

Department of Industrial Relations
DIVISION OF LABOR STANDARDS ENFORCEMENT
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2010 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.

Background

To ensure that these laws are adequately enforced, Assembly Bill (AB) 749 (Chapter 6, Statutes of 2002) added Labor Code §90.3(b). Senate Bill (SB) 869 (Chapter 662, Statutes of 2007) amended sections 62.5 and 90.3 of the Labor Code, and 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 to conduct on-site inspections of those employers who can show no valid reason for lack of a record of coverage.

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 approach for the collection of data was created. Through the partnership, 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 workers’ compensation insurance coverage. DLSE then mails letters to the employers for whom WCIRB did not locate evidence of coverage. If the employer cannot provide verifiable proof that it had workers’ compensation insurance at the time of the mailing of the letter, an investigation is initiated by the Bureau staff. Upon inspection, citations are issued for lack of workers’ compensation insurance as well as other violations of wage and hour laws as appropriate. DLSE compiles a list of all the employers who were determined to have had coverage¹ at the time of the WCIRB check. That list is forwarded to WCIRB which prepares a response explaining why it previously failed to find a record of the coverage.

¹ Employers were included in this list if they provided proof of coverage when DLSE mailed them a letter or if they were found to have had coverage at the time of inspection.

DLSE received 2,000 randomly selected referrals from EDD in 2010, reflecting employer information from records for the third and fourth quarters of 2009 and the first and second quarters of 2010, as DLSE receives the EDD referrals two quarters beyond the end of the applicable quarter. This lag time is to allow for employers to file any appropriate addendums or changes to their returns before EDD closes the quarter's statistics to ensure the most accurate and up-to-date data is transmitted to DLSE. It should be noted that during the course of the inspection process, workers' compensation insurance coverage is verified for the period of time that the referral from EDD covers (e.g., in January 2010 EDD provided referrals covering the second quarter of 2009. An inspection conducted in January 2010 checks to ensure that the employer has adequate coverage at the time of the inspection and has had continuous coverage for the time period covering the second quarter of 2009 to the date of the inspection.) If no coverage existed for any time within that period, a citation will be issued.

Because there is a delay in receipt of referrals from EDD and the data reporting from WCIRB, this report reflects information available as of December 31, 2010. However, some investigations based on data obtained during the prior three quarters are ongoing. Therefore, it should be noted, that results in some categories shown below are not complete and may not mathematically balance. The following tables summarize results of this program based on data available:

TABLE 1 – Summary of Program Results	
Employers identified from records of EDD that were screened for matching records of insurance coverage or self-insurance.	2,000
Employers identified from records of EDD that were matched to the WCIRB records evidencing insurance coverage or self-insurance.	1,284
Employers identified from records of EDD that were notified by DLSE that there was no record of their insurance coverage and assigned for investigation.	716
The number of employers responding to contact for verification.	463
Employers responding who verified they had workers' compensation insurance.	132
Employers responding who obtained insurance upon receipt of letter.	81
Employers acknowledging lack of workers' compensation insurance.	250
Inquiries returned by the post office as undeliverable.	49
<i>(Table continues on next page)</i>	

Employers not cited following investigation. (See Table 2 for nature of responses)	324
Number of Inspections completed. ²	410
Pending investigation.	306
Number of citations issued per Labor Code section 3722(a). ³	85
Number of citations issued per Labor Code section 3722(b). ⁴	54
Amount of workers' compensation penalties assessed.	\$439,287
Amount of penalties collected.	\$92,287 ⁵
* Amount of citations administratively dismissed. ⁶	\$29,250

The following table summarizes the reasons why the 324 employers referenced in Table 1 were not cited for lack of workers' compensation insurance:

TABLE 2 – Employers Not Cited for Lack of Workers' Compensation Insurance	324
Company out of business/unable to locate	52
No employees	54
Corporate officers only	53
Verified they had insurance	104
Self-insured	2
Out of state/verified no California employees	4
Still under investigation	55

² As referenced above, the inspections completed in this reporting period may include inspections initiated in the prior reporting period.

³ Until 2011 Labor Code section 3722(a) provided: 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.

⁴ Until 2011 Labor Code section 3722(b) provided: 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).

⁵ The most significant amount of penalties collected represents collections against citations for lack of workers' compensation coverage; however, a small amount of this figure represents collection of penalties assessed for Labor Code violations found at the time of inspection for other than lack of workers' compensation insurance.

⁶ 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 64 employers that, during the course of DLSE's investigation for the third and fourth quarters of 2009⁷, were able to provide proof of insurance coverage for the period of time in which the WCIRB previously indicated it was unable to verify coverage. The following table summarizes WCIRB's responses for these employers:

TABLE 3 - Number of Employers Where DLSE Verified Coverage	64
Employer was not required to have coverage because it was either self-insured or had no employees.	1
DLSE found coverage after inception date of submission to WCIRB.	11
Coverage found under another name or address.	23
DLSE confirmed coverage but it has not been submitted to the WCIRB.	6
Coverage found by DLSE not found in WCIRB first review but was found in follow-up review.	11
WCIRB did not have sufficient database information to identify the business to respond.	5
Number not meeting criteria to be included in the follow-up list.	7

Summary

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,

Denise Padres
Deputy Chief Labor Commissioner

⁷ Although DLSE had provided inspection results to WCIRB for the third quarter of 2010, the WCIRB had not yet been able to complete its response process as of December 31, 2010. The third quarter was not sent until November 2010. Because it takes at least a full quarter to complete the inspection process, DLSE had not yet completed that process on all referrals from EDD for the second quarter of 2010 and had not provided its inspection results for that batch to WCIRB as of the end of the fourth quarter of 2010.