

DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Labor Standards Enforcement
Headquarters Office
1515 Clay Street, Ste. 401
Oakland, CA 94612
Tel: (510) 285-2118 Fax: (510) 285-1365

MAILING ADDRESS:
P. O. Box 420603
San Francisco, CA 94142-0603



Daniel Yu
Assistant Chief
Division of Labor Standards Enforcement

2018 Annual Report on the Unlawfully Uninsured Employer Enforcement Program in Labor Code Section 90.3(d)

The Labor Commissioner respectfully submits this report to the Legislature.

Through the Bureau of Field Enforcement (BOFE) Unit, the Labor Commissioner (DLSE) is charged with enforcing laws that require employers to secure workers' compensation insurance coverage for any and all employees in the State of California.

Background

To ensure adequate law enforcement, Assembly Bill (AB) 749 (Chapter 6, Statutes of 2002) added Labor Code section 90.3(b). Senate Bill (SB) 869 (Chapter 662, Statutes of 2007) amended sections 62.5 and 90.3 of the Labor Code as well as section 1095 of the Unemployment Insurance Code. Labor Code section 90.3(b) states: "In 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 held by 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's Office establish procedures for ensuring that (1) employers with payroll but with no record of workers' compensation insurance coverage be contacted and (2) on-site inspections be conducted of employers that cannot show any valid reason for lacking coverage.

Labor Code section 90.3 also requires the Labor Commissioner to report annually to the Legislature concerning the effectiveness of the program.

Program Overview

A partnership between the Labor Commissioner, the EDD, and the WCIRB enables quarterly data collection. Through a data-sharing agreement that has been refined over time, the EDD provides the Labor Commissioner with a randomly selected list of 1,250 employers that report five or more employees in the EDD database.¹ This list includes 500 employers selected

¹ EDD referrals for any given quarter are received two quarters later, allowing employers to file any appropriate addendums or changes in their returns. For instance, in January 2018, the EDD provided referrals covering the third quarter of 2017.

randomly across all industries, as well as 250 new employers. An additional 500 employers are selected randomly from two industries (250 employers each) designated for each quarter based on their high rate of participation in the underground economy. These employers are in, for example, the restaurant, car wash, construction, agriculture, automotive, janitorial, hotel/motel, medical, nail salon, and garment industries. The WCIRB then screens the list of 1,250 employers for a specific quarter for evidence of workers' compensation insurance coverage.

The Labor Commissioner mails SB 869 notification letters to all employers for whom the WCIRB finds no evidence of workers' compensation insurance coverage that would be considered for investigation. If the employer cannot provide verifiable proof of workers' compensation insurance in effect at the time of the postmark on its response letter, BOFE can initiate an investigation. During the inspection process, BOFE verifies workers' compensation insurance coverage for the time period corresponding to the EDD referral. If no coverage existed for an employer during that quarter or at any time during the year leading up to the inspection, then BOFE issues a citation to the employer. At the time of the inspection, BOFE may issue citations for other violations of laws pertaining to wages and work hours, as appropriate.

Some BOFE inspections reveal that the employer did indeed have coverage at the time of the WCIRB's screening. The Labor Commissioner's Office compiles a list of all such employers and sends it to the WCIRB.² In response, the WCIRB explains why these employers were not appropriately recognized during the initial screening process (see Table 4). In certain cases, BOFE may be unable to ascertain whether the employer has insurance coverage. The reasons include: (1) inability to locate business; (2) the business is a residence; (3) the address provided by the EDD is not valid; and (4) employers did not appear after an Order to Appear notice was mailed.

The Labor Commissioner has been working to overcome the challenges associated with multiple data exchanges for this program, which can lead to inefficiencies, such as sending out an investigator to an employer that had proper insurance coverage or is no longer in business. In 2016, we refined certain elements of the data exchange to improve the program's efficiency and its targeting. For example, historically, in inspections conducted of employers with ten or fewer employees, investigators found that the employees were primarily corporate officers or principal members of a limited liability company (LLC), and thus coverage was not required. As a result, the Labor Commissioner now pursues further screening and investigation of employers with more than ten employees from the randomized list provided by the EDD.

In 2018, the Labor Commissioner received 5,000 randomly selected referrals from the EDD, reflecting employer information from records covering the third quarter of 2017 through the second quarter of 2018. Of the 5,000 received, we filtered employers with more than ten employees, for the third quarter of 2017 through second quarter of 2018, and forwarded 2,596 employers to the WCIRB for additional screening. The Labor Commissioner issued citations for 96 violations and assessed \$3,399,294 and collected \$691,118 in penalties for lack of insurance as well as other violations.

