

## State labor commissioner pays nearly \$1 million in back wages to garment workers

The Division of Labor Standards Enforcement (DLSE) recently paid more than \$865,000 in back wages owed to more than 200 employees of former Wins garment contractors.

"It was with a great deal of satisfaction that we gave those checks to workers, who went over a year without the pay they'd earned," said California Labor Commissioner Arthur Lujan.

The workers' back wages were paid out of a special garment worker fund established by the state. A portion of licensing fees paid by California's garment contractors and manufacturers is set aside for use as a "payment of last resort" when employers don't pay wages. The garment worker fund has an annual payout cap of \$50,000 so early this year DLSE employee Leslie Clements obtained an exception to that cap from the Legislature and the governor, which authorized payment of the money owed Wins workers.

### Cooperation pays dividends

"We are very pleased the workers have finally received their wages, and we look forward to continuing to work with the state labor commissioner to hold accountable the owners of the Wins garment factories," said Nikki Bas, co-director of Sweatshop Watch, which, along with the Chinese Progressive Association and the Women's Employment Rights Clinic of Golden Gate University, partnered with DLSE to provide compensation to these workers.

Checks in amounts ranging from \$250 to over \$10,000 were distributed Oct. 9 to Wins workers. The DLSE worked with advocacy groups to develop a plan for distribution, which included recruitment of community volunteers. Those volunteers came from as far away as Los Angeles to help with translations for workers, many of whom were monolingual Chinese immigrant women, and created a comfortable environment for workers to pick up their checks.

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*Wins workers received checks in amounts ranging from \$250 to over \$10,000.*

## New agency supports heightened enforcement efforts

Creation of the new Labor and Workforce Development Agency in July promises to improve services offered by several programs now overseen by the agency, including services of the Department of Industrial Relations (DIR), the Employment Development Department (EDD), the Agricultural Labor Relations Board (ALRB) and the California Workforce Investment Board (CWIB).

A formal relationship could help improve enforcement efforts among the programs, which often coordinated activities such as sweeps, or unannounced workplace inspections, on an informal basis or because

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**Senior deputy labor commissioner Ethera Clemons (right) gets help from a Chinese-speaking volunteer recruited by Sweatshop Watch to help distribute checks.**

Mei Yan Fang, a former Wins worker said, “We are overjoyed to finally receive the wages owed to us after so many months of struggling for justice.”

### **Complex case unfolds**

The Wins investigation began in July 2001, when the DLSE learned that Wins of California’s employees had worked for months without pay. The investigation further revealed that shop owners Anna Wong and Toha “Jimmy” Quan owned three other companies — San Francisco garment shops Win Industries of America and Win Fashions, as well as Utah-based manufacturer, Tomi Inc. Family member and company principal Jenny Wong kept the books and rotated employees among the three San Francisco shops.

Through Tomi Inc., Wins sold garments to K-Mart, JC Penny, Sears, TJ Maxx, Sam’s Club, Mervyn’s, Bebe, It’s my Baby, Kandy Kiss, Cut Loose, Two Star Dog, Flapdoodles, M.B. Sport and the U.S. Army/Air Force Exchange.

DLSE investigators shut the factories down for operating without workers’ compensation or proper registration and the companies declared bankruptcy, setting the stage for a complex legal battle over workers’ back wages.

The case was further complicated by employees’ fears of confronting their long-time employers. Several community organizations worked together with the DLSE to overcome that hurdle and help workers claim their wages.

Audits of company records were also used to determine how much was owed each employee.

### **State lawsuit continues battle**

“We applaud the state’s efforts on behalf of the Wins workers, but the former sweatshop owners must still be held accountable so that a clear message is sent to all employers that criminal labor abuses will not be tolerated,” said Chinese Progressive Association spokesperson Leon Chow.

After initial attempts to recover workers’ wages from Wins companies were rebuffed, DLSE attorney David Balter filed suit against the principals to prevent them from transferring ownership of eight properties in San

Francisco and Oakland, estimated to be worth in excess of \$6 million. The DLSE won a writ of attachment in the amount of \$2.1 million on the properties and is aggressively pursuing its lawsuit to secure payment of civil penalties for Wins’ workers, recover wages paid to these workers out of the garment worker fund, and to pay state attorney fees.

To date, Wins owners have not paid a dime of back wages owed to workers.

