

DEPARTMENT OF INDUSTRIAL RELATIONS

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**Julie A. Su***California Labor Commissioner**Division of Labor Standards Enforcement***2013-2014 FISCAL YEAR REPORT ON THE EFFECTIVENESS  
OF THE BUREAU OF FIELD ENFORCEMENT**

Labor Code section 90.5(d) requires the Labor Commissioner to report annually to the Legislature concerning the effectiveness of the Bureau of Field Enforcement (the Bureau). This report shall include: (1) the enforcement plan adopted by the Labor Commissioner and the rationale for the priorities, (2) the number of establishments investigated by the Bureau and the number and types of violations found, (3) the amount of wages found to be unlawfully withheld from workers and the amount of unpaid wages recovered for workers, and (4) the amount of penalties and unpaid wages transferred to the General Fund as a result of the efforts of the Bureau.

The Bureau investigates complaints and takes enforcement actions to ensure employees are not being required or permitted to work under unlawful conditions. Authority for enforcement action taken by Bureau investigators includes a broad range of actions: enforcing minimum wage and overtime requirements, child labor laws, and the requirement of employers to carry workers' compensation insurance; auditing payroll records; collecting unpaid wages, including prevailing wages on public works jobs; issuing citations for violations of any applicable Labor Code sections; confiscating illegally manufactured garments; and providing injunctive relief to preclude further violations of the law.

Over the last four years, the Bureau has reinforced the core mission of the Division of Labor Standards Enforcement (the Division) of collecting wages for California's wage earners and penalizing employers who participate in the underground economy. It is unacceptable that businesses violating labor laws should gain a competitive advantage over law abiding employers. As a result, the Bureau is targeting businesses that are intentionally cheating and will use every tool in its arsenal to prosecute these violators to the fullest extent of the law. Because we cannot investigate every workplace suspected of breaking the law, the Bureau must maximize the impact of each enforcement action. To do so, the Bureau works in collaboration with sister state agencies, local law enforcement and other governmental agencies, as well as other stakeholders from community-based organizations to industry associations. Over this reporting period in particular, the Bureau has successfully worked in conjunction with District Attorneys to bring criminal prosecutions for wage theft.

The Bureau's partnerships have resulted in better leads to uncover wage theft and strengthened the Division's ability to interview workers in a safe environment to understand the nature of violations occurring at the workplace. In addition, legislative changes have given the Bureau more power to issue civil citations for certain violations that were once only enforceable through the Berman wage claim process or through private lawsuits. For example, the Bureau is now able to issue citations for liquidated

damages when minimum wage violations occur. This change did not expand liability for employers breaking the law, but it did streamline the Division's ability to crack down on those perpetrators of underground economy violations, protecting honest employers and resulting in smarter use of government resources.

The Division has continued staff training, particularly on conducting wage audits to determine the extent of wage theft and to put wages back into workers' pockets, as well as additional field enforcement training to provide staff a better understanding of various schemes used by unscrupulous employers to avoid compliance with the law. This training has helped the Bureau secure better leads and conduct investigations more effectively. The deeper, more meaningful investigations the Bureau was able to conduct have increased the number and amount of wage audits and penalty assessments this year.

Finally, in this reporting period, the Bureau has continued the positive trend that has characterized the last four years of improving the rate of citations to inspections. This further demonstrates the Division's commitment to using government resources wisely and avoiding indiscriminate sweeps that burden law-abiding employers.

### **CRIMINAL INVESTIGATION UNIT**

The Criminal Investigation Unit (CIU), made up of sworn peace officers, handles cases involving wage theft (which can be a felony or misdemeanor), extortion, felony arrest, misdemeanor arrest, misdemeanor citations, payment of wages with insufficient fund checks, and kickbacks on public works projects. CIU increased its activities in fiscal year 2013-2014 by filing 12 felony cases of wage theft, 3 other felony cases for forgery, intimidating or threatening witnesses, and extortion. CIU also submitted 13 misdemeanor filings, made 15 misdemeanor arrests, issued 2 arrest felony warrants, and executed 11 search warrants.