² Employers were included in this list if they either provided proof of coverage when the Labor Commissioner's Office mailed them a letter or were found to have had coverage at the time of inspection.

Summary of Unlawfully Uninsured Program Results

The results of the program’s efforts for 2018 is as follows.

Table 1. Program Summary for 2018

Activity ³	Number Reported
Total number of employers identified from EDD records	5,000
<ul style="list-style-type: none"> • Total number of employers screened for matching WCIRB records of insurance coverage or self-insurance 	2,596
<ul style="list-style-type: none"> • Screened employers found to have questionable or no evidence of insurance coverage or self-insurance 	648
<ul style="list-style-type: none"> • Screened employers notified by the Labor Commissioner to provide verification of insurance coverage⁴ 	213
The number of employers that responded to the Labor Commissioner notification letter	33
<ul style="list-style-type: none"> • Employers that verified they had workers’ compensation insurance coverage 	26
<ul style="list-style-type: none"> • Employers that obtained insurance after receiving the letter 	7
<ul style="list-style-type: none"> • Employers that acknowledged their lack of workers’ compensation coverage 	0

³ Includes activity in the third quarter of 2017 through the second quarter of 2018.

⁴ Additional screening by the Labor Commissioner against the WCIRB database and the Self Insurance Program was done before employers were notified to provide verification of coverage.

Table 2. Results of Activities Performed in 2018 under the Unlawfully Uninsured Employer Program⁵

Number of inspections completed ⁶	45
Number of employers still under investigation	56
Number of violations per Labor Code section 3722 ⁷	61
Number of violations assessed for other wage and hour penalties	35
Amount of workers' compensation penalties assessed	\$3,099,544
Amount of other wage and hour penalties assessed	\$299,750
Total penalties assessed	\$3,399,294
Amount of workers' compensation penalties collected	\$641,987
Amount of other wage and hour penalties collected	\$49,131
Total penalties collected	\$691,118
Amount of workers' compensation citations administratively dismissed ⁸	\$373,980

Table 3. Reasons the Labor Commissioner Did Not Cite Employers for Lack of Workers' Compensation Insurance Following Investigation⁹

Rationale	Number of Cases
Company was no longer in business/unable to locate business	10
Labor Commissioner verified workers' compensation insurance coverage	31
Business located outside California	5
Employers not required to have any coverage	
• No employees	0
• Corporate officers only	0
• Self-insured	3
Total number of employers not cited for lack of workers' compensation insurance following investigation	49

⁵ Table 2 data reflects BOFE enforcement activity in calendar year 2018 on leads developed under Labor Code Section 90.3 regardless of the year or quarter the leads were assigned.

⁶ The number of inspections completed includes inspections of employers cited for lacking workers' compensation insurance, employers cited for other noncompliance issues, and employers not cited at all within the calendar year.

⁷ Each citation issued per Labor Code sections 3722(a) or (b) represents one employer that lacks coverage within the calendar year.

⁸ A citation may be administratively dismissed if the employer had no proof of workers' compensation insurance at the time of the inspection/citation but subsequently submitted proof of insurance valid for the date of inspection.

⁹ Table 3 covers activity in the third quarter of 2017, through the second quarter of 2018.

Table 4 shows the reasons employers were misidentified as having no workers' compensation coverage when initially screened by the WCIRB during the relevant periods.

Table 4. WCIRB Assessments of All Employers Misidentified as Uninsured¹⁰

WCIRB Response	Number of Cases
Employers with verified coverage	
The WCIRB found coverage under another name or address	14
The Labor Commissioner's Office found coverage for an employer; the WCIRB received the policy after the initial screening list was given to the Labor Commissioner's Office	7
The WCIRB did not find coverage until it received the follow-up list	4
Employers whose coverage the WCIRB still could not verify	
The WCIRB still has no records verifying coverage for employer, even though the Labor Commissioner's Office found coverage ¹¹	28
Total number of employers in follow-up list to the WCIRB	53

Summary

We are committed to refining the Unlawfully Uninsured Employer Enforcement Program to improve the results of its investigations. These referrals are included in the Labor Commissioner's targeting for concentrated enforcement to enhance efficiency and effectiveness for the benefit of both employees and employers.

Respectfully Submitted,



Daniel Yu
 Assistant Chief

¹⁰ Table 4 covers employers from the second quarter of 2017 through the first quarter of 2018. Results for the second quarter of 2018 will be included in the next report, once the WCIRB has had an opportunity to respond.

¹¹ DLSE was able to find coverage in some cases but did not provide enough information to WCIRB to verify coverage results.