“Our cooperation with Sweatshop Watch, the Chinese Progressive Association and the Women’s Employment Rights Clinic of Golden Gate University helped us get where we are in this case today — distributing the first of the money owed to these workers,” said Commissioner Lujan. ■

### Continued: **New agency supports heightened enforcement efforts**

of a memorandum of understanding. Enforcement is now shared by at least two departments, DIR and EDD. DIR oversees occupational safety and health and labor law enforcement while EDD’s tax branch collects payroll taxes.

The wisdom of coordinating resources stems from a realistic assessment of employers who violate the law, as well as a commitment to extending scarce resources.

“Not surprisingly, when we find a violator, we often find the violator is ignoring several areas of the law,” said Labor and Workforce Development Agency Acting Secretary Steve Smith when, as DIR director, he



**Acting Secretary Steve Smith gets a tour of Casa de la Cultura’s mobile health care clinic from Sister Rosa Dolores.**

testified before the Little Hoover Commission last spring. “For instance, the agricultural employer who is violating farming health and safety standards is often making illegal cash wage payments, carries no workers’ compensation coverage and does not pay employer taxes. Ensuring the various enforcement entities are not only coordinating, but sharing data bases, staff allocations and discussing timing of enforcement actions will increase the effectiveness and consequently, the reach of each individual department and board.”

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# The face of farm worker outreach

Juanita Martinez's career at the Employment Development Department (EDD) began in an office, taking claims for unemployment insurance. But then Martinez became an outreach worker covering all of Santa Cruz County. And her job took a different turn.

Her clients are migrant, seasonal farm workers and Martinez contacts them in the community to inform them about their rights and the services provided by the Santa Cruz County One-Stop Career Center and EDD. The 27-year veteran knows agricultural workers often don't have time to figure out what resources are available to them so she finds the workers where she can — in the fields, in their homes and through community-based organizations.

"Sometimes they get off as late as 7 p.m. from working in the fields," says Martinez. "They're so tired they just eat dinner, shower and go to bed."

Martinez fills in the gaps wherever necessary. She finds most employers are receptive to lunchtime presentations but occasionally she is denied access to workers on the job. That's why her role in the community is so vital.

## **Connecting with farm workers wherever she finds them**

"I look at it like an English muffin that has all these crevices," says Martinez. "I'll go down any dirt road, any alley, to find farm workers."

***"In the fields there aren't a lot of questions," says Martinez. "That's why I like the home visits better. People talk more freely."***

One time I visited a worker who had a broken foot and needed state disability insurance, so I filled out the application form for him. It was just by luck I went to his house."



***As an outreach worker, Juanita Martinez goes into the community to locate, contact and inform farm workers about services provided by EDD.***

Martinez's work in the community is what led her to Casa de la Cultura. A non-profit, grassroots organization serving residents of Pajaro (an unincorporated area in the most northeastern part of Monterey County), Casa de la Cultura promotes a healthy community through a variety of services including education, cultural activities, advocacy, translations, after-school tutoring and citizenship courses.

Run by Sister Rosa Dolores Rodriguez under the auspices of the St. Vincent de Paul Society, Casa's mobile clinic, La Casita de Salud, travels to the fields and other worksites to provide health education and diabetes testing to workers.

Martinez dropped in on one of Casa de la Cultura's citizenship classes after reading about it in a local paper. The class consisted of nearly 70 students and one teacher.

"Civics was not my favorite subject but I really became interested listening to the instructor," says Martinez. A year later, most of those

students became citizens. When the original instructor left and Sister Rosa started giving the classes Martinez offered to take her place.

"I knew Sister Rosa had a lot of other work to do," Martinez says.

## **Holistic approach makes sense**

Casa de la Cultura's mission is to build a healthy community through education and social services and its holistic approach reflects that of many community-based organizations. Casa provides health care to workers who don't have insurance so it makes sense for them to offer citizenship classes: While most undocumented workers have no medical coverage, citizens are eligible for Medi-Cal and other comprehensive services.

Martinez credits her students with taking steps to better their lives, provide themselves with more opportunities and make their children proud. And she credits herself with having lots of patience.

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"If a person doesn't understand, I can repeat and repeat," says Martinez. "My main goal is to help them understand what the questions mean and how to answer them. The citizenship test is given in English so students have to comprehend the meaning of raise your right hand."

Martinez sees the impact of her work at Casa when the people she teaches become citizens. And she knows it impacts her work for EDD because the majority of her students are farm workers, making her well known in the community and opening doors for her outreach efforts.

