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## **2021 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 is charged with enforcing laws that require employers to secure workers' compensation insurance coverage for 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.<sup>1</sup> This list includes 500 employers selected randomly across all industries, as well as 250 new employers. An additional 500 employers are

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<sup>1</sup> 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 2021, the EDD provided referrals covering the third quarter of 2020.

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 they may be subject to 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, BOFE verifies workers' compensation insurance coverage for the 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.

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.<sup>2</sup> 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 at the scheduled Order to Appear.

The Labor Commissioner has been working to eliminate inefficiencies associated with multiple data exchanges for this program, 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. For example, historically, inspections of employers with ten or fewer employees 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 2021, the Labor Commissioner received 5,000 randomly selected referrals from the EDD, reflecting employer information from records covering the third quarter of 2020 through the second quarter of 2021. Of the 5,000 received, we filtered employers with more than ten employees, for the third quarter of 2020 through second quarter of 2021, and forwarded 2,506 employers to the WCIRB for additional screening. The Labor Commissioner issued citations for 40 violations and assessed \$3,639,315 and collected \$284,174 in penalties for lack of insurance as well as other violations.

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<sup>2</sup> Employers were included in this list if they either provided proof of coverage in response to the letter from the Labor Commissioner's Office or were found to have had coverage at the time of inspection.

## Summary of Unlawfully Uninsured Program Results

**Table 1. Program Summary for 2021**

Activity <sup>3</sup>	Number Reported
<b>Total number of employers identified from EDD records</b>	<b>5,000</b>
<ul style="list-style-type: none"> <li>Total number of employers screened for matching WCIRB records of insurance coverage or self-insurance</li> </ul>	2,506
<ul style="list-style-type: none"> <li>Screened employers found to have questionable or no evidence of insurance coverage or self-insurance</li> </ul>	500
<ul style="list-style-type: none"> <li>Screened employers notified by the Labor Commissioner to provide verification of insurance coverage<sup>4</sup></li> </ul>	162
<b>The number of employers that responded to the Labor Commissioner notification letter</b>	<b>33</b>
<ul style="list-style-type: none"> <li>Employers that verified they had workers' compensation insurance coverage</li> </ul>	21
<ul style="list-style-type: none"> <li>Employers that obtained insurance after receiving the letter</li> </ul>	5
<ul style="list-style-type: none"> <li>Employers that acknowledged their lack of workers' compensation coverage</li> </ul>	7

<sup>3</sup> Includes activity in the third quarter of 2020 through the second quarter of 2021.

<sup>4</sup> 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 2021 under the Unlawfully Uninsured Employer Program<sup>5</sup>**

Number of inspections completed <sup>6</sup>	56
Number of employers still under investigation	31
Number of violations per Labor Code section 3722 <sup>7</sup>	29
Number of violations assessed for other wage and hour penalties	11
Amount of workers' compensation penalties assessed	\$3,499,915
Amount of other wage and hour penalties assessed	\$139,400
<b>Total penalties assessed</b>	<b>\$3,639,315</b>
Amount of workers' compensation penalties collected	\$232,149
Amount of other wage and hour penalties collected	\$52,025
<b>Total penalties collected</b>	<b>\$284,174</b>

**Table 3. Reasons the Labor Commissioner Did Not Cite Employers for Lack of Workers' Compensation Insurance Following Investigation<sup>8</sup>**

<b>Rationale</b>	<b>Number of Cases</b>
Company was no longer in business/unable to locate business	17
Labor Commissioner verified workers' compensation insurance coverage	42
Business located outside California	1
<b>Employers not required to have any coverage</b>	
No employees	0
Corporate officers only	0
Self-insured	3
<b>Total number of employers not cited for lack of workers' compensation insurance following investigation</b>	<b>63</b>

<sup>5</sup> Table 2 data reflect BOFE enforcement activity in calendar year 2021 on leads developed under Labor Code section 90.3 regardless of the year or quarter in which the leads were assigned.

<sup>6</sup> 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 during the calendar year.

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

<sup>8</sup> Table 3 covers activity in the third quarter of 2020, through the second quarter of 2021.

Table 4 shows the reasons that 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 Uninsured<sup>9</sup>**

<b>WCIRB Response</b>	<b>Number of Cases</b>
<b>Employers with verified coverage</b>	
The WCIRB found coverage under another name or address	12
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	4
The WCIRB did not find coverage until it received the follow-up list	2
Coverage was found by the WCIRB in the follow-up review	8
<b>Employers whose coverage the WCIRB still could not verify</b>	
The WCIRB still has no records verifying coverage for employer, even though the Labor Commissioner's Office found coverage <sup>10</sup>	14
<b>Total number of employers in follow-up list to the WCIRB</b>	<b>40</b>

**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,

Lilia García-Brower  
 Labor Commissioner

<sup>9</sup> Table 4 covers activity from the second quarter of 2020 through the second quarter of 2021.

<sup>10</sup> DLSE was able to find coverage in some cases but did not provide enough information to the WCIRB to verify the coverage results.