



Bulletin

MAY-JUNE 1996 — Published by DIR • P.O. Box 420603 • San Francisco, CA 94142-0603 • Phone: 415-972-8835 • e-mail: info@dir.ca.gov

DIR Director's Message Competitive Government Initiative by Lloyd W. Aubry Jr.

In Governor Wilson's Competitive Government initiative, which he announced in April, the administration has conducted a top-to-bottom review of all state government functions. This undertaking goes beyond the study of efficiency or cost effectiveness and examines the very nature of state government. It involves asking fundamental questions. What should state government do? And what *shouldn't* it do?

As Governor Wilson commented, certainly it is extremely rare for government to conduct such an examination. But government can neither solve every problem nor grow forever.

As members of both major political parties have expressed, and some attempted to implement, the era of big government is over. California's government has grown from 72 agencies in 1960 to 321 today. The time has come for re-examination and rightsizing.

What shouldn't government do? The Competitive Government review yielded several examples of questionable functions: rating the efficiency of thermal windows, licensing yacht brokers, developing curricula on illumination engineering, regulating trading stamp companies, managing and supporting local county fairs, and operating a Department of Boating and Waterways.

The Wilson administration is taking

Continued on page 3

Five-point plan to aid state's garment industry

DIR launched an ambitious five-point plan to combat ongoing problems cited in a recently released survey of the state's huge apparel industry.

Key points in the plan involve hiring up to 24 new labor investigators in Los Angeles, placing garment contractors' up-to-date registration certificates on the Internet, and simplifying the licensing process for employers.

Concentrating in the Southern California area where the vast majority of the state's apparel manufacturers thrive, the department unveiled its plan in response to the generally positive results of a sample survey conducted by the Targeted Industries Partnership Program (TIPP) to gauge compliance inside the industry.

The survey is the second of its kind

Continued on page 6

Legal Unit goes before Supreme Court in apprenticeship battle

State attorneys with the Director's Legal Unit will go before the U.S. Supreme Court to reverse an appeals court ruling in Dillingham v. Department of Industrial Relations, a case with far reaching implications for the state's thousands of apprentices and its prevailing wage law.

DIR's lead attorney John Rea filed a brief on June 17 with the highest court in the country arguing the department's

position. A response brief from Dillingham's attorneys and a reply by DIR will be filed before oral argument, which could occur as early as October or November. A decision from the Supreme Court is expected sometime in early 1997.

The case involves three divisions under DIR—the Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and Division

Continued on page 5

C o n t e n t s

- | | |
|--|---|
| 1 Competitive Government Initiative | 4 Schools & apprenticeship program reach new heights together |
| 1 Five-point plan to aid state's garment industry | 7 Labor member appointed to IWC |
| 1 Legal Unit goes before Supreme Court in apprenticeship battle | 7 DWC conducts record number of audits, reports results |
| 2 Senate kills daily overtime bill, IWC opens review of 5 orders | 8 DIR's letter on ergonomics legislation |
| 3 IWC Wage Board nominations | |

Senate kills daily overtime bill, IWC opens review of 5 orders

Although the Senate Industrial Relations Committee (SIR) rejected Assembly Bill 398 (Aguiar), which would allow employees and employers flexibility in scheduling work hours, the Industrial Welfare Commission (IWC) will call five wage boards to address issues raised during public hearings on overtime regulations.

The April 24 SIR vote was 4-2 against the bill, with senators splitting along party lines. This probably eliminates the possibility of legislative enactment of daily overtime reform this year. The Assembly approved AB 398 on a 41-34 vote in January.

Ironically, the SIR vote appears inconsistent with President Clinton's June 24 proposal for a family-oriented plan of flexible time already proposed by the Republican Congress.

Clinton's speech essentially echoed the IWC's attempt to create a flexible schedule that allows employees more time for family commitments—first prompted by a letter from Governor Wilson last year.

AB 398 sought to conform the state's daily overtime requirements with those of the federal Fair Labor Standards Act, which still requires overtime after 40 hours in a week.