"In the fields there aren't a lot of questions," says Martinez. "That's why I like the home visits better. People talk more freely."

### **Outreach effort includes employers**

Another aspect of Martinez's job is educating employers about EDD's services. Both workers and employers are provided with information about the CalJOBS system, which allows clients to look for work anywhere in California and employers to find workers through on-line resume searches.

Employers input job orders when they need workers and all users can connect to the system from any computer that has Internet access.

Martinez makes sure the employers she contacts receive state and federal workplace posters and pre-employment guidelines and she talks to them about workplace issues like preventing sexual harassment. She takes the same approach to seeking out employers that is so successful with workers.



**Sister Rosa Dolores of Casa de la Cultura uses vials of colored water to explain the effects of diabetes — a disease disproportionately affecting farm workers.**



"I'm very flexible," says Martinez. "I'll meet them at their business, a restaurant, or wherever is most convenient."

Martinez's connection to the agricultural community goes back to her childhood. Born in Mexico, she came to California with her family when she was three years old. In 1957 the family moved to Watsonville to grow strawberries, which Martinez picked on holidays and weekends.

Today Martinez believes her work for EDD gives her energy and she finds a sense of well being in helping her community.

Says Martinez, "I used to think volunteering was a waste of time when you could be out shopping." ■



## **Coordination of services benefits workers and employers**

In addition, the coordination is driven by a strong commitment to protect law-abiding employers who are penalized when competitors win an economic edge by violating the state's laws.

Already, DIR and EDD are using their new relationship to improve educational efforts in the business community. Recently, representatives from the two departments, including DIR's Acting Director Chuck Cake, EDD's Chief Deputy Sam Rodriguez and Bob Affleck, the deputy director of EDD's tax branch, met with a group of Korean-American employers in Los Angeles to discuss enforcement in the Korean-American business community. And in the wake of issuing AB 633 regulations improving enforcement in the garment industry, the two departments are planning a joint training session later this year with employers who represent the Korean American Chamber of Commerce, Korean American Garment Manufacturers Association, Korean American Apparel Manufacturers Association and the Korean American Grocers Retailers Organization of California.

And Cal/OSHA, EDD, the ALRB, California Rural Legal Assistance, Equal Opportunity Commission and the Mexican Consulate organized a forum for farm workers in Coachella during December. In addition, DIR joined EDD and the ALRB in sponsoring — along with employer and community groups — an annual farm worker breakfast Dec. 6 in Calexico. The breakfast not only features a hearty meal served from the EDD office, but also offers farm workers — many of whom cross the border each morning from Mexicali — an information packet.

## **Agency strengthens relationships with community-based organizations**

EDD has historically emphasized developing partnerships with community organizations to improve services and now DIR is doing the same, moving beyond established relationships with compliance programs instituted by labor unions. In the San Francisco Bay Area, for example, DIR recently collaborated with the Chinese Progressive Association and Sweatshop Watch to compensate more than 200 garment workers who had not been paid for over a year (see cover story). In Los Angeles, the department has participated in town hall meetings and other forums with a coalition of worker advocates, including those from Sweatshop Watch, Maintenance Cooperation Trust Fund, the Korean Immigrant Workers Advocates and the Coalition for Humane Immigrant Worker Rights of Los Angeles.

So important are improved enforcement efforts that when labor agency staff and representatives from unions and community organizations met during a two-day strategic planning workshop in September, one of the four priorities they outlined for the future of the agency was to strengthen enforcement efforts by developing an internal case management system and coordinating collection between EDD and DIR. ■



***Employment Development Department employees asked questions about the role of the new Labor and Workforce Development Agency at a training session in Salinas.***

## **Salinas training session focuses on agricultural employers**

Changes in labor law compliance was one of the subjects of a training session recently offered to agricultural employers at the Monterey County One-Stop Career Center in Salinas.

The session included introduction of Stephen J. Smith, acting secretary of the new Labor and Workforce Development Agency. Smith discussed the agency's impact on agricultural workplaces and took questions from employers. Division of Labor Standards Enforcement (DLSE) investigators Pete Tuminia, Mary Ellen Rocha and Penny Silva detailed licensing requirements for the over 1,200 farm labor contractors in the state. Farm worker health issues were discussed by Sister Rosa Dolores Rodriguez of Casa de la Cultura. Sister Rosa's mobile van, Casita de Salud, which is used to conduct diabetes screening for farm workers in the fields, was on site and available for tours. Phil Frieders and Ruben Garcia from the Employment Development Department detailed CalJOBS and other employment services. And Michael Alvarez from the Division of Occupational Safety and Health (DOSH), which offers free consultative assistance to employers, answered questions and provided information about effective injury and illness prevention programs.

