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**2009 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 for violations of any applicable Labor Code sections; 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 audits 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. Novel impact litigation, license revocations and debarment proceedings have also been aggressively promoted as part of the Labor Commissioner's multi-prong and high priority enforcement program 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 2009, the Bureau conducted a total of 9,053 inspections, resulting in a total of 4,465 citations.<sup>1</sup> The largest single source of violations and citations continues to be the failure to carry workers' compensation insurance with 2,257 citations with a total assessment amount of \$11,613,052. Although significantly fewer citations were issued for failure to issue an itemized wage statement (977 violations), the dollar amount of assessments for the citation category is a close second to lack of workers' compensation insurance at \$10,083,750.

The following tables illustrate the number of inspections conducted, citations issued, penalties assessed, and wages found due and recovered by DLSE *inclusive* of all special programs within the Bureau including prevailing wage enforcement through the Public Works Unit, and *inclusive* of the Economic Employment Enforcement Coalition (EEEC) sweeps in calendar year 2009.

<b>2009 Results by Industry</b>				
		<b>Total Inspections</b>		<b>9,053</b>
		<b>Total Citations Issued</b>		<b>4,465</b>
<i>Industry</i>	<i>Inspections</i>	<i># of Citations</i>	<i>Penalties Assessed</i>	<i>Penalties Collected</i> <sup>2</sup>
Agriculture	954	201	\$1,508,050	\$410,128
Car wash	623	469	\$3,098,050	\$1,250,719
Construction	1,017	330	\$2,091,493	\$675,806
Garment	834	418	\$2,192,700	\$275,582
Restaurant	1,382	953	\$5,498,880	\$1,822,836
Retail	682	236	\$1,050,542	\$307,418
Other <sup>3</sup>	2,209	1,595	\$10,326,037	\$3,951,012
<i>Subtotals</i>	<i>7,701</i>	<i>4,202</i>	<i>\$25,765,752</i>	<i>\$8,693,501</i>
Public Works <sup>4</sup>	1,352	263	\$4,539,501	\$839,123
<b>TOTAL</b>	<b>9,053</b>	<b>4,465</b>	<b>\$30,305,253</b>	<b>\$9,532,624</b>

<sup>1</sup>As explained below, the total number of inspections and citations includes performance of all Bureau programs including the performance of the Public Works unit and EEEEC.

<sup>2</sup>Penalties collected in calendar year 2009 may include collection of penalties assessed and found due in 2008 or earlier.

<sup>3</sup>The "other" category includes janitorial, race tracks, auto body, pallet manufacturing and distributing, and various other industries not falling into any of the other categories specified.

<sup>4</sup>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.

<b>2009 Results by Citation Category</b>			
<i>Citation Category</i>	<i># of Citations</i>	<i>Penalties Assessed</i>	<i>Penalties Collected</i>
Workers' Compensation	2,257	\$11,613,052	\$3,659,229
Child Labor	209	\$228,000	\$245,675
Itemized Statement	977	\$10,083,750	\$3,307,965
Minimum Wage	113	\$393,350	\$74,035
Overtime	103	\$257,200	\$309,688
Garment	71	\$111,800	\$36,251
Unlicensed Construction Contractor	45	\$791,400	\$67,550
Non-Registration <sup>5</sup>	427	\$2,287,200	\$993,108
<i>Sub-Total</i>	<i>4,202</i>	<i>\$25,765,752</i>	<i>\$8,693,501</i>
Public Works	263	\$4,539,501	\$839,123
<b><i>TOTAL</i></b>	<b><i>4,465</i></b>	<b><i>\$30,305,253</i></b>	<b><i>\$9,532,624</i></b>

<b>Total Wages Found Due</b>	<b>\$22,381,286</b>	
<b>Total Wages Collected<sup>6</sup></b>	<b>\$13,062,164</b>	
<i>Industry</i>	<i>Wages Found Due</i>	<i>Wages Collected</i>
Agriculture	\$694,508	\$445,149
Car Wash	\$92,818	\$311,325
Construction	\$402,782	\$459,513
Garment	\$1,662,761	\$55,461
Restaurant	\$1,480,269	\$447,862
Retail	\$514,705	\$144,042
Other	\$6,747,713	\$5,976,257
<i>Sub-Total</i>	<i>\$11,595,556</i>	<i>\$7,839,609</i>
Public Works	\$10,785,730	\$5,222,555
<b><i>TOTAL</i></b>	<b><i>\$22,381,286</i></b>	<b><i>\$13,062,164</i></b>

<sup>5</sup> Includes penalties for non-registration against car washes and garment manufacturers.

<sup>6</sup> Wages collected in calendar year 2009 may include collection of wages found due in 2008 or earlier. 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.

## **SPECIAL PROGRAMS <sup>7</sup>**

### **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:

- \$80,857 in overtime wages from a baking company
- \$42,704 in overtime wages from a dairy
- \$182,454 in overtime wages from a lumber company
- \$112,589 for meal and rest period violations from an agricultural enterprise
- \$95,876 in overtime wages from a transportation company
- \$51,319 for meal and rest period violations from a restaurant

### **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 results of this new program, issued 2,257 citations and \$11,613,052 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 2009, these efforts resulted in 623 car wash establishment inspections/re-inspections and the issuance of 469 citations for violations of various labor laws including non-registration and penalty assessments in the amount of \$3,098,050. In addition, \$311,325 was collected on behalf of workers as wages due. Part of the continued effort of enforcement in the industry which began in 2008 was a focus on 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 continued compliance. That re-inspection focus, which actually exceeded the 10% goal, was continued in 2009. The number of re-inspections and their results, inclusive of EEEEC and included in the statistics above, are:

Re-inspections:	90
Citations:	27

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<sup>7</sup> These programs are highlighted to provide enhanced information, but it should be noted that the statistics and dollar amounts referenced, are not additive to those reflected in the tables on the preceding pages.

