

DEPARTMENT OF INDUSTRIAL RELATIONS

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2008 ANNUAL REPORT ON THE EFFECTIVENESS OF 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. 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 civil and criminal citations; the confiscation of illegally manufactured garments; and injunctive relief to preclude further violations of the law.

The Labor Commissioner has maximized enforcement efforts through the use of focused enforcement programs operating within the Bureau. The Division of Labor Standards Enforcement (DLSE) has continued its emphasis on self-initiated inspections to augment the investigations conducted in response to specific complaints and additionally has initiated a program of re-inspecting employers previously cited for Labor Code violations. These measures are designed to target those employers committing flagrant violations or operating in the underground economy. The Labor Commissioner is intent on giving the economic advantage back to the law-abiding employer, and protecting workers from unlawful labor practices.

ENFORCEMENT RESULTS

In calendar year 2008, the Bureau conducted a total of 9,413 inspections, resulting in a total of 5,521 citations.¹ The largest single source of violations and citations continues to be the failure to carry workers' compensation insurance with 2,738 citations in 2008.

¹ As explained below, the total number of inspections and citations includes performance of the Public Works unit.

The following tables illustrate the number of inspections conducted, citations issued, penalties assessed, and wages found due and recovered by DLSE *inclusive* of the Economic Employment Enforcement Coalition (EEEC) enforcement task force sweeps in calendar year 2008 as well as prevailing wage enforcement.

2008 Results by Industry				
		Total Inspections		9,413
		Total Citations Issued		5,521
Industry	Inspections	# of Citations	Penalties Assessed	Penalties Collected ²
Agriculture	954	222	\$ 1,638,884	\$ 280,923
Construction	1,179	547	\$ 3,638,880	\$ 1,069,551
Car wash	576	519	\$ 3,835,972	\$ 2,024,687
Garment	798	516	\$ 3,123,600	\$ 907,681
Restaurant	1,299	1,113	\$ 6,633,252	\$ 2,941,921
Other ³	3,627	2,325	\$23,691,516	\$ 4,370,941
<i>Subtotal</i>	<i>8,433</i>	<i>5,242</i>	<i>\$42,562,104</i>	<i>\$11,595,704</i>
Public Works ⁴	980	279	\$3,733,751	\$ 721,242
TOTAL	9,413	5,521	\$46,295,855	\$12,316,946

2008 Results by Citation Category			
Citation Category	# of Citations	Penalties Assessed	Penalties Collected
Workers' Compensation	2,738	\$16,409,029	\$ 4,470,455
Child Labor	392	\$ 520,850	\$ 463,192
Itemized Statement	1,205	\$20,718,700	\$ 2,875,384
Minimum Wage	135	\$ 487,350	\$ 92,149
Overtime	130	\$ 397,023	\$ 169,371
Unlicensed Contractor	85	\$ 1,563,080	\$ 235,533
Car Wash Non-Registration	274	\$ 2,216,622	\$ 754,193
Other ⁵	283	\$ 249,450	\$ 2,535,427
<i>Subtotal</i>	<i>5,242</i>	<i>\$42,562,104</i>	<i>\$11,595,704</i>
Public Works	279	\$ 3,733,751	\$ 721,242
TOTAL	5,521	\$46,295,855	\$12,316,946

² Penalties collected in calendar year 2008 may include collection of penalties assessed and found due in 2007 or earlier.
³ The "other" category includes janitorial, race tracks, auto body, retail/service, pallet manufacturing and distributing, and various other industries not falling into any of the other categories specified.
⁴ The Public Works unit does not conduct inspections but rather measures performance based on cases opened for audit purposes. Likewise, the unit's performance is measured by the number of civil wage and penalty assessments (CWPA's) issued rather than the number of citations issued. These measurements are included here to provide a full picture of the Division's performance.
⁵ The "other" category in this table includes various penalty deposits into the General Fund during calendar year 2008.

Total Wages Found Due	\$26,709,394	
Total Wages Collected ⁶	\$19,181,005	
Industry	Wages Found Due	Wages Collected
Agriculture	\$542,473	\$301,098
Construction	\$229,302	\$1,598,266
Car wash	\$305,939	\$161,549
Garment	\$765,428	\$734,279
Janitorial	\$13,900	\$121,047
Restaurant	\$1,106,036	\$1,315,830
Other	\$12,978,109	\$11,532,956
<i>Subtotal</i>	<i>\$15,941,187</i>	<i>\$15,765,025</i>
Public Works	\$10,768,207	\$3,415,980
TOTAL	\$26,709,394	\$19,181,005

HIGHLIGHTS

- **Agricultural Industry:** Increased the number of inspections conducted by 78% over 2007, largely as the result of increased emphasis on heat illness prevention and adequate working conditions; the number of citations issued by 66% and penalties assessed by 45%.
- **Garment Industry:** Increased the number of inspections by 40% over 2007; the number of citations issued by 176%, the amount of penalties assessed by 16%, and the amount of penalties collected by 216%.
- **Construction Industry:** Increased the number of inspections by 49% over 2007; unlicensed contractor citations by 60%, penalties assessed by 241%, and penalties collected by 123% (highest numbers going back as far as 1995).
- **Child Labor:** Increased the number of citations by 9% over 2007, penalties assessed by 16%, and penalties collected by 53% (highest numbers going back as far as 1995).
- **Itemized statement citations** increased 29% over 2007, penalties assessed increased 117%, and penalties collected increased 6% (highest numbers going back as far as 1995).

SPECIAL PROGRAMS⁷

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 detail in a separate report. However, it is notable that the Bureau, including the

⁶ Wages collected in calendar year 2008 may include collection of wages found due in 2007 or earlier.