DOSH is currently developing new publications in cooperation with the California Farm Bureau and the State Compensation Insurance Fund and is working actively with the Western Growers Association and AgSafe (a nonprofit coalition focused on safety) on tailgate topics for publication. DOSH is one of the presenters at the annual AgSafe conference Feb. 5 and 6, 2003 in Seaside and is participating in ongoing roundtable meetings to develop new educational materials specifically for agriculture. ■

# Agricultural employers benefit from upgrades

## Farm labor contractor license verification Web site helps growers comply with state law

Compliance with state law is now just a click away, thanks to the Division of Labor Standards Enforcement (DLSE) license verification Web site.

In its first three months of operation, nearly 1,800 licenses were verified via the Web, showing that growers are eager to use time saving technology to help them provide evidence they have checked farm labor contractor licenses before signing a contract.

The new license verification Web site is at [www.dir.ca.gov/dlse](http://www.dir.ca.gov/dlse) and works easily because growers type in responses to a series of questions and submit their request electronically. DLSE's license verification unit sends a reply within 24 hours of receiving a request. The reply contains a verification number and information on the farm labor contractor's license, including license number, address and date of expiration.

If no license exists, the requester receives notification to that effect. DLSE's e-mail reply can be kept as evidence of verification.

***“There is no longer any reason for unlicensed farm labor contractors to be hired or for farm workers to run the risk of not being paid.”***

“We have put great effort into making this verification tool quick and easy for everyone to use,” said Minerva Duff, DLSE's licensing and registration manager. “We're glad to see the volume of verifications being done through the Web. There is no longer any reason for unlicensed farm labor contractors to be hired or for farm workers to run the risk of not being paid.”

The license verification unit helps agricultural growers comply with regulations that became effective July 1 as part of Assembly Bill 423. Growers must now provide evidence they have verified the licenses of farm labor contractors prior to entering a contractual agreement.



***Growers and others that hire farm labor contractors must provide evidence they have verified the validity of the FLC's license.***

Any grower or farm labor contractor who has not verified a license could be held civilly liable for violations committed by an unlicensed farm labor contractor, including wages due, attorney fees and costs.

In addition to using the Web, licenses can be verified through one of the two farm labor contractor (FLC) licensing offices serving the agricultural community.

The Fresno office reviews and issues licenses for FLCs in the counties of Kern, Fresno, Tulare, Kings, Merced and Madera:

**DLSE licensing and registration unit**  
770 E. Shaw Ave. Suite 312  
Fresno, CA 93710  
(559) 248-1893  
Fax (559) 248-1895

The San Francisco office is responsible for all the other counties in the state:

**DLSE licensing and registration unit**  
455 Golden Gate Ave. 9<sup>th</sup> floor  
San Francisco, CA 94102  
(415) 703-4854  
Fax (415) 703-4808 ■



## Licensing services improved for farm labor contractors

Farm labor contractors in the Fresno, Kern, Tulare, Kings, Merced and Madera counties can now apply for a license, take the necessary test and submit a notarized farm labor contractor bond at the Division of Labor Standard's (DLSE) Fresno office.

In fact, farm labor contractor licensing — once performed exclusively in the San Francisco office — is available throughout the state to ease access for contractors. In areas outside of the Fresno office jurisdiction, DLSE will send applications and exams to the office nearest the farm labor contractor. The tests, which are administered by DLSE staff in the local office, are then sent back to San Francisco and corrected.

The Fresno office, which initiated farm labor contracting licensing in February 2001, processes more than 500 licenses per year or approximately one-half of all the farm labor contractor licenses in the state, says Minerva Duff, the Bureau of Field Enforcement manager who oversees the DLSE licensing and registration unit. The rest are processed from the division's San Francisco headquarters and in the remaining offices throughout the state.

Duff says the process, which once took 90 days, now only takes 30 days.

Once a farm labor contractor registers, they are sent a license renewal package every year 90 days in advance of their license expiration.