During this reporting period, the Bureau also led the first Wage Theft Training at the California District Attorney Association conference. (See the list below for additional criminal prosecutions in public works enforcement.) Some of the other highlights for fiscal year 2013-2014 include the following:

- The San Diego County District Attorney's Office requested the assistance of CIU to investigate the death of an employee and additional allegations of fraud. After the preliminary hearing, the defendants were charged with violation of Labor Code section 3700.5(a) and Unemployment Insurance Code sections 2117.5 and 2118.5.
- As a result of investigating a forged workers' compensation insurance document, the CIU also learned employees were paid less than minimum wage and were not reported to the Employment Development Department (EDD). The San Diego County District Attorney's Office issued charges against the owner for violation of Penal Code sections 115, 134, and 470.
- The CIU investigated an employer with several outstanding judgments and determined that the owner had the ability to pay the judgments, but refused to do so. Employees were owed nearly \$33,000 in unpaid wages. In addition, the owner was issued a Stop Order/Penalty Assessment for not possessing workers' compensation insurance. The Riverside County District Attorney's

Office issued charges against the owner for violation of Labor Code sections 3700.5, 3710.2, 1197.2, and Penal Code section 487(a).

- Two employees told the Division that their employer threatened to deport them because they filed wage complaints for being paid significantly below minimum wage. The two employees are owed nearly \$25,000 in wages. The San Diego County District Attorney's Office issued charges against the owner for violation of Penal Code sections 476(a) and 487(a).
- The CIU investigated allegations of several wage claims filed against a restaurant owner and determined \$15,875 in unpaid wages was owed. The San Diego County District Attorney's Office issued charges against the owner for violation of Penal Code section 487(a).
- The CIU initiated an investigation of a janitorial company for minimum wage violations and threats of deportation when employees filed a complaint with the Division's Wage Claim Adjudication Unit and determined the owners had previously owned another company where the employees were not paid their wages. In total, there were 31 employees affected throughout Riverside and San Diego Counties, totaling \$30,582 in losses. The San Diego County District Attorney's Office issued charges against the owner for violation of Penal Code sections 476(a) and 487(a).

## **ENFORCEMENT RESULTS**

In fiscal year 2013-2014, the Bureau conducted a total of 3,792 inspections, resulting in a total of 2,664 citations. The ongoing commitment of this Administration to identify and combat wage theft has resulted in more in-depth investigation to uncover underground labor violations. The largest single source of violations and citations continues to be the failure to carry workers' compensation insurance, with 1,224 citations and a total assessment amount of \$30,108,340 (see Table 1). Citations for the failure to issue an itemized wage statement (630 violations) were second highest in frequency, with a total dollar amount of assessments for this citation category of \$7,870,513 (see Table 1). The following tables illustrate the performance by the Bureau *inclusive* of all special programs within the Bureau, in particular prevailing wage enforcement through the Public Works Unit and the collaborative efforts of the Labor Enforcement Task Force (LETF).

**TABLE 1: 2013-14 Bureau Results by Citation Category (including Public Works)**

<i>Citation Category</i>	<i># of Citations</i>	<i>Penalties Assessed</i>	<i>Penalties Collected</i>
Workers' Compensation	1,224	\$30,108,340	\$4,011,771
Itemized Statement	630	\$7,870,513	\$3,062,563
Overtime	199	\$879,044	\$168,344
Minimum Wage	178	\$845,850	\$122,618
Rest and Meal Period	115	\$732,613	\$65,765
Non-registration <sup>1</sup>	112	\$802,600	\$278,517
Unlicensed Construction Contractor	79	\$966,800	\$59,760
Child Labor	76	\$95,000	\$62,940
Garment	39	\$61,100	\$22,506
Unlicensed Farm Labor Contractor	7	\$70,000	\$21,700
Other	4	\$3,400	\$200
Misclassification	1	\$5,000	\$5,000
<i>Subtotals</i>	<i>2,664</i>	<i>\$42,440,259</i>	<i>\$7,881,683</i>
Public Works	406	\$13,420,728 <sup>2</sup>	\$3,521,696
<i>LESS citations dismissed/modified</i>		<i>&lt;\$14,656,948&gt;</i>	
<b>TOTALS</b>	<b>3,070</b>	<b>\$41,204,039</b>	<b>\$11,403,380</b>

