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## 2011 ANNUAL REPORT ON THE EFFECTIVENESS OF THE BUREAU OF FIELD ENFORCEMENT

The Labor Commissioner respectfully submits this report to the Legislature.

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), a program within the Division of Labor Standards Enforcement (DLSE). 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. In addition to enforcement of the state's minimum wage and overtime laws, Bureau investigators enforce child labor laws; the requirement of employers to carry workers' compensation insurance coverage; the obligation to provide itemized wage statements indicating, among other things, wages earned; and licensing and registration requirements in specified industries. In the second half of this reporting period, the Bureau re-focused enforcement efforts on ensuring protection for the state's lowest-wage earners and on conducting in-depth inspections to uncover not just easily identifiable violations, but sophisticated schemes to break the law. To that end, we have conducted staff-wide training on performing audits of payroll records and prioritized citations for unpaid minimum wages, overtime, as well as prevailing and other unpaid wages.

The Bureau's Enforcement Plan targets industries known to participate in the underground economy, in which common violations include failure to comply with minimum wage, overtime, cash pay, and workers' compensation statutes. The Bureau's Plan requires strategic targeting, involving data-driven pre-inspection identification and surveillance of violators, resulting in better use of limited resources and greater focus on noncompliant employers, rather than exhaustive investigations or random selection among all employers. DLSE has provided industry specific training to equip staff with an understanding of low-wage industries and the types of schemes used to avoid complying with labor laws as well as laws specific to each industry. This knowledge enables staff to conduct meaningful interviews with employers and employees, to collect all relevant information in an inspection; to use surveillance and other investigatory tools effectively; to perform comprehensive payroll reviews, and to analyze

employers' records for indications of noncompliance. Current enforcement efforts prioritize evasive noncompliant employers for targeted investigation. The Bureau has collaborated with DLSE's Legal Unit to obtain inspection warrants and issue subpoenas where needed to conduct a thorough investigation. DLSE is working on improving compliance with subpoenas by putting resources into enforcement against those who refuse to cooperate with investigations.

The Bureau's Plan emphasizes quality over quantity in inspections. This shift in priorities departs from DLSE's historic practice of conducting a high number of randomly selected inspections, and while it may reduce inspection volume, the refined approach improves the efficacy of inspections, involving thorough identification and issuance of all appropriate citations. The resulting increased penalties for noncompliance produce a more level playing field for all employers. The Bureau's Plan also prioritizes serial labor law violators—those who have engaged in repeated labor law abuse and change their names to avoid detection and collection of outstanding citations—that endeavor to hide, requiring more flexibility and savvy use of all the tools at our disposal. The underground economy thrives when employers believe they can violate the law with impunity, the chances of getting caught are slim, and violation costs are minimal. This Administration's Bureau's Enforcement Plan aims to change this calculus.

## **ENFORCEMENT RESULTS**

In fiscal year 2010-11, the Bureau conducted a total of 9,201 inspections, resulting in 4,769 citations.<sup>1</sup> The Bureau assessed wages due in the amount of \$28,765,490. Collection of these wages owed to employees amounted to \$8,694,915. A total of \$26,783,081 in penalties was assessed and \$7,727,062 collected. The largest single source of violations and citations remains, as it has been in immediately prior years, the failure to carry workers' compensation insurance, with 2,294 citations and a total assessment amount of \$14,373,814. Second in frequency after workers' compensation citations was the failure to issue an itemized wage statement (1,047 violations), which resulted in penalties assessed at \$8,627,276. The following tables illustrate the Bureau's performance *inclusive* of all special programs such as non-public works field enforcement and prevailing wage enforcement through the Public Works Unit and performance of the Economic Employment Enforcement Coalition (EEEC). The Labor Commissioner notes the data reflecting a relatively high percentage of citations that were dismissed or modified, a statistic that has remained relatively high for some time. Through increased training and improved techniques, the Bureau is committed to decreasing the relatively high proportion of citations dismissed or modified.