*Farm labor contractor licensing services are now available throughout the state.*

The bond, required by labor law, ensures payment of farm workers. The cost of the surety bond is tied to annual payroll. Annual payrolls up to \$500,000 require a \$25,000 bond; those totaling \$500,000 to \$2 million require a \$50,000 bond and annual payrolls greater than \$2 million require a \$75,000 bond.

For more information on licensing, go to [www.dir.ca.gov/dlse](http://www.dir.ca.gov/dlse). ■

## New law increases employer penalties for not reporting accidents to Cal/OSHA

Any employer who fails to report a fatal injury or the serious injury or illness of an employee to Cal/OSHA within eight hours of its occurrence now faces a minimum penalty of \$5,000.

Provisions of Assembly Bill (AB) 2837, which include the substantial increase in penalties for employers who don't report — up from \$500 — take effect Jan. 1, 2003 and are being implemented by the Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA).

"We need to investigate all serious accidents and fatalities to ensure employers are maintaining safe work sites," said Vicky Heza, Cal/OSHA's chief of enforcement. "That's why reporting them is so important."

A serious injury or illness is defined as amputation of a member of the body, disfigurement, or in-patient hospitalization for more than 24 hours for other than observation.

Employers must report the name and location of the injured person, the nature of the injury or illness, a description of the accident including its time and date, the employer's name, address and telephone number and other relevant information to the nearest Cal/OSHA office by phone or fax within eight hours.

AB 2837 also provides that an employer, officer, management official, or supervisor who knowingly fails to report a death to Cal/OSHA or knowingly induces another to do so is guilty of a misdemeanor and will face a penalty of up to one year in jail, a fine of up to \$15,000, or both. If the violator is a corporation or a limited liability company, the fine could be up to \$150,000.

Cal/OSHA offers free consultative assistance to employers. For more information call 1 (800) 963-9424 or visit the Web site at <http://www.dir.ca.gov/DOSH/>. ■

# DLSE cites residential contractor in San Diego

When Martin Sarabia Tobar was hired for a day's work by landscaper Jesus Garcia Villalobos, he didn't know he was taking a job that would change his life forever. But the situation he hired on for is one seen too frequently by Division of Labor Standards Enforcement (DLSE) and Cal/OSHA inspectors.

Construction is one of the most hazardous industries in California and residential construction — which went largely unpoliced for 15 years — relies heavily on subcontractors who too often employ crews of poorly trained, poorly equipped and poorly supervised workers, many of whom are immigrants unfamiliar with California law.

Tobar was gravely injured when a mobile crane used to lift and place trees on a 12-acre, \$18 million private home construction site in the Rancho Santa Fe area of San Diego fell on him, crushing his legs, fracturing his pelvis and causing spinal injuries. The 22-year old Tobar had to have both legs amputated as a result.



**DLSE and Cal/OSHA investigators conduct enforcement sweeps in residential construction projects to combat widespread labor law violations. This residential construction worker should be wearing fall protection to prevent a potentially fatal accident.**

## Irresponsible employers frequently violate many laws

Cal/OSHA safety engineer Mel Dunn's investigation into the cause of the accident revealed more than faulty equipment; it revealed labor law violations by the general and subcontractor. Often employers found in violation of safety and health standards are the same employers who fail to comply with wage, overtime, cash pay and other laws.

"It's an unfortunate situation," said Dunn. "Villalobos was working by the seat of his pants."

Villalobos, who worked for general contractor Phil Richardson Construction, didn't have a contractor's license or workers' compensation insurance. Dunn apprised DLSE deputy Michele Keith of the situation.

## Inspectors concerned with worker's welfare

Keith and DLSE senior deputy David Dorame went to the job site and obtained declarations from Richardson and Villalobos and issued initial citations. Then they turned their attention to Tobar's welfare.

"The emotional part of this case has been the most challenging," said Keith. "We're very, very concerned for this worker."

Keith contacted the hospital to ensure that Tobar's family knew of his injuries and location, and that he was being cared for.

Villalobos, who regularly hired day laborers and paid them cash, was using a mobile crane he'd inherited from his previous employer. To be legal, cranes must be inspected and certified annually by Cal/OSHA and must have all four stabilizing legs, called outriggers, functional and deployed while in use. Villalobos' crane was missing two of its four outriggers and had only one deployed at the time of the accident.

"The crane had not been certified in 10 years and would not have passed inspection," said Dunn.