Breakdown by citation type:	
Registration	20
Itemized Statement	4
Overtime	2
Workers Compensation	1
Assessed Amount:	\$195,500

As in 2008, likely as a result of the Division’s increased focus on enforcement in the car washing industry, while the number of inspections conducted increased, the number of citations issued in all citation categories including non-registration, and the corresponding dollar amount of penalties assessed decreased, indicating continually increasing 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" 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, wage payment without a 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. In calendar year 2009, the EEEEC conducted 1,179 inspections. As a result of the EEEEC inspections DLSE issued:

Citations	828
Citation Assessments	\$6,227,736

**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.

	2009
Cases Opened	1,352
Cases Closed	855
CWPAs Issued	263
Settlements	60

Wages Found Due	\$10,785,730
Wages Recovered <sup>8</sup>	\$5,222,555
Penalties Assessed	\$4,539,501
Penalties Collected	\$839,123

The Public Works unit was able to significantly improve performance in 2009 compared to 2008 performance. Most notable of the unit's accomplishments is an increase of 66% over 2008 in wages recovered on behalf of workers who were not paid pursuant to the prevailing wage laws.

Additionally, in 2009 the Labor Commissioner signed Orders of Debarment for nine contractor companies and their principles. The number of debarments finalized in 2009 is the highest known number of debarments in a single year. 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.

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 3,257 judgments for calendar year 2009, with total penalty collections by the Unit of \$3,064,181. 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 are impressive and demonstrate the significant efforts of the Collections Unit staff to maximize their efficiency. We continue to look for new methods for collection and are hopeful that our efforts will continue to have positive results.

### **Legal Unit**

The Legal Unit has had significant successes in the filing of major impact litigation as part of the overall enforcement program. For example, included in highlights below: ten lawsuits for temporary restraining orders and injunctions were filed against car washes continuing to operate despite Bureau enforcement efforts; one new lawsuit alleging violation of Labor Code section 2810, which prohibits certain contracts that do not provide sufficient funds to comply with applicable state and federal laws, was filed against a janitorial company; and significant settlements were achieved under the California WARN Act.

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<sup>8</sup> Wages recovered and penalties collected may include moneys found due in 2008 or earlier.

The Bureau continues to work closely with the Legal Unit to ensure compliance and effective enforcement, and in defending actions brought by employers that have attempted to have citations overturned. 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 conduct an inspection. The following represent noteworthy highlights realized in 2009 as the result of coordinated efforts between the Bureau and the Legal Unit<sup>9</sup>:

- Obtained a default judgment against two janitorial contracting services operations in California in the amount of \$13,640,819 in unpaid wages, penalties for wage violations, and penalties for unfair business practices. The judgment was the result of the first joint lawsuit by the DLSE and the Attorney General.
- Filed a lawsuit against a janitorial company for violation of Labor Code §2810, based upon findings that the company entered into an agreement with a janitorial services subcontractor with knowledge that the contract did not include sufficient funds to allow the subcontractor to comply with all applicable California wage and hour laws. The complaint also alleges other Labor Code violations against the company for minimum wage and overtime, recordkeeping, and meal and rest periods concerning its own 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 priority 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 in the amount of \$90,000 in damages under California's Warn Act on behalf of 79 employees terminated without prior notice when their auto dealer employer abruptly ceased operations. The settlement was reached with an individual defendant, who was an owner of the auto dealership. The Legal Unit obtained a default judgment against the remaining individual defendant and auto dealership.
- Filed permanent injunction lawsuits against ten separate car wash operations seeking to shut down the car washes for continuing to operate without registering with the DLSE.
- Settlement for all wages and interest due and \$80,000 in penalties with a San Diego employer for failure to timely pay employees on scheduled pay dates due to purported cash flow problems.
- Filed a lawsuit against a restaurant with two Bay Area locations following a Bureau investigation that disclosed multiple labor law violations for failure to pay overtime, failure to keep payroll records, and failure to provide itemized statements of wages paid which resulted in \$500,000 in penalty assessments, for 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 owners.
- Filed a lawsuit seeking over \$1 million in unpaid wages plus damages and penalties in excess of \$16.6 million against a loan modification employer with ten related entities and individuals for claims alleging failure to pay all wages due.

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<sup>9</sup> 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.

- Settlement in the amount of \$802,072 in unpaid wages, waiting time penalties, and civil penalties on behalf of 1,440 workers who may not have been 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 \$98,086.20 in unpaid prevailing wages and civil penalties on behalf of 83 workers who may not have been paid all wages due for work on a specified California public works project. 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 on behalf of workers for unpaid wages. The settlement followed the filing of mechanics liens by the Legal Unit on behalf of the affected workers.

Also in 2009, 228 cases were referred to local district attorneys. One matter involving the denial of a farm labor contractors' license was reviewed by staff in the Legal Unit as well as two cases denying and one instance of revoking registration in the garment industry. The revocation of a garment industry registration was brought to hearing before the Labor Commissioner, and resulted in revocation for the one year period allowed by law.

### **Transfers to the General Fund**

In calendar year 2009, DLSE deposited \$4,042,143 million in fines and penalties collected into the General Fund.

### **SUMMARY**

Enforcement has been a top priority for 2009. In 2010, 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