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2011 Annual Report of the Unlawfully Uninsured Employer Enforcement Program Labor Code Section 90.3(d)

The Labor Commissioner respectfully submits this report to the Legislature.

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 adequate law enforcement, 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 on-site inspections of those employers who can show no valid reason for lack of a record of coverage are conducted.

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 was created for quarterly data collection, whereby EDD provides DLSE a randomly-selected list of 500 employers from the EDD database. 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 for whom WCIRB

did not locate evidence of coverage. If the employer cannot provide verifiable proof of workers' compensation insurance at the time of postmark, Bureau staff initiates an investigation. 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 coverage¹ at the time of the WCIRB check. That list is forwarded to WCIRB, which prepares a response explaining why it previously failed to find a record of the coverage.

DLSE received 1,498 randomly selected referrals from EDD in 2011, reflecting employer information from records for the first, second and third quarters of 2010. DLSE receives the EDD referrals two quarters beyond the end of the applicable quarter to allow employers to file any appropriate addendums or changes to their returns before EDD closes the quarter's statistics. This ensures DLSE receives the most accurate and current data. It should be noted that during the course of the inspection process, workers' compensation insurance coverage is verified for the period of time that the referral from EDD covers (e.g., in January 2011 EDD provided referrals covering the third quarter of 2010. If no coverage existed for any time within that period, a citation would have been issued).

Because there is a delay in receipt of EDD referrals and WCIRB data reporting, this report reflects information available as of December 31, 2011. Some investigations based on data obtained during the prior three quarters are ongoing, thus reported results in the following tables are based on data available and mathematical discrepancies are due to cases not yet concluded.

Table 1. Summary of Unlawfully Uninsured Program Results

Activity	Reported Number/Amount
Employers identified from records of EDD that were screened for matching records of insurance coverage or self-insurance.	1,498
Employers identified from records of EDD that were matched to the WCIRB records evidencing insurance coverage or self-insurance.	1,019
Employers identified from records of EDD that were notified by DLSE that there was no record of their insurance coverage and assigned for investigation.	479
The number of employers responding to contact for verification.	271
<ul style="list-style-type: none"> • Employers responding who verified they had workers' compensation insurance. • Employers responding who obtained insurance upon receipt of letter. • Employers acknowledging lack of workers' compensation insurance. 	80 45 132
Inquiries returned by the post office as undeliverable.	14
Number of inspections completed.	343
Number of employers pending investigation.	32

¹ Employers were included in this list if they provided proof of coverage when DLSE mailed them a letter or if they were found to have had coverage at the time of inspection.

Number of citations issued per Labor Code section 3722(a).	51
Number of citations issued per Labor Code section 3722(b).	54
Employers not cited following investigation. <i>(See Table 2 for nature of responses)</i>	313
Amount of workers' compensation penalties assessed.	\$393,958
Amount of penalties collected.	\$119,900
Amount of citations administratively dismissed. ²	\$82,000

The following table summarizes the reasons why the 313 employers referenced in Table 1 were not cited for lack of workers' compensation insurance.

Table 2. Reasons Employers Were Not Cited for Lack of Workers' Compensation Insurance

Rationale	Number of Cases
Company out of business/unable to locate	51
No employees	58
Corporate officers only	44
Verified they had insurance	122
Self-insured	4
Out of state/verified no California employees	2
Still under investigation	32
Total number of employers not cited for lack of workers' compensation insurance	313

DLSE provided WCIRB a list of 101 investigated employers that 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 Assessments of Employers Who Were Misidentified As Uninsured

WCIRB Response	Number of Cases
Employer was not required to have coverage because it was either self-insured or had no employees.	2
DLSE found coverage after incepted date of submission to WCIRB.	2
Coverage found under another name or address.	26
Coverage found by DLSE but policy not received by WCIRB.	61
Coverage found by DLSE not found in WCIRB first review but was found in follow-up review.	1

² 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.

DLSE reported finding coverage but did not provide sufficient information to confirm coverage.	9
Total number of employers with verified coverage	101

Summary

DLSE is committed to refining the Unlawfully Uninsured Employer Enforcement Program to improve results with more limited resources. Updated procedures have been designed to improve the quality of initial inspection data to enhance efficiency and effectiveness for the benefit of both employees and employers.

Respectfully Submitted,



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Labor Commissioner