## General and subcontractor receive citations

At the request of DLSE investigators, Richardson provided evidence of payments he'd made to Villalobos, amounting to \$305,000. Since Villalobos was unlicensed, he should have been paid as an employee, not an independent contractor, with taxes withheld from his paychecks. Richardson was issued a \$24,000 citation for hiring an unlicensed subcontractor and a \$7,000 citation for paying him improperly.

Villalobos received an \$11,000 citation for failing to carry workers' compensation insurance — \$1,000 for each of 11 employees on the job at the time the violation occurred.

"Basically, the entire subcontracting operation was under the table, and this is just one of this general contractor's projects," said Dorame. "We are committed to continuing our investigation to help ensure other workers' lives are not forever altered." ■



# Labor Front Lines

**Janitorial subcontractors prosecuted:** Jaime Huerta and his wife Micaela Rivera Huerta, principal owners of A Janitorial, Sun Janitorial and Speed Janitorial Services — subcontractors working for Encompass Services Corporation — were booked on multiple charges, including grand theft of labor, after their arrest Sept. 17. At a preliminary hearing in November, the Huertas pled no contest to charges brought by Los Angeles Deputy District Attorney and janitorial task force head Barry Gale. Although the company went by several different names, DLSE's investigation revealed that in reality there was one company and one owner. The principals' scheme involved shutting down and opening under different names, using family members to front new companies and leaving nearly \$2 million in unpaid wages, still owed to workers.

**Garment regulations:** Final regulations for enforcement of minimum wage, overtime, and registration requirements in the garment industry under AB 633 became effective Oct. 9, 2002. In response to ongoing abuses, the Legislature enacted AB 633 in 1999, which substantially revised existing laws governing garment manufacturing. The primary change brought about was the creation of a wage guarantee, under which garment manufacturers became proportionately liable for guaranteeing payment of minimum wages and overtime to employees of their contractors. The recently adopted regulations close gaps in AB 633 by creating new record keeping requirements that enable the Labor Commissioner to determine the identity and proportionate liability of manufacturers.

**Settlement in Saipan:** Seven clothing retailers and 23 manufacturers have agreed to a landmark settlement of a federal class-action lawsuit alleging violations of wage and hour laws and other workers' rights in Saipan, Northern Marianas. The companies will compensate more than 30,000 garment workers, follow a code of conduct, finance independent monitoring of factories and explore using the International Labor Organization as a monitoring body.

## New laws effective January 2003

**Agricultural mediation:** SB 1156 provides a mediation procedure for specific agricultural employers and labor organizations certified as employees' exclusive bargaining agents. It allows either party to file a declaration that they've failed to reach a collective bargaining agreement with the Agricultural Labor Relations Board (ALRB) following a period of

negotiation and requires the ALRB to immediately direct the parties to mandatory mediation and conciliation of the issues.

**California WARN:** As a result of AB 2957, California law now requires employers with 75 or more employees who layoff, relocate, or terminate 50 or more workers at once to first give 60 days notice to affected employees, similar to the federal WARN Act. This bill further provides for civil penalties against an employer who fails to give the required notice. Employees who bring a civil action to enforce the provisions of this bill are, at the discretion of the court, entitled to recover attorney's fees.

**Discussing pay or working conditions:** AB 2895 makes it illegal for employers to prohibit an employee from disclosing information about working conditions, or to discharge or in any other way discriminate against an employee in retaliation for having disclosed information about working conditions. This is an extension of existing law, which protects the right of employees to disclose information about wages.

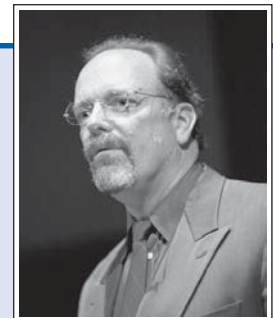
**Family sick leave:** SB 1471 tightened protection for families under the family sick leave law by making it illegal for employers to maintain absence control policies that count sick leave used to attend the illness of a child, parent, spouse, domestic partner or child of a domestic partner as a basis for discipline, demotion, discharge or suspension.

**Access to payroll records:** Prior law required that employers allow employees to inspect their payroll records but did not provide a time frame in which the inspection must occur. With the passage of AB 2412 employers are now required to comply with oral or written requests from current or former employees to inspect and/or copy their payroll records within 21 calendar days. Failure to permit an inspection within the time frame entitles the current or former employee, or the Labor Commissioner, to recover a \$750 penalty from the employer.

