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2014 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 (BOFE) Unit 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 section 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. As a result, in 2012, EDD began providing DLSE a list of 1,250 employers¹ on a quarterly basis: 500 randomly selected employers and 250 new employers, in addition to 250 each in two designated industries, per quarter, or on a rotational basis. The two industries designated each quarter are selected based on their high rate of participation in the underground economy. The WCIRB then takes the list of 1,250 employers for the represented quarter and screens all of them for evidence of workers' compensation insurance coverage.

After WCIRB identifies employers in the list for whom no evidence of coverage can be found, DLSE mails SB869 letters to all of those employers. 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, and BOFE may also issue other citations for violations of wage and hour laws, as appropriate. Some BOFE inspections reveal that the employers did indeed have coverage at the time of the WCIRB check. DLSE compiles a list of all such employers and sends it to WCIRB.² In response, WCIRB explains to DLSE why it had previously failed to find a record of the coverage for the employers on this follow-up list (see Table 3). In yet other inspections, BOFE may be unable to ascertain whether or not the employer has insurance coverage.³

In 2014, DLSE received 3,750 randomly selected referrals from EDD, reflecting employer information from records covering the first through the third quarter of 2013.⁴ DLSE receives the EDD referrals for any given quarter two quarters beyond the end of the quarter in question, allowing employers to file any appropriate addendums or changes to their returns before EDD closes the end-of-the-year quarter's statistics. During the inspection process, DLSE verifies workers' compensation insurance coverage for the time period that the EDD referral covers. For instance, in January 2014, EDD provided referrals covering the third quarter of 2013. If no coverage existed for an employer during that quarter or at any time during the year leading up to DLSE's inspection, then DLSE issued a citation to the employer.

This report reflects analysis of EDD data for the first three quarters of 2013 available as of January 26, 2015. The fourth quarter cases from 2013 are now under investigation and will be reported in next year's legislative report.

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

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

³ The reasons may be as follows: (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 Throughout this report, all references to quarters are for calendar years.

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. | 3,750 |
| <ul style="list-style-type: none"> • Screened employers found to have evidence of insurance coverage or self-insurance. | 2,789 |
| <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. | 961 |
| | 588 |
| | 373 |
| The number of employers responding to DLSE’s notification and request for verification of insurance coverage. | 544 |
| <ul style="list-style-type: none"> • Employers who verified they had workers’ compensation insurance. | 226 |
| <ul style="list-style-type: none"> • Employers who obtained insurance upon receipt of letter. | 262 |
| <ul style="list-style-type: none"> • Employers who acknowledged lack of workers’ compensation insurance (including those not required to have it; see Table 2). | 56 |
| Number of citations issued per Labor Code section 3722(a). | 45 |
| Number of citations issued per Labor Code section 3722(b). ⁶ | 29 |
| Employers not cited for lack of coverage following investigation. (See Table 2 for breakdown) | 510 |
| Amount of workers’ compensation penalties assessed. | \$2,286,892 |
| Amount of penalties collected. | \$262,860 |
| Amount of citations administratively dismissed. ⁷ | \$167,946 |

Table 2 summarizes the reasons why the 510 employers referenced in Table 1 were not cited for lack of workers’ compensation insurance following investigation.

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 Each citation issued per Labor Code sections 3722(a) or (b) represents one employer lacking coverage. Consequently, of the 3,750 employers identified by EDD and screened by WCIRB, DLSE ultimately found 74 of them to be without coverage.

⁷ 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. 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. | 99 |
| DLSE verified workers' compensation insurance coverage. | 381 |
| Employers not required to have any coverage. | 30 |
| • No employees. | 6 |
| • Corporate officers only. | 1 |
| • Self-insured. | 15 |
| • Out of state. | 8 |
| Total number of employers not cited for lack of workers' compensation insurance following investigation. | 510 |

DLSE provided WCIRB a follow-up list of 183 investigated employers based on the results collected as of December 17, 2014. The list is made up of employers who were able to provide DLSE proof of insurance coverage that was in effect during the time period for which WCIRB initially indicated it was unable to verify coverage. Table 2 indicates a higher number of investigated employers found to have coverage (381) than Table 3 does (183), because Table 2 reflects more recently collected data (as of January 26, 2015). While WCIRB was reviewing the follow-up list from DLSE, BOFE obtained proof of coverage for additional cases still under investigation. Table 2 reflects this higher number of cases, whereas Table 3 only summarizes WCIRB's responses for the 183 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. | 157 |
| • WCIRB found coverage under another name or address. | 82 |
| • DLSE found coverage that inceptioned after the date of submission for the original list of 3,750 employers to WCIRB. | 45 |
| • DLSE found coverage, but WCIRB did not receive policy until after DLSE had submitted the original list from EDD to WCIRB. | 4 |
| • WCIRB did not find coverage until after receiving the follow-up list. | 26 |
| Total number of employers whose coverage WCIRB still could not verify. | 26 |
| • DLSE reported finding coverage but did not provide sufficient information to for WCIRB to confirm coverage. | 16 |
| • WCIRB still has not received verification of coverage from employers, even though DLSE found they had coverage. | 10 |
| Total number of employers in follow-up list to WCIRB for which WCIRB provided responses (the sum of all rows). | 183 |

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 cursive script, appearing to read "Julie A. Su", is written above a solid horizontal line.

Julie A. Su
Labor Commissioner