**TABLE 2: 2013-14 Bureau Results by Industry (including Public Works)**

<b>Total Inspections</b>				<b>3,792</b>
<b>Total Citations Issued</b>				<b>2,664</b>
<i>Industry</i>	<i>Inspections</i>	<i># of Citations</i>	<i>Penalties Assessed<sup>3</sup></i>	<i>Penalties Collected<sup>4</sup></i>
Agriculture	280	125	\$1,290,621	\$459,066
Auto Repair	224	253	\$2,335,419	\$581,444
Car Wash	142	201	\$2,395,223	\$370,647
Construction	590	422	\$3,314,914	\$855,449
Garment	146	135	\$689,731	\$191,785
Restaurant	603	545	\$7,737,815	\$1,586,639
Retail	85	99	\$1,161,539	\$253,514
Other <sup>5</sup>	1,722	884	\$23,514,996	\$3,583,140
<i>Subtotals</i>	<i>3,792</i>	<i>2,664</i>	<i>\$42,440,259</i>	<i>\$7,881,683</i>
<i>LESS citations dismissed/modified<sup>6</sup></i>			<i>&lt;\$14,656,948&gt;</i>	
<i>Subtotals</i>	<i>3,792</i>	<i>2,664</i>	<i>\$27,783,311</i>	<i>\$7,881,683</i>
<b>PLUS Public Works<sup>7</sup></b>	<b>2,617</b>	<b>406</b>	<b>\$13,420,728<sup>8</sup></b>	<b>\$3,521,696</b>
<b>TOTALS</b>	<b>6,409</b>	<b>3,070</b>	<b>\$41,204,039</b>	<b>\$11,403,380</b>

<sup>1</sup> "Non-registration" includes penalties for non-registration against car washes and garment manufacturers.

<sup>2</sup> Includes the assessment of \$4,744,115 in Labor Code section 1777.7 penalties.

<sup>3</sup> When appropriate, dollar amounts have been rounded up to the next dollar. Therefore, all columns/rows may not add up to the exact dollar.

<sup>4</sup> Penalties collected in fiscal year 2013-2014 may include collection of penalties assessed and found due in earlier reporting periods.

<sup>5</sup> The "other" category includes janitorial, race tracks, pallet, and various other industries not falling into any of the other industries specified.

<sup>6</sup> Citations may be dismissed or modified if the employer provides documentary evidence subsequent to the issuance of the citation or at appeal hearing showing compliance at the time the citation was issued.

<sup>7</sup> The Public Works Unit does not conduct inspections but rather measures performance based on cases opened for audit purposes. Thus the data in this table should be understood as 2,617 audits (not inspections) conducted with 406 civil wage and penalty assessments (CWPA's) issued (rather than the number of citations). These measurements are included here to provide a full picture of the Division's performance.

<sup>8</sup> This figure includes an assessment of \$4,744,115 in Labor Code section 1777.7 penalties.

**TABLE 3: 2013-14 Bureau Results by Industry (including Public Works)**

<b>Total Wages Found Due</b>	<b>\$39,350,471</b>	
<b>Total Wages Collected<sup>9</sup></b>	<b>\$18,190,269</b>	
<i>Industry</i>	<i>Wages Found Due</i>	<i>Wages Collected</i>
Agriculture	\$1,929,750	\$237,378
Auto Repair	\$266,111	\$132,621
Car Wash	\$1,546,116	\$861,422
Construction	\$726,276	\$204,401
Garment	\$239,717	\$30,343
Restaurant	\$7,908,056	\$930,319
Retail	\$969,846	\$366,824
Other	\$11,021,869	\$1,964,817
<i>Subtotals</i>	<i>\$24,607,740</i>	<i>\$4,728,126</i>
Public Works	\$14,742,792	\$13,462,143
<b>TOTALS</b>	<b>\$39,350,471</b>	<b>\$18,190,269</b>