**Immigrant worker rights:** Through SB 1818, the Legislature declared that all protections, rights, and remedies available under state law, except for reinstatement if prohibited by federal law, are available to individuals who have applied for employment or who are or have been employed in California regardless of their immigration status. The bill further declared that for the purposes of enforcing state labor, employment, civil rights, and employee housing laws, a person's immigration status is irrelevant and no inquiry shall be permitted into a person's immigration status, except when necessary to comply with federal immigration law. This bill lends strength to the Department of Industrial Relations and the Division of Labor Standards Enforcement longstanding enforcement policies. ■

"Creation of a California labor agency allows DIR to combine enforcement resources and intelligence with other programs under the agency to strengthen statewide enforcement efforts through strategic targeting of employers who flaunt labor law."

— Stephen J. Smith, acting secretary, Labor and Workforce Development Agency



# Navigating California's public works programs

On any given day a myriad of publicly-funded California construction projects are governed by a complex system of labor laws that encompass everything from legal definitions of workers and huge public agencies awarding contracts to tiny subcontractors performing the work. Several divisions in the Department of Industrial Relations (DIR) help keep these projects rolling.

DIR's Division of Labor Statistics and Research (DLSR) conducts labor research and provides statistics for public works projects; the Division of Labor Standards Enforcement (DLSE) enforces laws related to payment of prevailing wages and working conditions; and the Division of Apprenticeship Standards (DAS) provides assistance placing apprentices on public works construction projects.

The process begins when an awarding body — the public agency awarding a contract — opens its project up for bid. Awarding bodies must hire licensed contractors who pay their workers the prevailing wage, carry workers' compensation insurance and adhere to California's public works laws.

"The awarding of a public works contract amounts to a privilege," says Bob Twomey, deputy labor commissioner for DLSE. "Awarding bodies have agreed to pay premium rates for premium work and taxpayers that fund them expect contracts to be executed in full compliance with the law."

## Prevailing wage rate must be paid on public works projects

The DLSR, acting for DIR's director, determines the prevailing wage rate that must be paid to workers. DLSR conducts investigations and maintains files of collective bargaining agreements to establish the rate.

"The prevailing wage is the basic hourly rate paid to a majority of workers in a particular craft within a locality," says David Mar, research manager for DLSR. "If there is no single rate being paid to a majority, the single rate being paid to the greater number of workers is prevailing. General prevailing wage determinations are published and issued semiannually and the current prevailing wage determinations are available on the Internet."

Enforcement of prevailing wage rates and working conditions begins when DLSE receives a complaint from an awarding body, a worker or a labor compliance group alleging a grievance on a public works project.

Journeyman and apprentices typically file complaints about improper payment of wages, failure to pay the correct prevailing wage or unpaid overtime hours. Complaints are assigned to an investigator who obtains background information, such as the contractor's payroll, tax, bonding, workers' compensation and other records, from the awarding body. Investigators audit certified payroll reports, obtain confirmation from DAS that

apprentices are hired on the site, and cooperate with other agencies to prosecute public works crimes like kickbacks or keeping fraudulent records.

If a violation of the law is found, a citation may be issued to the awarding body. DLSE investigators can request that public funds, which may be used for back payment of workers' wages or for civil penalties, be withheld until the contractor has exhausted all administrative steps to resolve the violation.

Since January 2002, DLSE's public works units have received 917 new enforcement cases statewide.

## Some investigations lead to debarment

Sometimes violations are so serious they lead to criminal prosecution and/or debarment of a contractor. When a contractor violates the public trust, DLSE investigators can restrict or rescind their privilege to bid on and receive such contracts.

In the case of Castello Inc., a general contracting company owned by Morteza Rahimi and Mostafa Beheshti, DLSE's investigation resulted in payment of nearly \$600,000 to 80 workers who had not received the prevailing wage. DLSE successfully debarred Castello Inc., which prevents Rahimi and Beheshti from bidding on, accepting or performing any public works projects for three years.

Of the 858 cases closed by DLSE in 2002, 15 became debarments and 40 contractors are currently under investigation.

"Debarment is a penalty for willful violation of prevailing wage laws," says senior deputy labor commissioner Lauro Cons. "Our aggressive pursuit of egregious violators helps eliminate the unfair advantage gained by contractors who don't comply."

Once a debarment is successful DLSE can provide that information to the Contractors' State License Board, where proceedings to revoke or suspend a contractor's license are initiated.

