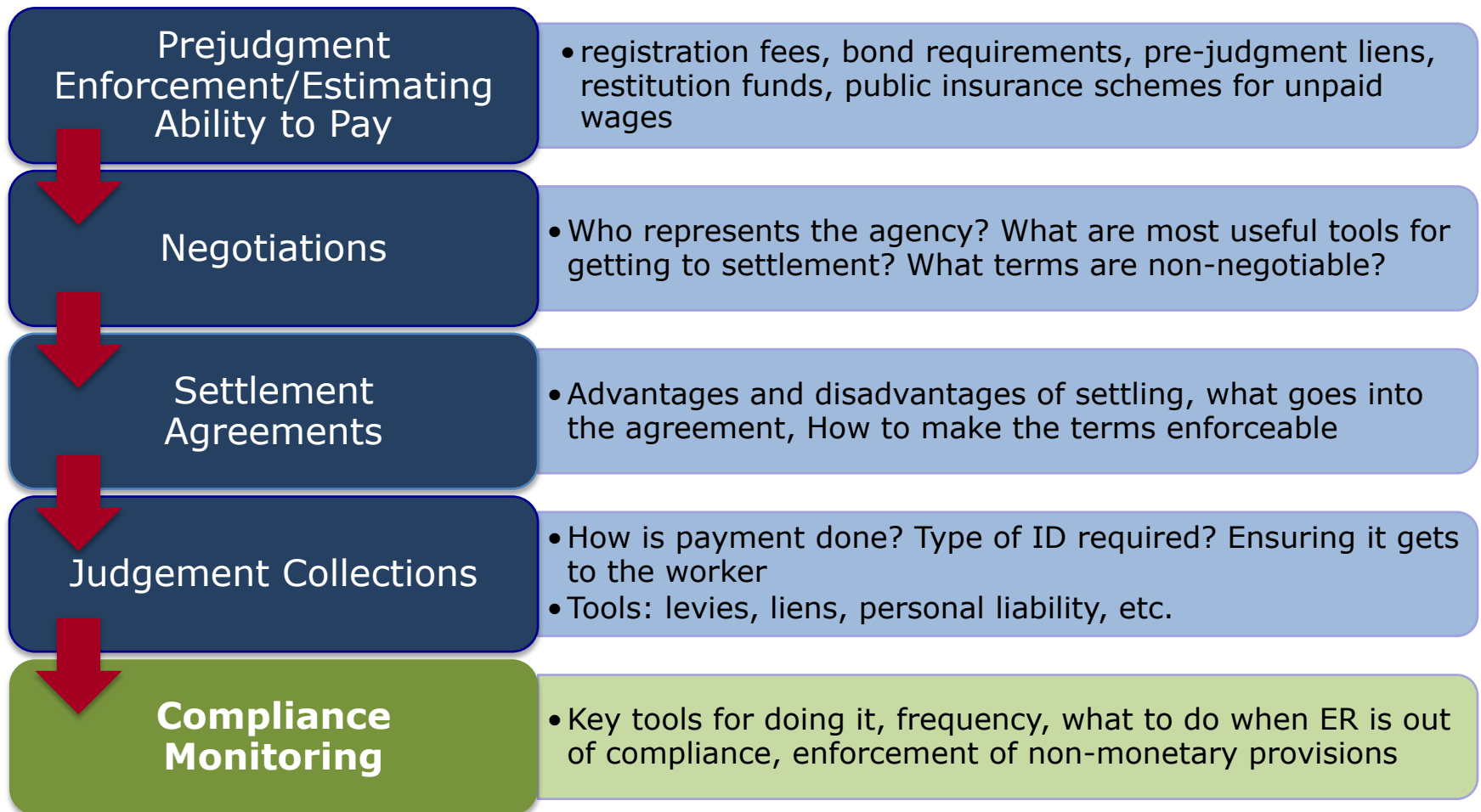
cynthia.mark@state.ma.us

Lauren Moran

617-963-2264

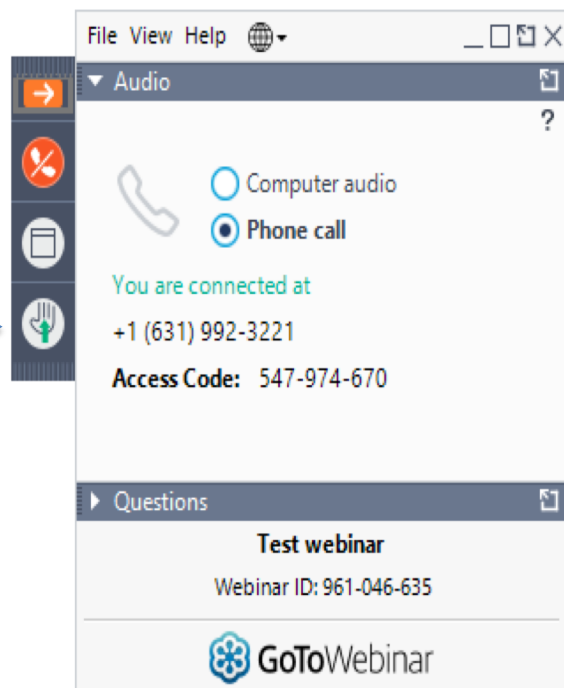
lauren.moran@state.ma.us

The Flow Of The Webinar Will Follow The Flow Of A Typical Case

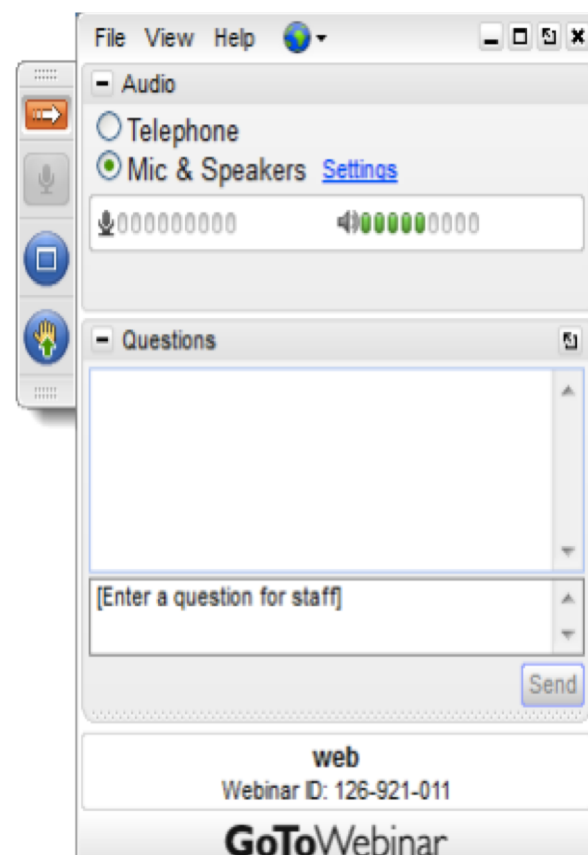


Raise your hand to be unmuted
and ask a question verbally...

Click here
to "raise
your hand"



...or type in your question



Thank You For Joining!

Presenter Contact Information:

Sarah Leyrer

Email: Sarah.Leyrer@seattle.gov

Matthew Sirolli

Email: Msirolli@dir.ca.gov

Cynthia Mark

Email: cynthia.mark@state.ma.us

Laura Fortman

Email: laura.a.fortman@gmail.com

Webinar Series Contacts: Please Suggest Ideas for Future Webinars!

Pronita Gupta

Email: pgupta@clasp.org

Janice Fine

Email: jrfine@smlr.rutgers.edu