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<sup>1</sup> The total number of inspections and citations, and all statistics throughout this report referenced as a "total" statistic, unless otherwise specified, encompass the performance of all Bureau programs including the performance of the Public Works Unit as well as the Economic Employment Enforcement Coalition (EEEC). As of January 1, 2012, the EEEEC was renamed and reconstituted into the Labor Enforcement Task Force; however, this report references only EEEEC because of the reporting period, which concluded prior to LETF taking effect. Performance statistics for the Bureau and the EEEEC units are detailed separately in this report's tables.

**Table 1. Bureau Performance by Industry Type for Fiscal Year 2010-2011**

| Total Inspections                                     |              |                | 9,201                                  |                                  |
|---|--------------|----------------|--|----------------------------------|
| Total Citations Issued                                |              |                | 4,769                                  |                                  |
| Industry  | Inspections  | # of Citations | Penalties Assessed <sup>2</sup>        | Penalties Collected <sup>3</sup> |
| Agriculture   | 895          | 280            | \$1,696,100                            | \$513,947                        |
| Car wash  | 626          | 468            | \$3,086,892                            | \$868,912                        |
| Construction  | 1,333        | 469            | \$1,966,656                            | \$658,381                        |
| Garment   | 858          | 574            | \$3,176,350                            | \$513,288                        |
| Restaurant  | 1,245        | 942            | \$5,841,250                            | \$1,570,111                      |
| Retail  | 574          | 138            | \$537,750                              | \$275,810                        |
| Other <sup>4</sup>                                    | 2,265        | 1,509          | \$10,838,184                           | \$2,677,625                      |
| <i>Subtotals</i>                                      | <i>7,796</i> | <i>4,380</i>   | <i>\$27,143,182</i>                    | <i>\$7,078,074</i>               |
| <i>LESS citations dismissed/modified <sup>5</sup></i> |              |                | <i>&lt;\$6,127,326&gt;<sup>6</sup></i> |                                  |
| <i>Subtotals</i>                                      | <i>7,796</i> | <i>4,380</i>   | <i>\$21,015,856</i>                    | <i>\$7,078,074</i>               |
| PLUS Public Works <sup>7</sup>                        | 1,405        | 389            | \$5,767,225                            | \$648,988                        |
| <b>TOTALS</b>   | <b>9,201</b> | <b>4,769</b>   | <b>\$26,783,081</b>                    | <b>\$7,727,062</b>               |

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

<sup>3</sup> Penalties collected in fiscal year 2010-11, as depicted in tables throughout this report, may include collection of penalties assessed and found due in earlier reporting periods.

<sup>4</sup> The “other” category includes janitorial, race tracks, auto body, pallet manufacturing and distributing, hotel/motel industry and various other industries not falling into any of the other industries specified.

<sup>5</sup> Throughout all tables, this reference reflects a reversal of assessment. 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.

<sup>6</sup> This total is derived in detail in Table 2.

<sup>7</sup> In this reporting period, the Public Works Unit did not conduct inspections but rather measures performance based on cases opened for audit purposes. Thus the data in this table should be understood as 1,405 audits conducted with 389 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.

**Table 2. Bureau Performance by Citation Category for Fiscal Year 2010-2011**

| <b>Citation Category</b>           | <b># of Citations</b> | <b>Penalties Assessed</b> | <b>Citations Dismissed or Modified</b> | <b>Penalties Collected</b> |
|------------------------------------|-----------------------|---------------------------|--|----------------------------|
| Workers' Compensation              | 2,294                 | \$14,373,814              | \$4,429,126                            | \$3,183,245                |
| Child Labor                        | 156                   | \$158,250                 | \$22,000                               | \$103,847                  |
| Itemized Statement                 | 1,047                 | \$8,627,276               | \$1,150,200                            | \$2,578,861                |
| Minimum Wage                       | 133                   | \$444,250                 | \$67,300                               | \$122,986                  |
| Overtime                           | 161                   | \$539,392                 | \$84,400                               | \$205,675                  |
| Garment Recordkeeping <sup>8</sup> | 118                   | \$146,150                 | \$1,400                                | \$91,374                   |
| Unlicensed Construction Contractor | 52                    | \$304,800                 | \$115,400                              | \$64,888                   |
| Non-Registration <sup>9</sup>      | 419                   | \$2,549,250               | \$257,500                              | \$711,621                  |
| Other                              | 0                     | \$0                       | \$0                                    | \$15,577                   |
| <i>Subtotals</i>                   | <i>4,380</i>          | <i>\$27,143,182</i>       | <i>\$6,127,326</i>                     | <i>\$7,078,074</i>         |
| Public Works                       | 389                   | \$5,767,225               |  | \$648,988                  |
| <b>TOTALS</b>                      | <b>4,769</b>          | <b>\$32,910,407</b>       | <b>\$6,127,326</b>                     | <b>\$7,727,062</b>         |

