



2009 Annual Report of the Unlawfully Uninsured Employer Enforcement Program Labor Code Section 90.3(d)

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.

Background

To ensure that these laws are adequately enforced, Assembly Bill (AB) 749 (Chapter 6, Statutes of 2002) added Labor Code §90.3(b). 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. Labor Code section 90.3(b) mandates that "[i]n 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 contained in 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 establish procedures for ensuring that employers with payroll but with no record of workers' compensation insurance coverage are contacted and to conduct on-site inspections of those employers who can show no valid reason for lack of a record of coverage.

Effective January 1, 2008, SB 869 created a funding mechanism for implementation of the Unlawfully Uninsured Employer Enforcement Program, and required the Labor Commissioner to report annually to the Legislature concerning the effectiveness of the program.

Program Results

At the inception of the program, a partnership approach for the collection of data was created. Through the partnership, each quarter DLSE receives from EDD a randomly-selected list of 500 employers from EDD's database of reporting employers. All 500 employers for the represented quarter are screened through the WCIRB for evidence of workers' compensation insurance coverage. DLSE then mails letters to the employers whom WCIRB did not locate evidence of coverage. If the employer cannot provide verifiable proof that it had workers' compensation insurance at the time of the mailing of the letter, an investigation is initiated by the Bureau staff. Upon inspection, citations are issued for lack of workers' compensation insurance as well as other violations of wage and hour laws as appropriate. DLSE compiles a list of all the employers who were determined to have had coverage at the time of the WCIRB check. That list is forwarded to WCIRB which prepares a response explaining why it failed to find a record of the coverage previously.

DLSE received 1,500 referrals from EDD in 2009, reflecting employer information from records for the third and fourth quarters of 2008 and the first quarter of 2009, as DLSE receives the EDD referrals two quarters beyond the end of the applicable quarter. This lag time is to allow for employers to file any appropriate addendums or changes to their returns before EDD closes the quarter's statistics to ensure the most accurate and up-to-date data is transmitted to DLSE. It should be noted that during the course of the inspection process, workers' compensation coverage is verified for the period of time that the referral from EDD covers (e.g., in January 2009 EDD provided referrals covering the 3rd quarter of 2008. An inspection conducted in January 2009 checks to ensure that the employer has adequate coverage at the time of the inspection and has had continuous coverage for the time period covering the 3rd quarter to the date of the inspection. If no coverage existed for any time within that period, a citation will be issued.)

Because there is a delay in receipt of referrals from EDD and the data reporting from WCIRB this report reflects information available as of December 31, 2009. However, some investigations based on data obtained during the prior three quarters are ongoing. The following tables summarize results of this program.

TABLE 1	
Employers identified from records of EDD that were screened for matching records of insurance coverage or self-insurance.	1,500
Employers identified from records of EDD that were matched to the WCIRB records of insurance coverage or self-insurance.	976
Employers identified from records of EDD that were notified by DLSE that there was no record of their insurance coverage.	524
Inquiries returned by the post office as undeliverable.	34
The number of employers responding to contact for verification.	322
Employers responding who verified they had workers' compensation insurance.	87
Employers responding who obtained insurance upon receipt of letter.	51
Employers acknowledging lack of workers' compensation insurance.	184
WCIRB did not have sufficient database information to identify the business to respond.	242
Employers investigated.	524
Employers not cited following investigation (See Table 3 for nature of responses)	264
<i>(table continued on next page)</i>	
Number of citations issued per Labor Code section 3722(a). ¹	62

¹ Labor Code section 3722(a) provides: At the time the stop order is issued and served pursuant to section 3710.1, the director shall also issue and serve a penalty assessment order requiring the uninsured employer to pay to the director, for deposit in the

Number of citations issued per Labor Code section 3722(b). ²	22
Amount of workers' compensation penalties assessed.	\$227,090
Amount of workers' compensation penalties collected.	\$57,583
* Amount of citations administratively dismissed. ³	\$43,000

The following table summarizes the reasons why the 264 employers referenced in Table 1 were not cited for lack of workers' compensation insurance:

TABLE 2	
Company out of business	27
No employees	30
Corporate officers only	29
Verified they had insurance	63
Self insured	2
Out of state	8
Still under investigation	105

While the number of investigations was only 5% less than last year, the number of citations under Labor Code section 3722(a) were approximately 50% less, suggesting that the program is improving compliance.

DLSE provided a list to the WCIRB of 134 employers that, during the course of DLSE's investigation for the first two quarters of reported data⁴, were able to provide proof of insurance coverage for the period of time in which the WCIRB previously indicated it was unable to verify coverage. The following table summarizes WCIRB's responses for these employers:

TABLE 3	
WCIRB found coverage under another name and/or address provided by DLSE in the follow-up lists.	31

State Treasury to the credit of the Uninsured Employers' Benefits Trust Fund, the sum of one thousand dollars (\$1,000) per employee employed at the time the order issued and served, as an additional penalty for being uninsured at that time.

² Labor Code section 3722(b) provides: At any time that the director determines that an employer has been uninsured for a period in excess of one week during the calendar year preceding the determination, the director may issue and serve a penalty assessment order requiring the uninsured employer to pay to the director, for deposit in the State Treasury to the credit of the Uninsured Employers' Benefits Trust Fund, the greater of (1) twice the amount the employer would have paid in workers' compensation premiums during the period the employer was uninsured, determined according to subdivision (c), or (2) the sum of one thousand dollars (\$1,000) per employee employed during the period the employer was uninsured. A penalty assessment issued and served by the director pursuant to this subdivision shall be in lieu of, and not in addition to, any other penalty issued and served by the director pursuant to subdivision (a).

³ A citation may be administratively dismissed if the employer had no proof of workers' compensation insurance at the time of the inspection/citation but proof of insurance at the time of inspection was submitted later. In such a case, the dollar value of the citation as issued is counted as "penalties assessed" but the dollar value of the assessment is uncollectable.

⁴ DLSE received the third batch of referrals (covering the 1st quarter of 2009) from EDD late in August of 2009. Because it takes at least a full quarter to complete the inspection process, DLSE had not yet completed that process on all cases from the third batch of referrals from EDD and had not provided its inspection results for that batch to WCIRB as of the end of the 4th quarter of 2009.

Coverage was found by DLSE, but the policy either incepted or was not received by the WCIRB until after the date of submission of the original quarterly lists.	25
Employer was not required to have workers' compensation insurance (i.e., employer was self-insured or had no employees subject to workers' compensation requirements).	61
DLSE reported finding coverage, but did not provide sufficient coverage information in the follow-up lists and the WCIRB could not confirm coverage.	17

Summary

As shown, DLSE has undertaken significant efforts to implement the systematic Unlawfully Uninsured Employer Enforcement Program, and those efforts have yielded positive results in DLSE's continued work in combating the underground economy. DLSE will continue to refine the efficiency and effectiveness of this program for the benefit of both employees and employers.

Respectfully Submitted,

Angela Bradstreet
State Labor Commissioner