California is one of only four states to mandate daily overtime. DIR sponsored AB 398 in the Legislature because reform could be accomplished quickly and in one event.

While consideration of reform has apparently stopped in the Legislature, the IWC is moving forward with its review.

In response to the Governor's letter, the commission held public meetings in Oakland, San Jose, Merced, Long Beach and San Diego to receive public comments on daily overtime requirements in its orders, and on other provisions that involve scheduling flexibility. The IWC also received written comments from the public.

Clinton's speech essentially echoed the IWC's attempt to create a flexible schedule that allows employees more time for family commitments—first prompted by a letter from Governor Wilson last year.

Under the Labor Code, this public hearing and comment period is the first step in the IWC's rule making process. After receiving comments, the commission evaluates whether a formal review should be opened for particular wage, hour, or working condition issues.

At its May 17 meeting in Oakland, the IWC voted 4-0, with one member abstaining, to convene formal wage boards and examine daily overtime requirements in five of its 15 orders.

(See related story concerning nominations to new wage boards.)

The wage orders include:

- Order 1-89, Manufacturing Industry
- Order 4-89, Professional, Technical, Clerical, Mechanical, and Similar Occupations
- Order 5-89, Public Housekeeping Industry
- Order 7-80, Mercantile Industry
- Order 9-90, Transportation Industry

The IWC's specific mandate to the wage boards involves examination of several issues: existing daily overtime requirements and the need for flexible scheduling, the voluntary waiver of meal periods in certain overtime situations, and the definition of "exempt" and "non-exempt" employees within certain industries.

The wage boards will examine the issues, conduct a public hearing, and receive public comments in writing. The boards are expected to meet this fall. Afterward, the boards present a report, possibly with recommendations, to the IWC.

If the commission makes a motion to change any existing requirements, it must provide public notice and hold three public hearings around the state before taking a vote.

The commission has the discretion to impanel wage boards to review other wage orders at a later date. Because of the rule making process which the IWC must follow, the review process could take more than a year to complete.

IWC Wage Board nominations

The Industrial Welfare Commission (IWC) has closed the nomination process for members of five separate wage boards to review daily overtime requirements. Each wage board, expected to convene in San Francisco for two consecutive days sometime this fall, will review a particular IWC wage order.

The IWC expects to appoint approximately 100 wage board members after the July 1 nomination cutoff date.

The Labor Code requires that each wage board consist of an equal number of employer and employee representatives, with a non-voting member serving as chairperson. Wage board members are paid \$100 per meeting day, plus per diem travel expenses.

For any further information, contact the IWC at 415-975-0761. The address is: Industrial Welfare Commission, P.O. Box 420603, San Francisco, CA 94142-0603.

Competitive Government Initiative

Continued from page 1

steps to eliminate these activities from the purview of state government so resources may be focused on functions government should be performing.

These functions are obviously basic for a society: educating children, protecting public safety, caring for Californians who genuinely cannot care for themselves, and maintaining and enhancing the state's infrastructure and our environment. These fundamental responsibilities are core functions.

Non-core functions involve other areas that can be eliminated, consolidated, outsourced or privatized. Is it unreasonable to ask if state government or the private sector can perform a function better and at less cost? And/or if government should even perform particular functions at all?

As part of the first phase of his Competitive Government plan, Governor Wilson announced his initiative to study privatizing the State Compensation Insurance Fund.

State Fund's existence dates back to 1913. That year, the Legislature enacted the Boynton Act establishing the foundation of California's present workers' compensation system.

The Boynton Act made workers' compensation coverage mandatory for all employers. To guarantee that employers in the "residual" market would be able to obtain coverage, the

Act also created State Fund to serve as a carrier of last resort.

However, the Legislature's mandate allowed State Fund to compete with private carriers for the general market as well. State Fund is a state-created, self-sustaining non-profit insurance carrier. It is a state agency now competing with some 300 private workers' compensation insurance carriers in California.

State Fund has operated for 83 years as a unique entity in state government. The fund has no owner, except policyholders. Since the Legislature required that State Fund "shall ultimately become neither more nor less than self-supporting," it has received no money from taxpayers.