**Audits**

The Division has provided ongoing training to staff to uncover issues involving non-payment of wages, resulting in more audits of employers’ payroll records. The Division also initiated a program to train employers to conduct self-initiated audits to augment the investigations conducted in response to specific complaints. If employers are unable to or will not complete the self-audit, the Division has placed emphasis on conducting a thorough investigation and conducting the audits to recover unpaid wages. The following list provides a sampling of notable outcomes of payroll audits performed under the supervision and direction of Bureau staff and resulting in the assessment of wages due to employees (included in the statistics above):

- \$1.5 million for multiple wage theft violations against two janitorial companies operating out of Los Angeles and Orange Counties.
- \$394,944 in unpaid wages and premiums plus penalties against a janitorial company based in San Mateo County.
- \$336,103 in unpaid wages and premiums for 115 employees plus penalties against a janitorial company based in San Diego County.
- \$1.9 million for multiple wage theft violations involving 47 employees against a restaurant owner with two locations in Ukiah.
- \$481,813 in wages and penalties against a restaurant in Alameda County.
- \$236,175 in wages owed to 41 employees, as well as \$96,500 in civil penalties against a janitorial company based out of Stanislaus County.
- \$520,000 in minimum wages, \$550,000 in overtime wages, and \$191,000 as premium pay for no meal and rest periods against a restaurant in Alameda County, leading to a total of 16 felony and misdemeanor counts with the Alameda County District Attorney’s Office.

<sup>9</sup> Wages collected fiscal year 2013-2014 may include collection of wages found due in earlier reporting periods. This statistic also includes wages collected as the result of Bureau-assisted employer self-audits as well as actions taken by the Division’s Legal Unit, including litigation, settlements, and Legal Unit-assisted employer self-audits, all initiated by the Bureau.

- \$247,681 in unpaid wages for 31 construction workers were recovered as a result of a mechanic's lien filed in Eureka.
- \$120,000 in overtime wages paid to 143 employees of a furniture warehouse in Imperial County.
- \$664,764 for wage theft violations affecting up to 43 workers in a construction company located in Sacramento County.

### **Targeting Unlawfully Uninsured Employers**

As previously mentioned (and shown in Table 1), the lack of workers' compensation insurance continues to remain the violation most often identified in the Bureau's enforcement efforts. In 2008, as a result of the passage of Senate Bill 869 (Chapter 662), the Bureau began a new program using a data sharing partnership with the EDD, the Division of Workers' Compensation, and the Workers' Compensation Insurance Rating Bureau to proactively identify potentially unlawfully uninsured employers apart from its normal, complaint-driven investigations. The Bureau issued 74 citations and assessed \$2,286,892 in penalties through the Uninsured Employer Enforcement Program for failure to provide workers' compensation insurance.<sup>10</sup> As a result of the investigations conducted, the Bureau also issued 37 citations and assessed penalties of \$424,285 for various other violations. The process and results of the Senate Bill 869 enforcement activities will be provided in a separate report.

### **Car Wash Industry**

On January 1, 2007, the Bureau began a concerted enforcement effort to ensure compliance with the registration requirements of car washing and polishing businesses (Labor Code sections 2050-2067 and Title 8, California Code of Regulations (CCR), Division 1, Chapter 6, Subchapter 11, Sections 13680-13693). Inspection results improved noticeably due to training and effective tools that staff received to better identify wage audit issues and uncover wage theft. In addition, training held in 2012 has encouraged staff inspecting car wash businesses to go beyond registration status when they suspect that other labor laws are being violated. In fiscal year 2013-2014, the Division conducted 142 inspections and issued 201 citations assessing \$2,395,223 for violations of various labor laws including non-registration and penalties. Additionally, the Division assessed \$1,546,116 in wages and collected \$861,422 wages due to car wash workers. The results of all car wash inspections, including re-inspections, are shown in Table 4 on the next page.

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<sup>10</sup> These penalties are a subset of the total amount of the assessed workers' compensation penalties reported in Table 1.