<sup>8</sup> This is based on Labor Code section 2673, which requires businesses engaged in garment manufacturing to keep accurate records that include names and addresses of all employees, hours worked, piece rates used, and other specified information.

<sup>9</sup> These figures represent penalties for non-registration against car washes and garment manufacturers.

**Table 3. Bureau Performance Regarding Wages for Fiscal Year 2010-2011<sup>10</sup>**

| <b>Total Wages Found Due</b>              | <b>\$28,765,490</b>    |                        |
|---|------------------------|------------------------|
| <b>Total Wages Collected<sup>11</sup></b> | <b>\$8,694,915</b>     |                        |
| <b>Industry</b>                           | <b>Wages Found Due</b> | <b>Wages Collected</b> |
| Agriculture                               | \$73,450               | \$137,002              |
| Car Wash                                  | \$210,092              | \$282,603              |
| Construction                              | \$2,096,983            | \$230,403              |
| Garment                                   | \$230,625              | \$42,236               |
| Restaurant                                | \$1,579,915            | \$579,160              |
| Retail                                    | \$328,042              | \$173,923              |
| Other                                     | \$3,089,663            | \$1,643,568            |
| <i>Subtotals</i>                          | <i>\$7,608,770</i>     | <i>\$3,088,895</i>     |
| Public Works                              | \$21,156,720           | 5,606,020              |
| <b>TOTALS</b>                             | <b>\$28,765,490</b>    | <b>\$8,694,915</b>     |

### Self Audits

DLSE continues to use employer self-initiated audits to augment the investigations conducted in response to specific complaints and to encourage employers to voluntarily correct violations and come into compliance. Thirty employer self-audits were conducted in fiscal year 2010-2011, performed under the supervision and direction of Bureau staff. Examples illustrating the financial results of these efforts include:

- \$56,644 by a software company for failure to pay overtime wages
- \$49,651 by a manufacturing company for failure to provide meal and rest periods
- \$48,751 by a farm grower for failure to pay overtime wages
- \$71,175, by a professional corporation for failure to pay overtime wages
- \$67,584 by a professional corporation for failure to provide meal and rest periods on behalf of 99 employees
- \$85,459 by a restaurant for failure to provide meal and rest periods on behalf of 59 employees
- \$58,153 by a professional corporation for failure to pay overtime wages

<sup>10</sup> The disparity between wages found due and the level of collection on those wages may be attributable to: (1) noncompliant employers who lack assets with which to pay assessments and/or upon which DLSE can levy collection of judgments; and (2) businesses closing down and re-opening under a new name.

<sup>11</sup> Wages collected in fiscal year 2010-2011, as depicted in Table 3, may include collection of wages found due in earlier reporting periods. This statistic is also inclusive of wages collected as a 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.

- \$43,956 by a media corporation for failure to provide meal and rest periods
- \$161,832 by a technology company for failure to provide meal and rest periods on behalf of 70 employees
- \$62,541 by a pharmaceutical company for failure to pay overtime wages
- \$61,588 by a restaurant for failure to provide meal and rest periods

In total, \$767,334 in wages was collected for workers through such audits.

### **Targeted Unlawfully Uninsured Employer Enforcement Program**

As previously mentioned, the lack of workers' compensation insurance remained the most prevalent violation for fiscal year 2010-2011. 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 in addition to standard complaint-driven investigations. During this reporting period, we enhanced the quality and quantity of data obtained from these partnering agencies. The process and results of those efforts are discussed in a separate report.