It has supported its operations entirely on money generated from premiums and investments. Today it covers approximately 20 percent of the workers' compensation market in California, and has approximately \$7.3 billion in assets.

Governor Wilson has ordered a feasibility study on whether to privatize State Fund. The study, which will last no longer than six months and is due in October, will be conducted by national consulting actuary Milliman & Robertson Inc. The firm will seek answers to the two basic questions—should State Fund be privatized, and if so, how?

PROFILE

Schools & apprenticeship program reach new heights together

This is part of an occasional series in which DIR Bulletin takes a more in-depth look at these separate components, from divisions to people, who make up DIR.

DIR's Division of Apprenticeship Standards (DAS) is generating new interest in apprenticeship opportunities, investing in a vital new plan that could double the number of registered apprentices in California.

"This is a unique concept, it's clearly a win-win situation," said DAS Chief Rulon Cottrell, the force behind the Schools to Career/Apprenticeship Program. "Schools and students win because they are shepherded through a training period they could not get anywhere else, and the business community wins because it has access to an eager work force rarely before tapped."

Schools to Career/Apprenticeship Program pilots are being introduced in school districts throughout California, opening doors to students who want job training before high school graduation.

Though scaled-down versions of the program operate in some states, California's entry will set a new standard and expects to become the largest coordinated operation in the country.

The program brings young people—as early as ninth grade—to the world of apprenticeship, a world which equips them with training and skills necessary to become productive members of society at a critical period of life. Training for well-paying careers in specialty fields such as the culinary arts, health care, automotive repair and manufacturing are a few of the

"Schools and students win because they are shepherded through a training period they could not get anywhere else, and the business community wins because it has access to an eager work force rarely before tapped."

**Rulon Cottrell
DAS Chief**

apprenticeship programs so far offered.

Under the Schools to Career/Apprenticeship Program, DIR signs memorandums of understanding with local high school districts, community colleges and regional occupational programs (which run career centers in local schools and serve as a conduit between educators and employers). The contract ensures that the job training for students meets all approved apprenticeship standards.

DAS provides field consultants to the school districts involved. The program prepares students for life in the selected industries by offering theoretical training through a customized school curriculum in addition to on-the-job training.

Participating students who do not attend a college or university would complete the apprenticeship program as full-time workers. Those who go on

to a college or university can complete the training while still in school. Colleges offer credit for many of the specialized courses.

Cottrell, a native of California, was the architect of a similar program in Utah while he served with the U.S. Department of Labor. He retired, was talked back into service by Governor Wilson to steer his plan into the larger market of California, and was named chief of DAS a year ago.

Cottrell set about to renew statewide interest in registered apprenticeship programs so trainees could become a force in the state's growing economy at a much earlier age. California statistics show the average age of an apprentice is 28. With the introduction of the Schools to Career/Apprenticeship Program, the starting age for apprentices could drop to below 18.

"It gives the average successful apprentice an additional decade to earn wages and make a valuable contribution to his or her community," Cottrell said.

In May, DIR Director Lloyd Aubry launched the first pilot program in Riverside, quickly followed by programs in Milpitas, Torrance, and two sites in Monterey County. The program has garnered interest from Hawaii, New York and Louisiana.

The Schools to Career/Apprenticeship Program is a welcomed innovation to a long history of apprenticeship training in the state. California approved the Shelley-Maloney Apprentice Labor Standards Act in 1939, which gave an official seal of approval for apprenticeships.

Continued on page 5

Schools & apprenticeship

Continued from page 4

The state's legislation came two years after the federal government passed the National Apprenticeship Act, known as the Fitzgerald Act.

Throughout the state DAS recognizes 1,038 apprenticeship programs which train an estimated 42,200 men and women, mostly in the construction industry. The division estimates that figure could jump to more than 75,000 once the Schools to Career/Apprenticeship Program is in place.

The program has garnered interest from Hawaii, New York and Louisiana.

California oversees more than 10 percent of the 350,000 apprentices registered in the United States. The state has the largest apprenticeship system in the country, equal to any two other states.