**TABLE 4: 2013-14 Results by Citation Category for Car Wash<sup>11</sup>**

<i>Citation Category</i>	<i># of Citations</i>	<i>Penalties Assessed</i>	<i>Penalties Collected</i>
Workers' Compensation	52	\$1,006,923	\$24,838
Non-registration	87	\$770,800	\$271,333
Itemized Statement	23	\$371,000	\$46,816
Minimum Wage	14	\$98,700	\$9,050
Overtime	11	\$47,750	\$6,010
Rest and Meal Periods	10	\$95,000	\$12,100
Child Labor	3	\$5,000	\$500
Other	1	\$50	\$0
<b>TOTALS</b>	<b>201</b>	<b>\$2,395,223</b>	<b>\$370,647</b>

**Labor Enforcement Task Force (LETF)**

The LETF is a partnership of state, federal, and local agencies. These partnerships consist primarily of the Division of Labor Standards Enforcement (referred to as the Division elsewhere in this report), the EDD, the Division of Occupational Safety and Health (DOSH), the Contractors State License Board (CSLB), and the Board of Equalization (BOE). With the creation of the LETF by this Administration, the approach of the Department of Industrial Relations (DIR) to combating the underground economy shifted from randomly conducting inspections to conducting targeted inspections based on empirical data. The task force also reflects the Division's focus on improved targeting through better data and intelligence gathering and on assessing wages owed. LETF accomplishes its mission through targeted inspections for minimum wage and overtime violations, workers' compensation, child labor, illegally operating without the required licenses, and a focus on garment, agriculture, construction, auto body or repair, restaurants, and any industry in which labor law violations are prevalent.

**Public Works**

The Bureau's Public Works Unit investigates complaints arising from violations of the State's prevailing wage, apprenticeship laws and conducts audits on behalf of workers for back wages owed. As a result of SB 1038 (Budget Trailer Bill, Chapter 46, Statutes of 2012), on July 1, 2012, the Bureau began enforcing Labor Code section 1777.5, previously enforced by the Division of Apprenticeship Standards. Since then, Labor Code section 1777.7 assessments have been issued by Bureau investigators up to \$300 per calendar day when contractors violate apprenticeship law pursuant to Labor Code section 1777.5.

<sup>11</sup> The statistics reported here are included in the overall results of the Bureau summarized earlier in this report.

**TABLE 5: 2013-2014 Public Works**

Public Works	2013-14
Cases Opened	2,617
Cases Closed	927
CWPAs Issued	406
Determination of Civil Penalties- Apprenticeship Assessments	439
Settlements	117
Wages Found Due	\$14,742,792
Wages Recovered <sup>12</sup>	\$13,462,143
Penalties Assessed	\$13,420,728 <sup>13</sup>
Penalties Collected	\$3,521,696 <sup>14</sup>

**Record High Debarments and Criminal Prosecutions in Public Works**

In fiscal year 2013-2014, the Labor Commissioner signed Orders of Debarment for 14 construction companies and individuals. All of the Orders imposed the maximum statutory debarment period of three years, rendering each of these individuals and legal entities ineligible to bid on or be awarded public works contracts, or to perform work on a public works project as a subcontractor or an employee. This is the highest debarment total on record. The actual debarment orders can be accessed at <http://www.dir.ca.gov/dlse/debar.html>.

The Public Works Unit has been active in public works criminal investigations. In fiscal year 2013-2014, Public Works staff worked closely with District Attorney’s Offices around the State. Active public works criminal investigations are occurring in Alameda, Los Angeles, Orange, Riverside, Santa Barbara, San Bernardino, San Diego and Yolo counties. In 2011, the Orange County District Attorney’s (OCDA) Office established a Public Works Criminal White Collar Unit and has been working closely with the Public Works staff. Labor Commissioner deputies conducted the investigations that led to criminal prosecutions, performed audits for criminal cases, and testified at legal proceedings, including giving expert testimony to grand juries. As a result of the partnership between the Division and OCDA, two contractors pleaded guilty to multiple counts of felony wage theft and are serving two-year prison terms. Several more criminal investigations of public works violations done in collaboration with OCDA are ongoing.

