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2008 Annual Report of the Unlawfully Uninsured Employer Enforcement Program Labor Code Section 90.3(d)

The Division of Labor Standards Enforcement (DLSE), through its Bureau of Field Enforcement Unit (Bureau), 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. In furtherance of this, Labor Code §90.3(b) requires the Labor Commissioner to maintain a program designed to systematically identify potentially unlawfully uninsured employers through data matching efforts involving the Uninsured Employers' Benefits Trust Fund (UEBTF), the Employment Development Department (EDD), and the Workers' Compensation Insurance Rating Bureau (WCIRB). Labor Code section 90.3(d) requires the Labor Commissioner to report annually to the Legislature concerning the effectiveness of this program.

Background

Assembly Bill (AB) 749 (Chapter 6, Statutes of 2002) added Labor Code section 90.3, mandating that the Labor Commissioner establish and maintain a targeted unlawfully uninsured employer enforcement program. Effective January 1, 2008, SB 869 (Chapter 662, Statutes of 2007) created a funding mechanism for implementation of the unlawfully uninsured employer enforcement program, and additionally modified the data reporting relationships between the partner agencies in support of the program. In implementing SB 869, the various agencies immediately worked to establish a coordinated system of data collection which includes development of detailed processes for the identification of employers, transmission and sharing of information, verification of information including notification to employers and cross-referencing of data, and inspection and enforcement against uninsured employers.

Program Results

In order to implement the systematic unlawfully uninsured employer enforcement program, a novel data collection system was established. Through the new process, each quarter DLSE receives from EDD a randomly-selected list of 500 employers from EDD's database of reporting employers. All 500 employers for the represented quarter are screened through the WCIRB for evidence of insurance coverage.

DLSE initially received data in May 2008, reflecting employer information from records for the fourth quarter of 2007 (October – December 2007). Because the implementation of SB 869 is still in its early stages and there is a delay in the data reporting, this report reflects information available as of January 27, 2009. However, some investigations based on data obtained during the prior three quarters are ongoing. The following tables summarize results of this program.

TABLE 1	
Employers identified from records of EDD that were screened for matching records of insurance coverage or self-insurance.	1,500
Employers identified from records of EDD that were matched to the records of insurance coverage or self-insurance.	949
Employers identified from records of EDD that were notified that there was no record of their insurance coverage.	551
The number of employers responding to contact for verification. <i>(See Table 3 for nature of responses.)</i>	279
Inquiries returned by the post office as undeliverable.	33
Employers responding who verified they had workers' compensation insurance.	71
WCIRB did not have sufficient database information on the business to respond.	27
Employers acknowledging lack of workers' compensation insurance.	138
Employers investigated.	551
Number of citations issued per Labor Code section 3722(a). ¹	123
Number of citations issued per Labor Code section 3722(b). ²	33
Amount of workers' compensation penalties assessed.	\$484,489
Amount of workers' compensation penalties collected.	\$151,783
* Amount of citations administratively dismissed. ³	<\$76,000>

¹ Labor Code section 3722(a) provides: At the time the stop order is issued and served pursuant to section 3710.1, the director shall also issue and serve a penalty assessment order requiring the uninsured employer to pay to the director, for deposit in the State Treasury to the credit of the Uninsured Employers' Benefits Trust Fund, the sum of one thousand dollars (\$1,000) per employee employed at the time the order issued and served, as an additional penalty for being uninsured at that time.

² Labor Code section 3722(b) provides: At any time that the director determines that an employer has been uninsured for a period in excess of one week during the calendar year preceding the determination, the director may issue and serve a penalty assessment order requiring the uninsured employer to pay to the director, for deposit in the State Treasury to the credit of the Uninsured Employers' Benefits Trust Fund, the greater of (1) twice the amount the employer would have paid in workers' compensation premiums during the period the employer was uninsured, determined according to subdivision (c), or (2) the sum of one thousand dollars (\$1,000) per employee employed during the period the employer was uninsured. A penalty assessment issued and served by the director pursuant to this subdivision shall be in lieu of, and not in addition to, any other penalty issued and served by the director pursuant to subdivision (a).

³ A citation may be administratively dismissed if the employer had no proof of workers' compensation insurance at the time of the inspection/citation but proof of insurance at the time of inspection was submitted later. In such a case, the dollar value of the citation as issued is counted as "penalties assessed" but the dollar value of the assessment is uncollectable.

DLSE provided a list to the WCIRB of 71 employers who, during the course of DLSE's investigation for the first two quarters of reported data, were able to provide proof of insurance coverage for the period of time in which the WCIRB indicated there was no coverage. The following table summarizes WCIRB's responses for these employers:

TABLE 2	
WCIRB found coverage under another name and/or address provided by DLSE in the follow-up lists.	29
Coverage was found by DLSE, but the policy either inception or was not received by the WCIRB until after the date of submission of the original quarterly lists.	10
Employer was not required to have workers' compensation insurance (i.e., employer was self-insured, had no employees subject to workers' compensation requirements, or was otherwise legally not insured).	7
DLSE reported finding coverage, but did not provide sufficient coverage information in the follow-up lists and the WCIRB could not confirm coverage.	25

The following table summarizes the nature of responses received from employers in accounting for a lack of workers' compensation coverage:

TABLE 3	
Company out of business	52
No employees	49
Corporate officers only	30
Self-Insured	4

As shown, DLSE has undertaken significant efforts to implement the systematic unlawfully uninsured employer enforcement program, and those efforts have yielded positive results in DLSE's continued work in combating the underground economy. DLSE will continue to refine the efficiency and effectiveness of this program for the benefit of both employees and employers.

Respectfully Submitted,

Angela Bradstreet
 State Labor Commissioner