An estimated 47 percent of the in-training workers are minorities, and the presence of women in apprenticeship programs exceeds 11 percent. Both figures place California ahead of other states.

Standard apprenticeship programs run between one and six years. Most fall between three and four years for completion. The system allows an apprentice to work while learning the occupation, earning from 40 percent (at the beginning of training) to 90 percent (at the last stage) of a full-time employee's wage. Apprentices are required to complete yearly supplemental training which amounts to about 144 hours in a classroom.

Legal Unit goes before Supreme Court

Continued from page 1

of Labor Statistics and Research—along with the County of Sonoma.

The decision pits California's apprenticeship laws against the 9th Circuit Court of Appeals' interpretation of the federal Employee Retirement Income Security Act (ERISA). At issue is whether states can restrict payment of apprentice wages—for prevailing wage purposes—to only registered apprentices in programs recognized as meeting federal standards.

The opportunity to argue before the Supreme Court came after DIR won a decision in a San Francisco federal district court against Dillingham. The district court said a contractor cannot pay a lower rate to apprentices before the apprentice program is registered—the same rule that is followed on federal public works.

The (district court) decision was overturned in April by the 9th Circuit Court of Appeals.

"The federal government uses the Department of Industrial Relations to determine who is an apprentice," Director Lloyd Aubry said. "The Dillingham decision removed the state authority to do that on state-funded or jointly-funded jobs. DIR is petitioning the Supreme Court to reverse Dillingham and give us back our authority."

The case dates back to 1988 and involves work on a jail in Sonoma County. Dillingham Construction Co. received the public works project and subsequently subcontracted electrical wiring tasks to Sound Systems Media. It was the wage practices of Sound Systems that came under scrutiny.

During an audit DIR's Division of Labor Standards Enforcement discovered that Sound Systems paid some of its workers below mandated wage rates on public works projects. The company had recently signed a new collective bargaining agreement but had gained no approval for an apprenticeship

program from DIR's Division of Apprenticeship Standards.

Caught paying the lower rate, the subcontractor quickly deemed the underpaid workers "apprentices." At the time, the subcontractor was not participating in a California Apprenticeship Council (CAC) approved program. The state allows contractors to pay a below prevailing wage rate only after the apprentice's program gets CAC approval.

To get such CAC approval, apprentice programs commit to train in a skilled trade or occupation which requires 2,000 hours—and more typically up to 6,000 hours—of on-the-job training. Additionally, apprenticeship programs require related and supplemental instruction and are multi-year programs. In courtroom testimony, the subcontractor said these "installer apprentices receive no formal training and engage in cable pulling tasks such as speaker hanging."

Dillingham argued that its subcontractor's right to declare who is an apprentice was established by the federal benefit-protection law, the broad Employee Retirement Income Security Act. The argument, adopted by the 9th Circuit, was that the federal statute's mention of "apprenticeship" supersedes state control over determining who is an apprentice.

DIR will argue that even if ERISA rules pertain to who is an apprentice on public works projects, the department's long-standing cooperative arrangement under the National Apprenticeship Act means the state maintains authority.

If the Supreme Court upholds the appellate court's decision against the department, it would mean that the states no longer have the right to govern apprenticeship. That decision would essentially be left up to individual business owners with an array of different wage scales.

Five-point plan to aid state's garment industry

Continued from page 1

in the state. The first survey was conducted in 1994 and served as a "base line" to determine the industry's level of compliance with state and federal labor and workplace safety laws.

Compliance in the garment industry has improved over the past two years in nearly every area measured.

TIPP 1996 survey

The 1996 survey results show that compliance has improved over the past two years in nearly every area measured. The percentage of firms violating minimum wage requirements dropped from 61 to 43 percent. Shops cited for overtime law violations dropped from 78 to 55 percent. No shops were cited for child labor violations while the current survey was conducted, compared to 4 percent in the 1994 survey.

Only 9 percent of the firms were cited for failure to carry workers' compensation insurance, down from 13 percent before the impact of reforms initiated by Governor Wilson two years ago that made coverage more affordable.