⁷ These programs are highlighted to provide enhanced information, but it should be noted that the dollar amounts referenced are not additive to those reflected on page 2.

results of this new program, issued 2,738 citations and \$16,409,029 in penalties for the 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 the year 2008, these efforts resulted in 576 car wash establishment inspections and the issuance of 519 citations for violations of various labor laws including non-registration and penalty assessments in the amount of \$3,835,972. Part of the continued effort of enforcement in the industry begun in 2008 has been re-inspections of businesses previously cited for Labor Code violations as a means to identify both repeat offenders and to verify continued compliance. Likely as a result of the Division's increased focus on enforcement in the car washing industry, while the number of inspections conducted increased over 2007, the number of citations issued and the dollar amount of penalties assessed decreased, indicating industry compliance.

Economic Employment Enforcement Coalition

On July 1, 2005 the EEEEC was launched. A partnership of state and federal agencies consisting of the EDD, Division of Occupational Safety and Health (DOSH), the Contractor's State License Board, the Franchise Tax Board, and the federal Department of Labor has collaborated for vigorous and targeted enforcement against unscrupulous businesses participating in the "underground economy" historically abusing the workforce in traditionally low wage industries including garment manufacturing, janitorial services, agriculture, car wash, construction, race track, and restaurant industries. The EEEEC has concentrated its inspection and education efforts in the areas of workers' compensation, non-payment of overtime and minimum wage, child labor, cash pay with no deduction statement, and illegally operating without the required garment, car wash, farm labor, construction, and auto body repair licenses and registrations. Based upon ongoing reviews of the effectiveness of the EEEEC's targeted inspection approach, in early 2008, the auto body repair and pallet manufacturing industries were determined to be more appropriate targets for EEEEC enforcement and were, therefore, substituted for the janitorial services and race track industries. Early efforts by the EEEEC in these two newly added industries have shown significant violations of law. In calendar year 2008, the EEEEC conducted 1,198 inspections affecting 19,254 employees of the inspected employers. As a result of the EEEEC inspections DLSE issued:

Citations	941
Citation Assessments	\$6,612,050
Notice to Discontinue	919

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 still maintained a high level of enforcement activities as illustrated below:

Cases Opened:	980
Cases Closed:	807
Civil Wage and Penalty Assessments Issued:	279
Settlements:	75
Wages Found Due:	\$10,768,207
Wages Recovered:	\$ 3,415,980 ⁸
Penalties Assessed:	\$ 3,733,751
Penalties Collected:	\$ 721,242

Additionally, in 2008 the Labor Commissioner signed Orders of Debarment for seven contractors. 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. In addition, DLSE initiated but has not yet completed debarment actions against three additional contractors and their principles for failure to pay for all hours worked, falsified certified payroll records, misclassification of workers, and failure to pay correct prevailing wage rates.

Collections Unit

With the implementation of the DLSE's new Collection Unit in November 2006, the Division achieved significant progress in collecting penalties assessed. As anticipated, the Unit's collection efforts surpassed the 2007 results. Collections Unit staff processed 2,720 judgments for calendar year 2008, an increase of nearly 1,000 cases with total penalty collections by the Unit of \$3,103,935, which represents an increase of nearly \$350,000 over 2007. We continue to look for new methods for collection and are hopeful that our efforts will have positive results.

Legal Unit

Utilizing the result of its inspections and enforcement activities, the Bureau has worked closely with the Division's Legal Unit to ensure compliance, and in defending actions brought by businesses that have attempted to have citations overturned. In 2008, the Division brought three lawsuits against unlicensed car washes which continued to operate illegally after being cited to enjoin them from continuing to operate. As a result of the lawsuits, one of the businesses came into compliance by paying the penalties and registering. Litigation against the other two car washes is ongoing.

In September 2008, DLSE also negotiated the settlement of a lawsuit initiated by DLSE in 2007 in Los Angeles Superior Court on behalf of 60 workers. A Bureau investigation uncovered a systematic practice of allowing employees to work 8 or 9 hours per day, but only paying them for 3 to 5 hours, and failing to maintain individual employee time records. The settlement reached included the payment of \$400,000 in back wages, \$5,000 in penalties, \$5,000 in liquidated damages, and \$40,000 in attorney's fees.

In 2008, the Legal Unit also filed two lawsuits alleging violations of Labor Code section 2810 which prohibits certain contracts that do not provide sufficient funds to comply with applicable state and

⁸ Wages recovered and penalties collected may include moneys found due in 2007 or earlier.

federal laws. As a result of an additional lawsuit under this provision filed in 2007 by the DLSE as lead counsel in partnership with the Attorney General, an Application for Default Judgment in the amount of approximately \$13 million is pending against a janitorial company in the Superior Court.

Also in 2008, 122 cases were referred to local District Attorneys. Four criminal citations were issued against persons engaging in farm labor contracting without a license. Three cases to revoke a farm labor contractors' license were brought to hearing before the Labor Commissioner, each resulting in revocations for the three year maximum period allowed by law. As noted above, heat stress illness prevention and enforcement of minimum health and safety standards was a major focus of DLSE in 2008 in partnership with the DOSH. In cooperation with various government departments and local law enforcement, one of the cases resulting in revocation sought the revocation of the registration of a farm labor contractor that failed to provide adequate health safeguards, contributing to the death of one of its employees.

Transfers to the General Fund

In calendar year 2008, DLSE deposited \$8.7 million in fines and penalties collected into the General Fund.⁹ Statistics show that the transfer to the General Fund is by far the largest deposit going back over 10 years.

SUMMARY

Enforcement has been a top priority for 2008. In 2009, the Division will remain focused on its mission to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

Respectfully Submitted,

Angela Bradstreet
State Labor Commissioner

⁹ This amount includes \$2.2 million in transfers from the Unpaid Wage Fund in accordance with provisional language in the annual Budget Act.