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2007 Annual Report of the Unlawfully Uninsured Employer Enforcement Program

The Division of Labor Standards Enforcement (DLSE) through its Bureau of Field Enforcement Unit (Bureau) is charged with enforcing laws requiring employers in the state of California to secure the coverage of workers' compensation insurance for any and all employees. To ensure that these laws are adequately enforced, Assembly Bill (AB) 749 (Chapter 6, Statutes of 2002) added Labor Code §90.3(b) mandating the Labor Commissioner to establish and maintain a program targeting employers in industries with the "highest incidence of unlawfully uninsured employers." The section also requires that the industries and employers be identified from data contained in the Uninsured Employers' Benefits Trust Fund (UEBTF), the Employment Development Department (EDD), and the Workers' Compensation Insurance Rating Bureau (WCIRB). Finally, the law requires the Labor Commissioner to conduct on-site inspections of those employers found to have employees, but no record of a valid workers' compensation policy to ensure that compliance with the workers' compensation laws is achieved.

Labor Code §90.3(d) requires the Labor Commissioner to report annually to the Legislature concerning the effectiveness of the program that targets unlawfully uninsured employers. This report shall include: (1) the number of unlawfully uninsured employers identified pursuant to the program, (2) the number of employers matched to records of insurance coverage, (3) the number of employers identified that there was no record of their insurance, (4) the number of employers inspected, and (5) the number and amount of penalties assessed pursuant to Section 3722 as a result of the program.

Senate Bill (SB) 869 (Chapter 662, Statutes of 2007) amended sections 62.5 and 90.3 of the Labor Code, and section 1095 of the Unemployment Insurance Code. The amendment to Labor Code section 90.3 provided a funding mechanism for implementation of the Unlawfully Uninsured Employer Enforcement Program. SB 869 also modified the reporting requirements concerning this program to identify the following:

- The number of employers identified from records of the EDD who were screened for matching records of insurance coverage or self-insurance;
- The number of employers identified from records of the EDD that were matched to records of insurance coverage or self-insurance;
- The number of employers identified from records of the EDD that were notified that there was no record of their insurance coverage;
- The number of employers responding to the notices, and the nature of the responses, including the number of employers who failed to provide satisfactory proof of workers' compensation coverage and including information about the reasons that employers who provided satisfactory proof of coverage were not appropriately recognized in the comparison performed.
- The report may include recommendations to improve the accuracy and efficiency of the program in screening for unlawfully uninsured employers.

- The number of employers identified as unlawfully uninsured from records of the UEBTF or from records of the Division of Workers' Compensation (DWC), and the number of those employers that are also identifiable from the records of the EDD. These statistics shall be reported in a manner to permit analysis and estimation of the percentage of unlawfully uninsured employers that do not report wages to the EDD.

The DLSE has met with representatives of the EDD, the WCIRB, and the DWC, and is working to develop detailed processes for the identification of employers in targeted industries, transmission and sharing of information, verification of information including notification to employers and cross-referencing of data, and inspection and enforcement against uninsured employers. Results of these efforts in 2008 utilizing the required reporting criteria will be provided as required in the DLSE's annual report of activities by March 1, 2009.

However, for this report with respect to 2007 activities, DLSE did not establish a special program as a result of AB 749 because the bill did not provide funding to do so. In the normal course of enforcement activities through the Bureau of Field Enforcement and partnership efforts with other departments within the Economic and Employment Enforcement Coalition, the DLSE has focused its enforcement efforts in the underground economy and other industries with a history of labor law violations that include being illegally uninsured for workers' compensation.

As a result of these efforts, Bureau staff inspected 7,883 employers through its ongoing inspection program in calendar year 2007. The largest single source of violations and citations by the Bureau was for the failure to carry workers' compensation insurance. The total number of investigations conducted by the Division has increased over prior years and the ratio of workers' compensation citations per inspection has increased somewhat from 28% of inspections resulting in workers' compensation citations in 2006, to 32% in 2007. In 2007, of those 7,883 employers inspected, 2,536 were found to be in violation of workers' compensation laws and were assessed \$16,602,394 in penalties. A total of \$4,338,857 was collected during the year from illegally uninsured employers. With the implementation of the Division's new collection unit in November 2006, the Division has achieved significant progress in collecting penalties assessed, and anticipates that its efforts will continue to result in increasing success in collection of penalties.

Respectfully Submitted,

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State Labor Commissioner