The 1996 survey also reflected a corresponding drop in back wages and penalties owed. Back wages owed workers who were paid less than the minimum wage totaled \$1,592— compared to \$3,866 in 1994. Unpaid overtime owed workers was \$1,643— down from \$3,418 two years ago. Employers were fined \$1,128 for failure to maintain workers' compensation insurance, compared to \$4,407 in the previous survey.

With the news of improvement the survey also provided troubling information. Violations for failure to have a valid California registration soared from 11 percent to 33 percent; record keeping violations were down from 74 percent in 1994, but were found to be at 64 percent in the latest survey; cash pay, a staple of underground economic activity, was cited in 33 percent of the shops; and serious workplace safety violations, not previously measured, were found in 72 percent of the shops inspected.

Only 9 percent of the firms were cited for failure to carry workers' compensation insurance, down from 13 percent before the impact of reforms initiated by Governor Wilson two years ago that made coverage more affordable.

The five points in the state's plan, aimed at the most recent manifestations in the industry, call for budget enhancement, increased education, workplace safety outreach, on-line registration verification, and the universal business license concept.

Budget

Enhancement—Long sought by the Wilson administration, the current Wilson budget request will add 24 new labor investigators to concentrate on

the Southern California garment industry. Additional personnel will handle a "Garment Hot-Line" that would respond to calls of industry violations, intended to oust those who undercut their legitimate competition by not paying legally mandated wages or taxes, or otherwise avoiding labor and safety laws.

Increased

Education—This calls for an expansion of general industry outreach and specifically increasing the number of public forums held to apprise industry members of their responsibilities under state and federal labor laws and methods of most efficient compliance.

Workplace Safety

Outreach—To stem the presence of major safety hazards in the industry, a new program focusing on garment shop safety is being developed by the Cal/OSHA Consultation Service, free of charge to sewing shops and manufacturers.

On-line Registration

Verification—To provide manufacturers with easy access to up-to-the-minute information, the California Labor Commissioner begins on July 1 an Internet method of verification of the status of all garment contractors' registration certificates.

Universal Business License

Concept—This will ease the application process for responsible employers and weed out those who are not. The plan calls for one-stop-shopping for garment contractors and manufacturers to begin by October 1. Applicants may obtain at one time all necessary licenses and certificates from

Continued on page 7

Five-point plan

Continued from page 6

DIR's Division of Labor Standards Enforcement, the Employment Development Department, local cities, counties and other governmental jurisdictions. It will also help ensure the applicant has received permission to conduct business by each authority before final acceptance is granted.

Labor member appointed to IWC

Governor Pete Wilson appointed Syed P. Alam to the Industrial Welfare Commission, filling one of two slots on the five-member commission reserved for labor representatives.

Alam, a resident of Sacramento, has served as an associate mechanical engineer at the Department of Corrections since 1988. A licensed professional engineer since 1990, he is a member of the Professional Engineers in California Government (PECG), which is the collective bargaining representative of engineers employed by the state.

From 1985-87 Alam was a project engineer for Guyer Santin, Inc. He worked from 1982-84 as a technical manager for Civil Construction Co. in Amman, Jordan, and from 1980-82 as a project engineer for Corridi, ITS in Jeddah, Saudi Arabia. He earned a bachelor's degree in mechanical engineering from the Engineering University in Lahore, Pakistan in 1973 and a master's degree in mechanical engineering from Sacramento State University in 1986.

Alam's appointment must be confirmed by the Senate. He replaces Donald Novey, president of the California Correctional Peace Officers Association, who resigned from the position.

DWC conducts record number of audits, reports results

The Audit Unit of DIR's Division of Workers' Compensation (DWC) conducted 64 audits in 1995 of workers' compensation insurance carriers, self-insured employers, and third-party claims administrators—and assessed \$1,099,610 in civil penalties, an increase of more than 22 percent from the year before. In 1994 the unit examined 56 audit subjects and issued penalty assessments totaling \$857,595.

