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2013 Annual Report of the Unlawfully Uninsured Employer Enforcement Program Labor Code Section 90.3(d)

The Labor Commissioner respectfully submits this report to the Legislature.

The Division of Labor Standards Enforcement (DLSE) through its Bureau of Field Enforcement Unit (BOFE) is charged with enforcing laws requiring employers in the state of California to secure the coverage of workers' compensation insurance for any and all employees.

Background

To ensure adequate law enforcement, Assembly Bill (AB) 749 (Chapter 6, Statutes of 2002) added Labor Code §90.3(b). Senate Bill (SB) 869 (Chapter 662, Statutes of 2007) amended sections 62.5 and 90.3 of the Labor Code, as well as section 1095 of the Unemployment Insurance Code. Labor Code section 90.3(b) mandates that "[i]n order to ensure that the laws requiring employers to secure the payment of compensation are adequately enforced, the Labor Commissioner shall establish and maintain a program that systematically identifies unlawfully uninsured employers." The section also requires that the industries and employers be identified from data contained in the Uninsured Employers' Benefits Trust Fund (UEBTF), the Employment Development Department (EDD), and the Workers' Compensation Insurance Rating Bureau (WCIRB). Finally, Labor Code section 90.3(c) requires that the Labor Commissioner establish procedures for ensuring that employers with payroll but with no record of workers' compensation insurance coverage are contacted and on-site inspections of those employers who can show no valid reason for lack of a record of coverage are conducted.

Effective January 1, 2008, SB 869 created a funding mechanism for implementation of the Unlawfully Uninsured Employer Enforcement Program and required the Labor Commissioner to report annually to the Legislature concerning the effectiveness of the program.

Program Results

At the inception of the program, a partnership was created for quarterly data collection: EDD would provide DLSE a randomly selected list of 500 employers from the EDD database. To increase the effectiveness of the program, in September 2011, EDD was asked to send a list consisting solely of employers who reported five or more employees, and the number of

employers was also increased according to specific criteria. Beginning with the first three quarters of calendar year 2012, EDD provided a list of 1,250 employers: 500 randomly selected employers and 250 new employers, in addition to 250 each in two designated industries, per quarter, or on a rotational basis.¹ The two designated industries will be selected based on their high rate of participation in the underground economy. The WCIRB takes the list of 1,250 employers for the represented quarter and screens all of them for evidence of workers' compensation insurance coverage.

DLSE then mails SB 869 letters to the employers for whom WCIRB could not locate evidence of coverage. If the employer cannot provide verifiable proof of workers' compensation insurance in effect at the time of the postmark on its response letter, BOFE initiates an investigation. Upon inspection, BOFE issues citations to employers who still do not provide proof of workers' compensation insurance, as well as other citations for other violations of wage and hour laws, as appropriate. At that point, DLSE compiles a list of all the employers inspected who were determined to have had coverage at the time of the WCIRB check, and DLSE sends that list to WCIRB.² Finally, WCIRB responds to this follow-up list by explaining why it previously failed to find a record of the coverage.³

For 2013, DLSE received 7,500 randomly selected referrals from EDD, reflecting employer information from records for the third and fourth quarter of 2011 and all quarters of 2012. DLSE receives the EDD referrals two quarters beyond the end of the applicable quarter, allowing employers to file any appropriate addendums or changes to their returns before EDD closes the end-of-the-year quarter's statistics. However, at the time of retrieval of the quarterly files for year 2012, the last two quarters of 2011 were deleted due to a file transfer error, which interrupted the flow of referrals for that year. The 2011 files were only received after the EDD cut-off-date.⁴

It should be noted that during the inspection process, DLSE verifies workers' compensation insurance coverage for the time period that the referral from EDD covers. For instance, in January 2012 EDD provided referrals covering the third and fourth quarter of 2011. If no coverage existed for any time during those two quarters or at any time in 2012, then DLSE issued a citation.

¹ Industries included were restaurants, carwash, construction, agriculture, automotive, janitorial, hotel/motel, medical offices, and garment.

² Employers were included in this list if they provided proof of coverage when DLSE mailed them a letter or if they were found to have had coverage at the time of inspection.

³ Some inspections may not confirm coverage for the following reasons: (1) inability to locate business; (2) the business is a residence; (3) the address provided by WCIRB is not valid; and (4) employers did not appear after the Order to Appear notice was mailed.