Through the Uninsured Employer Enforcement Program, the Bureau issued 105 citations and assessed \$393,958 in penalties for failure to provide evidence of workers' compensation insurance.

### **Economic Employment Enforcement Coalition**

On July 1, 2005 the EEEEC was launched, forging 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. Charged with combating the underground economy, EEEEC concentrated inspection efforts on traditionally low-wage industries, including agriculture, car wash, garment manufacturing, janitorial service, horse racing tracks, restaurants, and the construction industry, known for a high rate of labor, tax, and licensing violations. EEEEC utilized a blend of enforcement, education, and outreach to gain employer compliance, establishing valuable communication with business and labor organizations within industries prone to underground economy activity. A separate report on EEEEC has been submitted, along with a report on the newly re-constituted Labor Enforcement Task Force led by DIR.

### **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 significant decline in the construction industry due to the economic downturn, efforts by the Public Works Unit have resulted in the activities detailed in Table 4.<sup>12</sup>

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<sup>12</sup> The statistics reported here are included in the overall results of the Bureau summarized earlier in this report.

**Table 4. Public Works Unit Performance for Fiscal Year 2010-2011**

| <b>Enforcement Activity</b>   | <b>Results</b> |
|-------------------------------|----------------|
| Cases Opened                  | 1,405          |
| Cases Closed                  | 1,110          |
| CWPAs Issued                  | 389            |
| Settlements                   | 115            |
| Wages Found Due               | \$21,156,720   |
| Wages Recovered <sup>13</sup> | \$5,606,020    |
| Penalties Assessed            | \$5,767,225    |
| Penalties Collected           | \$648,988      |

Additionally, in fiscal year 2010-11, the Labor Commissioner signed Orders of Debarment<sup>14</sup> for six 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, coupled with aforementioned concerted efforts to process complaints to recover wages on behalf of workers not paid prevailing wage, sends a very strong message to the contractors within the public works industry. The Labor Commissioner is committed to ensuring the protection of workers from unlawful labor practices. Employers found noncompliant with respect to public works laws will be subject to exclusion from public works contracts.

### **Collections Unit**

The data reflects a need for much more effective collections, an area of priority for the Division. The efficacy of our other enforcement efforts, including the Bureau, is deeply undermined when inspections are conducted, citations issued, but collections fail. It diminishes the deterrent effect of our enforcement. The Collections Unit staff processed 3,757 judgments in fiscal year 2010-11 (an increase of 18 percent over FY 2009-10), with total penalty collections by the Unit totaling \$3,477,005 (an increase of nearly 15 percent over FY 2009-10). While these results demonstrate the significant efforts of the

<sup>13</sup> Wages recovered and penalties collected may include monies found due in earlier reporting periods.

<sup>14</sup> An Order of Debarment is issued when a contractor has been found by the Labor Commissioner to have intentionally defrauded public works statutes (Labor Code sections 1720-1861), has committed two or more separate willful violations of the public works statutes, or fails to provide certified payroll records within 30 days of a Labor Commissioner's written request.

Collections Unit staff, the Labor Commissioner is committed to assiduous efforts to improve the collection rate relative to wages owed and citations and penalties assessed.

### **Legal Unit**

The Bureau continues to collaborate with the Legal Unit within DLSE, whose attorneys assist with inspection warrants, which are needed when an employer refuses entry or otherwise impedes an investigation, and with subpoenas, including efforts to compel employers to provide records when the employer refuses to comply with a Bureau record demand. In addition, DLSE's Legal Unit files lawsuits against repeat violators. In this reporting period, DLSE filed seven lawsuits against car washes to enjoin them from doing business without first becoming registered. DLSE obtained permanent injunctions in three cases, and one case is still pending in court; one case was dismissed after the car wash agreed to and became registered; and in two cases the car washes ceased doing business. The Legal Unit also assisted the Bureau in obtaining five inspection warrants in FY 2010-11.

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

In Fiscal Year 2010-11, DLSE deposited \$2,647,694.38 in fines and penalties collected into the General Fund.

Respectfully Submitted,



Julie A. Su  
Labor Commissioner