Debarred contractors are listed on DLSE's Web site at <http://www.dir.ca.gov/dlse/Debar.html>.

Apprentices employed on public works projects are paid the apprentice prevailing wage rate and contractors can only assign them the work of their registered craft. DAS refers complaints to DLSE for investigation and appropriate action.

"Every public works project is required to employ a certain ratio of apprentices to journeymen," says Twomey. "Therefore continued networking among DIR's divisions helps ensure effective enforcement on public works projects."

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## Agencies feel the impact of Senate Bill 975

Prior to passage of SB 975 many public agencies used funding methods, such as providing tax breaks to builders in lieu of cash payments, to avoid paying workers the prevailing wage. SB 975 expanded the scope of the prevailing wage law to include publicly assisted projects. Now local redevelopment agencies responsible for creating affordable housing and nonprofit housing groups can fall under prevailing wage laws if they don't meet specific requirements for exemption.

"We've received calls requesting clarification of SB 975 since its inception," says Gary O'Mara, legal counsel for DIR's director, who specializes in public works. "Some of these awarding bodies and housing developers want to structure their construction plans according to the new laws to guarantee meeting the exemption criteria."

Senate Bill 972, signed by Governor Davis, clarifies SB 975's language, allowing prevailing wage exemptions on construction of certain types of housing projects.

## Public works seminars help explain laws

Statewide public works conferences are helping awarding bodies and contractors understand the law. The Associated General Contractors and the Construction Employers Association presented seminars this year, offering expert keynote speakers and panelists knowledgeable in public works. Chuck Cake, DIR's acting director and Bob Balgenorth, president of the California Building and Construction Trades Council recently spoke to over 125 attendees of a seminar at the Foundation for Fair Contracting.

"We will offer more of these conferences in the future," says Cake. "With the amount of public works projects throughout the state, these seminars — and the panelists who share their information — are extremely beneficial to participants."

O'Mara also participates in public works panels with deputy labor commissioners at conferences from Sacramento to Long Beach and says attendance is high.

"You can see 400 to 500 people attending a conference, discussing the way the laws work, the complicated tax codes and the language in the statutes," says O'Mara.

Many large agencies administering numerous public works contracts have established their own formal labor compliance programs to ensure they comply with public works laws. These programs must meet specific criteria and be approved by the director of DIR before overseeing contractors and projects. Currently, nine labor compliance programs are charged with oversight of California's city, county and state public works projects: Caltrans, City and County of Sacramento, City of San Francisco, City of Los Angeles, BART in San Francisco, Los Angeles Unified School District, town of Paradise and the San Diego Unified School District.

Public works laws are found in Labor Code sections 1720-1815 and in the California Code of Regulations, Title 8 sections 16000-16403.

General prevailing wage determinations can be found on the Internet at [http://www.dir.ca.gov/DLSR/statistics\\_research.html](http://www.dir.ca.gov/DLSR/statistics_research.html). ■

## New! Public works/DAS search engine

A new search engine, available on the Internet at <http://www.dir.ca.gov/apprenticeship.html>, increases coordination between public works programs and the Division of Apprenticeship Standards (DAS). This new search site assists awarding bodies by listing registered apprenticeship program sponsors in the construction industry. Construction contractors also benefit because they can contact a program sponsor directly who'll dispatch an apprentice to their job site.

The registry lists available apprenticeships by county, providing the name, address and phone number of each program. Contact information on the search engine is updated daily.

Another new internal search feature from DAS allows the Division of Labor Standards Enforcement instant access to California's registered apprenticeship database files. Using this search site, investigators can confirm an apprentice is registered with DAS, validate their name and social security number, and expedite the wage claim process. On a prevailing wage job, if an apprentice is not registered with DAS, they must be paid as a journeyman, a wage much higher than that paid an apprentice.

For further information contact Glen Forman at the San Jose DAS office, 100 Paseo de San Antonio, Rm 125, San Jose, CA 95113, (408) 277-1273.

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*California Labor Commissioner Bulletin* is published by the Division of Labor Standards Enforcement of the Department of Industrial Relations. Look for coverage of DLSE's activity in the garment, agricultural and janitorial industries in upcoming issues. For more information or to request additional copies contact Susan Gard @ (415) 703-5050 or [sgard@hq.dir.ca.gov](mailto:sgard@hq.dir.ca.gov). Photos by Robert Gumpert.