<sup>12</sup> Wages recovered and penalties collected may include monies found due in earlier reporting periods.

<sup>13</sup> Includes \$4,744,115 assessed in Labor Code section 1777.7 penalties.

<sup>14</sup> Includes \$1,412,421 collected in Labor Code section 1777.7 penalties.



## **Judgment Enforcement Unit**

The Division's Judgment Enforcement Unit (previously called the Collections Unit) has continued to increase monies recovered for Bureau citations and unpaid wages unlawfully withheld from workers. The Judgment Enforcement Unit processed 2,432 judgments for fiscal year 2013-2014, with total recovery of \$4,081,255.

## **Legal Unit**

The Labor Commissioner's Legal Unit continued and enhanced its support for Bureau enforcement efforts in 2013-14. The Legal Unit continued its traditional work of representing the Division in Superior Court cases: in defense of penalty citation awards in writ of administrative mandamus challenges, prosecution of public works Civil Wage and Penalty Assessments in administrative hearings, enforcement of investigative subpoenas and conducting investigative depositions, obtaining tolling agreements, negotiating settlement agreements, and advising the Bureau on application of law to its field investigation planning. The Legal Unit also assumed responsibility for prosecuting some select citation appeals before hearing officers in cases with complex legal or factual components. Additional cases included those with large wage restitution amounts associated with the expanded authority provided by the Legislature for the Bureau to assess minimum wages and liquidated damages through citations.<sup>15</sup>

- The Labor Commissioner's Legal Unit filed suit in the Los Angeles County Superior Court to collect wages for 2,000 workers employed by a hospital corporation and its affiliates that shut down their facilities in Los Angeles. A total of \$13,000,000 was collected in settlement of the suit with over \$6,000,000 in unpaid wage restitution and another \$6,000,000 collected for statutory penalties and damages payable to the employees. The balance of the settlement was attributed to civil penalties, costs, and attorney's fees.
- Deputy Labor Commissioners working with the Legal Unit obtained a settlement in the amount of \$4,250,000 for approximately 280 restaurant workers at an upscale San Francisco restaurant that had failed to properly pay them for all hours worked and unlawfully diverted gratuities to managerial employees precluded by law from sharing in gratuities.
- The Labor Commissioner filed suit in Los Angeles County Superior Court on behalf of approximately 90 car wash workers who were not paid for off-the-clock work. A settlement in the amount of \$656,000 in wage restitution and an additional \$26,000 in penalties and costs was recovered as part of resolution of the civil case and a related criminal prosecution that the Bureau and the Legal Unit were instrumental in initiating and pursuing.
- The Legal Unit prosecuted minimum wage, overtime, and wage statement violation citations before an administrative hearing officer in a Santa Clara County case investigated and prepared by the Bureau. An award of \$275,000 in wage restitution and approximately \$51,000 in civil penalties was achieved.

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<sup>15</sup> The resulting penalties and/or wages collected in these cases are included in the Bureau statistics presented in Tables 1-3.

- The Legal Unit successfully defended a citation award for \$345,000 in wage restitution for restaurant workers and \$28,500 in civil penalties in a writ of administrative mandamus proceeding in Sonoma County Superior Court.
- The Legal Unit filed suit in Los Angeles County Superior Court and obtained judgment against a car wash employer that had failed to pay minimum wage and overtime timely and had also failed to provide employees with accurate wage statements in compliance with Labor Code section 226. Collection of \$50,000 was obtained from a successor entity.
- The Legal Unit assisted in settlement of citations for violations of minimum wage, overtime, and wage statement laws against a construction contractor operating in Yolo County. Recovery of \$20,000 in wage restitution and civil penalties in the amount of \$102,000 was achieved.
- The Legal Unit assisted in settlement of a writ of administrative mandate for \$75,637 in San Diego County Superior Court that challenged a \$105,128 citation appeal award for Labor Code section 558 violations against an employer in the restaurant industry.

### **Transfers to the General Fund**

In fiscal year 2013-14, the Division deposited \$5,661,877 in fines and penalties collected into the General Fund.

Respectfully Submitted,



Julie A. Su  
Labor Commissioner