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2010 ANNUAL 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 (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 involves the enforcement of child labor laws; the requirement of employers to carry workers' compensation insurance coverage; audits of payroll records, collection of unpaid minimum wages, overtime, as well as prevailing and other unpaid wages; the issuance of citations for violations of any applicable Labor Code sections; the confiscation of illegally manufactured garments; and injunctive relief to preclude further violations of the law.

In prior years, this report has been provided in a calendar year format. The Division has converted to fiscal year reporting to align with the time frame in which the state tracks program costs and to provide sufficient time for reconciliation between the State's accounting and ancillary database systems. To meet these goals, the Bureau will report fiscal year information commencing with this year's report. Therefore, this first report will cover fiscal year 2009-10.

ENFORCEMENT RESULTS

In fiscal year 2009-10, the Bureau conducted a total of 9,034 inspections, resulting in a total of 4,367 citations.¹ The largest single source of violations and citations continues to be the failure to carry workers' compensation insurance, with 2,155 citations and a total assessment amount of \$10,469,442. Although significantly fewer citations were issued for the failure to issue an itemized wage statement (894 violations), the dollar amount of assessments for this citation category in the amount of \$7,231,500, is second to the lack of workers' compensation insurance. As footnoted below, the following tables illustrate the performance by the Bureau *inclusive* of all special programs within the Bureau including prevailing wage enforcement through the Public Works Unit with separate tables depicting the performance of the Economic Employment Enforcement Coalition (EEEC) sweeps in fiscal year 2009-10.

BUREAU (including Public Works)				
2009-10 Results by Industry				
		Total Inspections		7,882
		Total Citations Issued		3,534
<i>Industry</i>	<i>Inspections</i>	<i># of Citations</i>	<i>Penalties Assessed</i> ²	<i>Penalties Collected</i> ³
Agriculture	985	212	\$1,301,350	\$343,227
Car wash	566	417	\$2,501,450	\$847,547
Construction	807	283	\$1,102,600	\$405,817
Garment	812	430	\$867,650	\$264,106
Restaurant	899	534	\$2,826,127	\$1,089,438
Retail	590	257	\$941,650	\$255,310
Other ⁴	1,888	1,090	\$6,360,465	\$2,716,143
<i>Subtotals</i>	<i>6,547</i>	<i>3,223</i>	<i>\$15,901,292</i>	<i>\$5,921,589</i>
<i>LESS citations dismissed/modified</i> ⁵			<\$5,111,965>	
<i>Subtotals</i>	<i>6,547</i>	<i>3,223</i>	<i>\$10,789,327</i>	<i>\$5,921,589</i>
PLUS Public Works ⁶	1,335	311	\$ 4,168,009	\$ 839,317
TOTALS	7,882	3,534	\$14,957,336	\$6,760,906

¹ The total number of inspections and citations, and all statistics throughout this report formatted as a "total" statistic, encompass the performance of all Bureau programs including the performance of the Public Works Unit *inclusive* of the performance of the EEEC. Performance statistics for the Bureau and the EEEC units are separated out in tables that follow.

² All figures in all dollar amount categories are rounded to the next dollar. Therefore, all columns/rows may not total to the exact dollar.

³ Penalties collected in fiscal year 2009-10 may include collection of penalties assessed and found due in earlier reporting periods.

⁴ The "other" category includes janitorial, race tracks, auto body, pallet manufacturing and distributing, and various other industries not falling into any of the other industries specified.

⁵ Citations may be dismissed or modified if the employer provides documentary evidence subsequent to the issuance of the citation or at appeal hearing that it was in compliance at the time the citation was issued.

⁶ 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 1,335 audits conducted with 311 civil wage and penalty assessments (CWPAAs) issued (rather than number of citations). These measurements are included here to provide a full picture of the Division's performance.