The audit unit was established as a part of DWC by the Legislature in 1989 to "make certain that injured workers ... receive promptly and accurately the full measure of compensation to which they are entitled ..." Under the Labor Code, at least half of the audit subjects must be selected at random. The remaining subjects are targeted audits, selected on the basis of complaints or past audit history.

In its 1995 audits DWC examined 16,261 claims, compared to the 13,196 cases from the 1994 audits. These audits resulted in 8,481 administrative penalty assessments. They also identified 728 claims with \$644,943 in compensation due. Per audit subject, the average number of penalty citations was 133 and the average amount in penalty assessments was \$17,181.

Most frequently cited violations were: failure to provide timely, proper and accurate benefit notice, 3,997 or 47.1 percent; late indemnity payments, 1,613 or 19 percent; failure to pay accrued and payable indemnity in undisputed cases, 1,119 or 13.2 percent; failure to provide timely vocational rehabilitation notice, 686 or 8.1 percent; failure to pay or object to medical or medical-legal bills within 60 days of receipt, 552 or 6.5 percent; and unsupported denial of liability for claims and failure to investigate, 55 or 0.6 percent.

If the audits reveal violations, a Notice of Compensation Due or a Notice of Penalty Assessment may be issued. Penalties range from \$25 to \$5,000 per incident.

However, in any situation where an audit subject exhibited a pattern of egregious or willful violations, DWC may impose a penalty of up to \$100,000. Such a penalty has never been issued against a subject since the audit unit was established. All penalties collected fund the activities of the Commission on Health and Safety and Workers' Compensation.

One San Francisco-based insurer was the subject of the unit's most significant audit to date. Because of a large number of complaints received in 1994, the company's location was selected for a targeted audit in 1995.

The audit unit found 446 violations in 405 audited files. Assessments amounted to \$88,375, including 10 assessments totaling \$34,500 for unsupported denial of claims. In 41 cases, unpaid compensation totaling \$64,039 was found due.

The company agreed to major changes in its business practices in order to avoid a potential hearing and possible further civil penalties of up to \$100,000. The carrier also made changes in its management personnel in San Francisco and is instituting staff training, conducting random audits of local claims adjusted, and submitting quarterly reports to DWC on progress in implementing the changes. Another targeted audit has been set for 1997.

For a copy of the Division of Workers' Compensation report to the Legislature on 1995 audits, please write to the division at P.O. Box 420603, San Francisco, CA 94142-0603—or call 415-975-0700.

DIR's letter on ergonomics legislation

The following is the text of DIR Chief Deputy Director John Duncan's letter to Assemblyman Dick Ackerman endorsing Assembly Bill 2504. The legislation would repeal the mandate that the Occupational Safety and Health Standards Board adopt an ergonomics standard by a specified date.

May 7, 1996

The Honorable Dick Ackerman
California State Assembly
State Capitol, Room 4116
Sacramento, CA 95814

Dear Assemblymember Ackerman:

The Department of Industrial Relations (DIR) supports your AB 2504

to repeal the mandate that the Occupational Safety and Health Standards Board (OSHSB) adopt a workplace ergonomics standard by January 1, 1995. To meet this deadline, OSHSB conducted numerous studies on the issue, held several hearings, and still no consensus was reached. As a result, OSHSB failed to adopt a standard by the specified date, and a lawsuit was filed against the board.

Forcing OSHSB to make a decision by a specified date merely rushes the board into a hasty decision. A decision on a workplace ergonomics standard is not one which should be made in this manner. The board must consider how to best prevent cumulative trauma disorder and other ergonomic injuries without imposing an undue burden on

employers, especially employers where the occurrence of such injuries has not been identified.

Repealing the requirement that OSHSB adopt an ergonomics standard by a specified date in no way relieves the board of their mandated duty to adopt regulations which promote a safer workplace for California workers. Instead, AB 2504 frees OSHSB from the constriction of an arbitrary deadline and allows them to take the proper amount of time needed to make a decision on an important topic. DIR supports AB 2504.

Sincerely,

John C. Duncan
Chief Deputy Director