⁴ 2011 referrals were retrieved at the same time as the 2012 quarterly referrals. As a result, DLSE had to assign and investigate six quarters of referrals to catch up on the backlog. EDD and DLSE expedited the referrals to eliminate the delay or lag time.

This report only reflects information available as of May 7, 2014. Because of the delay in the receipt of EDD referrals and WCIRB data reporting, some investigations based on data obtained during the prior six quarters are ongoing.

Table 1. Summary of Unlawfully Uninsured Program Results

Activity	Reported Number/Amount
Total number of employers (identified from EDD records) screened for matching WCIRB records of insurance coverage or self-insurance.	7,500
<ul style="list-style-type: none"> • Screened employers found to have evidence of insurance coverage or self-insurance. 	6,077
<ul style="list-style-type: none"> • Screened employers notified by DLSE that no record of their insurance coverage could be found and that they had been assigned for investigation. <ul style="list-style-type: none"> ○ Number of inspections completed.⁵ ○ Number of employers still under investigation. 	1,423
	1,259
	164
The number of employers responding to DLSE's notification and request for verification of insurance coverage.	761
<ul style="list-style-type: none"> • Employers who verified they had workers' compensation insurance. 	514
<ul style="list-style-type: none"> • Employers who obtained insurance upon receipt of letter. 	117
<ul style="list-style-type: none"> • Employers who acknowledged lack of workers' compensation insurance (including those not required to have it). 	130
Number of citations issued per Labor Code section 3722(a).	89
Number of citations issued per Labor Code section 3722(b).	73
Employers not cited following investigation. <i>(See Table 2 for breakdown)</i>	1,032
Amount of workers' compensation penalties assessed.	\$4,792, 272.86
Amount of penalties collected.	\$594, 944.17
Amount of citations administratively dismissed. ⁶	\$227, 706.54

⁵ The number of inspections completed includes inspections of employers cited for lacking workers' compensation insurance, employers cited for other noncompliance issues, and employers not cited at all.

⁶ A citation may be administratively dismissed if the employer had no proof of workers' compensation insurance at the time of the inspection/citation, but subsequently submitted proof of insurance valid for the date of inspection.

Table 2 below summarizes the reasons why the 1,032 employers referenced in Table 1 were not cited for lack of workers' compensation insurance following investigation.

Table 2. Reasons Why DLSE Did Not Cite Employers for Lack of Workers' Compensation Insurance Following Investigation

Rationale	Number of Cases
Company out of business/DLSE unable to locate business.	264
No employees.	26
Corporate officers only.	2
DLSE verified workers' compensation insurance coverage.	692
Self-insured.	41
Out of state.	7
Total number of employers not cited for lack of workers' compensation insurance following investigation.	1,032

DLSE provided WCIRB a follow-up list of 453 investigated employers based on the results collected as of January 27, 2014. The list is made up of employers who were able to provide proof of insurance coverage to DLSE which was in effect during the time period for which WCIRB initially indicated it was unable to verify coverage. While WCIRB was reviewing the follow-up list from DLSE, BOFE obtained proof of coverage for additional cases still under investigation. Table 2 indicates a higher number of investigated employers not cited (692) than Table 3 does (453), because Table 2 reflects more recently collected data. Table 3 only summarizes WCIRB's responses for the 453 employers included in the initial follow-up list.

Table 3. WCIRB Assessments of Employers Misidentified As Uninsured

WCIRB Response	Number of Cases
Total number of employers with verified coverage.	414
1. WCIRB found coverage under another name or address.	119
2. DLSE found coverage that incepted after the date of submission for the original list of 7,500 employers to WCIRB.	85
3. DLSE found coverage, but WCIRB did not receive policy until after DLSE had submitted the original list from EDD to WCIRB.	83
4. WCIRB did not find coverage until after receiving the follow-up list.	127
Total number of employers still lacking verified coverage.	39
5. DLSE reported finding coverage but did not provide sufficient information to confirm coverage and WCIRB could not confirm coverage.	5
6. Employers from whom WCIRB still has not received verification of coverage, even though DLSE found they had coverage.	34
Total number of employers in follow-up list to WCIRB for which WCIRB provided responses (the sum of all rows).	453

Summary

DLSE is committed to refining the Unlawfully Uninsured Employer Enforcement Program to improve results of the investigations. These referrals are included in DLSE targeting for concentrated enforcement to enhance efficiency and effectiveness for the benefit of both employees and employers.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Julie A. Su", with a long horizontal flourish extending to the right.

Julie A. Su
Labor Commissioner