EEEC				
2009-10 Results by Industry				
		Total Inspections		1,152
		Total Citations Issued		833
<i>Industry</i>	<i>Inspections</i>	<i># of Citations</i>	<i>Penalties Assessed</i>	<i>Penalties Collected</i>
Agriculture	169	34	\$401,000	\$40,270
Car wash	52	32	\$254,200	\$166,514
Construction	195	86	\$335,150	\$50,218
Garment	149	93	\$832,050	\$87,254
Restaurant	215	216	\$1,471,200	\$319,090
Retail	5	3	\$5,400	0
Other	367	368	\$1,911,550	\$264,184
<i>Subtotals</i>	<i>1,152</i>	<i>833</i>	<i>\$5,210,550</i>	<i>\$927,531</i>
<i>LESS citations dismissed/modified</i>			<i><\$1,590,400></i>	
TOTALS	1,152	833	\$3,620,150	\$927,531

BUREAU (including Public Works)			
2009-10 Results by Citation Category			
<i>Citation Category</i>	<i># of Citations</i>	<i>Penalties Assessed</i>	<i>Penalties Collected</i>
Workers' Compensation	1,766	\$8,681,942	\$2,565,560
Child Labor	141	\$135,000	\$166,288
Itemized Statement	621	\$4,432,050	\$2,059,229
Minimum Wage	71	\$109,100	\$66,882
Overtime	95	\$249,350	\$128,224
Garment	83	\$92,200	\$45,850
Unlicensed Construction Contractor	40	\$350,900	\$99,434
Non-Registration ⁷	406	\$1,850,750	\$728,538
Other	0	0	\$61,584
<i>Subtotals</i>	<i>3,223</i>	<i>\$15,901,292</i>	<i>\$5,921,589</i>
Public Works	311	\$4,168,009	\$839,317
<i>LESS citations dismissed/modified</i>		<i><\$5,111,965></i>	
TOTALS	3,534	\$14,957,336	\$6,760,906

⁷ Includes penalties for non-registration against car washes and garment manufacturers.

EEEC			
2009-10 Results by Citation Category			
<i>Citation Category</i>	<i># of Citations</i>	<i>Penalties Assessed</i>	<i>Penalties Collected</i>
Workers' Compensation	389	\$1,787,500	\$379,008
Child Labor	20	\$10,500	\$6,750
Itemized Statement	273	\$2,799,450	\$375,344
Minimum Wage	37	\$174,150	\$11,641
Overtime	37	\$75,150	\$9,848
Garment	15	\$126,100	\$5,750
Unlicensed Construction Contractor	13	\$14,200	\$3,331
Non-Registration	49	\$223,500	\$135,860
Other	0	0	0
<i>Subtotals</i>	833	\$5,210,550	\$927,531
<i>LESS citations dismissed/modified</i>		<\$1,590,400>	
TOTALS	833	\$3,620,150	\$927,531

BUREAU (including Public Works)		
Total Wages Found Due	\$19,579,680	
Total Wages Collected⁸	\$11,031,751	
<i>Industry</i>	<i>Wages Found Due</i>	<i>Wages Collected</i>
Agriculture	\$54,374	\$55,084
Car Wash	\$119,388	\$242,335
Construction	\$520,632	\$151,059
Garment	\$766,563	\$7,650
Restaurant	\$565,241	\$289,412
Retail	\$531,442	\$178,147
Other	\$6,621,955	\$5,319,763
<i>Subtotals</i>	<i>\$9,179,595</i>	<i>\$6,243,450</i>
Public Works	\$10,400,085	\$4,770,301
TOTALS	\$19,579,680	\$11,013,751

⁸ Wages collected fiscal year 2009-10 may include collection of wages found due in earlier reporting periods. This statistic is also inclusive of 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 of which were initiated by the Bureau.

EEEC		
Total Wages Found Due	\$408,778	
Total Wages Collected	\$612,745	
<i>Industry</i>	<i>Wages Found Due</i>	<i>Wages Collected</i>
Agriculture	\$101,756	\$239,935
Car Wash	\$29,517	\$29,032
Construction	\$4,823	\$148,390
Garment	\$41,701	\$15,192
Restaurant	\$170,724	\$147,709
Retail	0	0
Other	\$60,257	\$32,487
TOTAL	\$408,778	\$612,745

Self Audits

DLSE has emphasized to employers the use of self-initiated audits to augment the investigations conducted in response to specific complaints. A sampling of notable outcomes of payroll audits performed by the employer under the supervision and direction of Bureau staff which resulted in the payment of wages due to employees (included in the statistics above) includes:

- \$156,940 by a health care provider in overtime wages due as the result of an invalid alternative workweek schedule
- \$98,184 by a painting contractor for failure to pay overtime, illegal deductions, and non-payment of hours worked on behalf of 75 employees
- \$99,599 by a health care provider for overtime, interest, and waiting time penalties
- \$324,063 by a hospital for failure to pay overtime
- \$57,000 collected from a social services provider for failure to pay overtime
- \$194,676 by an education provider for failure to pay overtime and meal and rest period violations on behalf of 23 employees
- \$100,929 by a restaurant for meal and rest period violations on behalf of 165 employees
- \$63,536 by a restaurant for failure to pay overtime on behalf of 10 employees
- \$94,785 by a construction contractor for overtime violations on behalf of 50 employees
- \$121,692 by a transportation provider for failure to pay overtime on behalf of 43 employees
- \$151,631 by a lighting manufacturer for failure to pay overtime on behalf of 50 employees
- \$120,466 by a janitorial company for failure to pay overtime on behalf of 103 employees
- \$78,519 by a manufacturer for failure to pay overtime on behalf of 90 employees
- \$68,096 by a car wash for failure to pay overtime and meal and rest period violations on behalf of 235 employees
- \$108,000 by a financial institution for unpaid overtime on behalf of 32 employees
- \$324,915 by a manufacturer for meal and rest period violations on behalf of 169 employees
- \$48,953 by a feed supply company for failure to pay overtime on behalf of 34 employees
- \$66,369 by a restaurant for failure to pay overtime and wages due on behalf of 20 employees – referred to District Attorney

Targeted Unlawfully Uninsured Employer Enforcement Program

As previously mentioned, the lack of workers' compensation insurance continues to remain the violation found most often 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 utilizing a data sharing partnership with the Employment Development Department (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 process and results of those efforts will be discussed in a separate report. The Bureau issued 139 citations and assessed \$439,287 in penalties through the Uninsured Employer Enforcement Program for failure to provide workers' compensation insurance.

Car Wash

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 through 13693). For fiscal year 2009-10, these efforts resulted in a total of 618 car wash establishment inspections/re-inspections and the issuance of a total of 449 citations for violations of various labor laws including non-registration and penalty assessments in the total amount of \$2,755,650. In addition, a total of \$271,367 was collected on behalf of workers as wages due. Part of the enforcement effort in the industry which began in 2008 was the use of re-inspections of approximately 10% of the businesses previously cited for Labor Code violations, selected on a random basis, as a means to identify both repeat offenders and to verify ongoing compliance. For fiscal year 2009-2010, the Bureau conducted 69 re-inspections, exceeding the 10% goal. The results of total car wash inspections, inclusive of re-inspections and EEEEC and included in the statistics above, are:

Citations:	449
Breakdown by citation type:	
Registration	248
Itemized Statement	48
Overtime	12
Workers' Compensation	126
Child Labor	9
Minimum Wage	6
Assessed Amount:	\$2,755,650

Economic Employment Enforcement Coalition

On July 1, 2005 the EEEEC was launched. Nominally a partnership of state and federal agencies consisting of the EDD, the Division of Occupational Safety and Health (DOSH), the Contractor's State License Board, the Franchise Tax Board, and the federal Department of Labor to address the "underground economy," EEEEC has concentrated its inspection and education efforts in the areas of workers' compensation, child labor, and illegally operating without the required garment, car wash, farm labor, construction, or auto body repair license.

Public Works

The Bureau investigates complaints arising from violations of the state's prevailing wage laws, and conducts payroll audits on behalf of California's workers for back wages owed. Despite a significantly lower level of construction due to the economic downturn, the Public Works Unit has maintained the following enforcement activities:⁹

	2009-10
Cases Opened	1,335
Cases Closed	980
CWPAs Issued	311
Settlements	64
Wages Found Due	\$10,400,085
Wages Recovered ¹⁰	\$4,770,301
Penalties Assessed	\$4,168,009
Penalties Collected	\$839,317

Additionally, in fiscal year 2009-10 the Labor Commissioner signed Orders of Debarment for 11 contractor companies and their principals. All of these Orders imposed the maximum statutory debarment period of three years, rendering each of the individuals and entities ineligible to bid on or be awarded a contract for a public works project, or to perform work as a subcontractor on those projects.

The focus on debarments of contractors attempting to gain competitive advantage at the expense of workers, along with a concerted effort to process complaints to recover wages on behalf of workers not paid prevailing wage as discussed above, sends a very strong message to the contractors within the public works industry that the Labor Commissioner will utilize all avenues available to ensure the protection of workers from unlawful labor practices including putting employers who flout the public works laws out of the business of competing for public works contracts.

Collections Unit

With the implementation of DLSE's Collections Unit in November 2006, the Division achieved significant progress in collecting penalties assessed. Collections Unit staff processed 3,184 judgments for fiscal year 2009-10, with total penalty collections by the Unit of \$3,035,190. Given the state of the economy with businesses reducing staffing due to lack of business and/or failing, and the resulting lack of assets upon which to collect, these results demonstrate the significant efforts of the Collections Unit staff.

Legal Unit

The Bureau continues to work closely with the Legal Unit. A significant amount of time is spent by the Legal Unit staff in assisting the Bureau through the court motion process to, for example, compel employers to provide records when the employer refuses to comply with a Bureau record demand or to obtain access to an employer's premises when the employer refuses to allow a Bureau investigator to

⁹ The statistics reported here are included in the overall results of the Bureau summarized earlier in this report.

¹⁰ Wages recovered and penalties collected may include monies found due in earlier reporting periods.

conduct an inspection. The following represent highlights in fiscal year 2009-10 as the result of coordinated efforts between the Bureau and the Legal Unit.¹¹

- As the result of a lawsuit originally filed in 2008 alleging violations of Labor Code section 2810, settlement of \$100,000 was reached over charges that an out-of-state contractor did not provide adequate contract funds to a subcontractor resulting in employees being deprived of contributions to social security, disability and unemployment insurance.
- Obtained a settlement requiring payment of all wages plus interest and \$80,000 in penalties as the result of a lawsuit filed in 2008 stemming from failure to timely pay employees on scheduled pay dates due to cash flow problems and claims for minimum wage and overtime violations.
- Filed a lawsuit against a restaurant with two Bay Area locations following a Bureau investigation that disclosed multiple labor law violations including: failure to pay overtime, failure to keep payroll records, and failure to provide itemized statements of wages paid which resulted in \$640,000 in penalty assessments, illegally taking workers' tips, and failing to pay split shift premiums. The Legal Unit also obtained a writ of attachment securing real property owned by the restaurant employer.
- Filed a lawsuit against a loan modification center and ten related entities and individuals for the failure to pay workers all wages due for hours worked, seeking recovery of over \$1 million in wages and civil, liquidated damages and other penalties in excess of \$16.6 million. The Division has received over 149 wage claims totaling in excess of \$830,000 from employees.
- Obtained a court-approved settlement of approximately \$4.3 million in unpaid wages, vacation benefits, and damages under the California WARN Act on behalf of 633 California employees of subsidiaries of a Denver-based company who were abruptly laid off without notice. Under the settlement, the employees received over 92% of the allowed wages, expenses, commissions, and other amounts due. The Legal Unit continues to work to resolve claims on behalf of an additional 594 employees being pursued in California courts.
- Settlement on behalf of 83 individuals working on a public works project in the amount of \$90,291 in wages plus \$7,995 in penalties.
- Settlement in the amount of \$802,072 in unpaid wages, waiting time penalties, and civil penalties on behalf of 1,440 workers who potentially were not paid all wages due as a result of the employer's failure to properly calculate the regular rate of pay. The employer voluntarily came forward to the Division and agreed to pay all wages due.
- Settlement in the amount of \$252,665.58 in unpaid wages, waiting time penalties, and civil penalties on behalf of 65 workers who were possibly misclassified as exempt from California's overtime requirements. The employer voluntarily came forward to the Division and agreed to pay all wages due.
- Settlement in the amount of \$121,527 in unpaid wages. The settlement followed the filing of mechanics liens by the Legal Unit on behalf of the affected workers.
- Agreement prior to lawsuit requiring an employer to pay \$188,500 in penalties following an investigation finding that the employer had not complied fully with California's requirements

¹¹ It should be noted that some or all of the resulting penalties and/or wages collected are included in the Bureau statistics above, dependent upon the process utilized to achieve the end results.

for failing to require work permits for all minors, employed and allowing minors to perform work during restricted hours.

- Agreement prior to lawsuit requiring an employer to pay \$125,000 concerning allegations that the employer failed to properly establish an alternative workweek schedule, and thereby failed to pay required overtime wages.

The Legal Unit filed lawsuits against 12 car wash operations for their failure to register. Each of the lawsuits resulted in either the car wash obtaining the appropriate license (with payment of penalties for non-registration) or the grant of a court-ordered permanent injunction requiring closure of the non-compliant entity.

Transfers to the General Fund

In Fiscal Year 2009-10, DLSE deposited \$3,776,707 in fines and penalties collected into the General Fund.

Respectfully Submitted,

Julie A. Su
Labor Commissioner