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Division of Labor Standards Enforcement

**2012 ANNUAL REPORT ON THE EFFECTIVENESS
OF THE BUREAU OF FIELD ENFORCEMENT**

Labor Code Section 90.5(d) requires the Labor Commissioner to report annually to the Legislature concerning the effectiveness of the Bureau of Field Enforcement (henceforth referred to as the Bureau). This report shall include: (1) the enforcement plan adopted by the Labor Commissioner and the rationale for the priorities; (2) the number of establishments investigated by the Bureau, and the number and types of violations found; (3) the amount of wages found to be unlawfully withheld from workers, and the amount of unpaid wages recovered for workers; and (4) the amount of penalties and unpaid wages transferred to the General Fund as a result of the efforts of the Bureau.

The Bureau investigates complaints and takes enforcement actions to ensure employees are not being required or permitted to work under unlawful conditions. Authority for enforcement action taken by Bureau investigators involves the enforcement of minimum wage and overtime requirements and child labor laws; the requirement of employers to carry workers' compensation insurance; audits of payroll records, collection of unpaid wages, including prevailing wages on public works jobs; the issuance of citations for violations of any applicable Labor Code sections; the confiscation of illegally manufactured garments; and injunctive relief to preclude further violations of the law.

The Bureau has reinforced the core mission of the Division of Labor Standards Enforcement (henceforth referred to as the Division) to collect wages for California's wage earners and penalize employers who participate in the underground economy. It is unacceptable that businesses violating labor laws should gain a competitive advantage over law abiding employers. As a result, the Bureau is targeting businesses that are intentionally cheating and will use every tool available to prosecute these violators to the fullest extent of the law. This includes working in collaboration with sister state agencies, local law enforcement, and other governmental agencies, as well as other stakeholders from community-based organizations to industry associations.

The Division has conducted specialized industry training to provide staff a better understanding of various schemes used by unscrupulous employers to avoid compliance with the law. These trainings have helped the Bureau secure better leads and conduct more in-depth investigations. This commitment to staff training has led the Bureau to conduct deeper, more meaningful investigations that have increased the number and amount of wage audits and penalty assessments this year.

Criminal Investigation Unit

With the establishment of the Criminal Investigation Unit (CIU), consisting of sworn peace officers, the Division has sent a strong message that law-breaking will not be tolerated and that wage theft is a threat to workers, law-abiding

employers, and our economy. CIU has increased the number of criminal filings the Division has made with the District Attorney's Office (DA) and increased joint investigations. The CIU handles cases involving theft of labor (which can be a felony or misdemeanor), felony arrest, misdemeanor arrest, misdemeanor citations, payment of wages with insufficient fund checks, and kickbacks on public works projects.

Enforcement Results

In fiscal year 2011-12, the Bureau conducted a total of 6,766 inspections, resulting in a total of 3,788 citations.¹ The Division has increased attention to unpaid wages and the amount of wages assessed has increased from last year to this year, and both years reflect high water marks in the amount of wages found due to workers in California. This reflects the commitment of this Administration to identifying and combatting wage theft. The largest single source of violations and citations continues to be the failure to carry workers' compensation insurance, with 1,761 citations and a total assessment amount of \$27,017,136. Although significantly fewer citations were issued for the failure to issue an itemized wage statement (1,025 violations), the dollar amount of assessments for this citation category in the amount of \$10,430,875, is second to the lack of workers' compensation insurance. As mentioned (see footnote), the following tables illustrate the performance by the Bureau *inclusive* of all special programs within the Bureau including prevailing wage enforcement through the Public Works Unit and the collaborative efforts of the Labor Enforcement Task Force (LETF).

2011-12 Bureau Results by Industry (including Public Works)				
Total Inspections			6,766	
Total Citations Issued			3,788	
<i>Industry</i>	<i>Inspections</i>	<i># of Citations</i>	<i>Penalties Assessed</i> ²	<i>Penalties Collected</i> ³
Agriculture	384	97	\$1,167,424	\$367,968
Car Wash	162	157	\$2,013,065	\$723,911
Construction	874	525	\$4,782,284	\$631,486
Garment	241	168	\$1,711,623	\$331,660
Restaurant	837	695	\$5,591,650	\$1,451,022
Retail	658	211	\$1,582,938	\$351,955
Other ⁴	1,988	1,645	\$25,828,242	\$2,730,216
Subtotals	5,144	3,498	\$42,677,226	\$6,588,218
LESS Citations Dismissed/Modified ⁵			<\$9,238,630>	
Subtotals	5,144	3,498	\$33,438,596	\$6,588,218
PLUS Public Works ⁶	1,622	290	\$6,333,748	\$1,394,754
TOTALS	6,766	3,788	\$39,772,344	\$7,982,972

¹ The total number of inspections and citations, and all statistics throughout this report formatted as a "total" statistic, encompass the performance of all Bureau programs including the performance of the Public Works Unit and the Labor Enforcement Task Force (LETF).

² Figures in dollar amount categories are rounded to the next dollar. Therefore, all columns/rows may not total to the exact dollar.

³ Penalties collected in fiscal year 2011-12 may include collection of penalties assessed and found due in earlier reporting periods.

⁴ The "other" category includes janitorial, race tracks, auto body, pallet, and various other industries not falling into any of the other industries specified.

⁵ Citations may be dismissed or modified if the employer provides documentary evidence subsequent to the issuance of the citation or at appeal hearing that it was in compliance at the time the citation was issued.

⁶ The Public Works Unit does not conduct inspections but rather measures performance based on cases opened for audit purposes. Thus the data in this table should be understood as 1,622 audits conducted with 290 civil wage and penalty assessments (CWPA's) issued (rather than number of citations). These measurements are included here to provide a full picture of the Division's performance.

2011-12 Bureau Results by Citation Category (including Public Works)			
<i>Citation Category</i>	<i># of Citations</i>	<i>Penalties Assessed</i>	<i>Penalties Collected</i>
Workers' Compensation	1,761	\$27,017,136	\$2,770,859
Child Labor	123	\$126,000	\$73,265
Itemized Statement	1,025	\$10,430,875	\$2,735,660
Minimum Wage	175	\$783,374	\$84,920
Overtime	226	\$2,312,491	\$244,183
Garment	42	\$124,200	\$55,740
Unlicensed Construction Contractor	56	\$1,362,200	\$40,869
Non-Registration ⁷	90	\$520,950	\$582,722
Subtotals	3,498	\$42,677,226	\$6,588,218
Public Works	290	\$6,333,748	\$1,394,754
LESS Citations Dismissed/Modified		<\$9,238,630>	
TOTALS	3,788	\$39,772,344	\$7,982,972

2011-12 Bureau Results (including Public Works)		
Total Wages Found Due	\$28,224,289	
Total Wages Collected ⁸	\$14,553,301	
<i>Industry</i>	<i>Wages Found Due</i>	<i>Wages Collected</i>
Agriculture	\$727,989	\$1,113,609
Car Wash	\$652,389	\$74,665
Construction	\$1,696,464	\$1,075,015
Garment	\$613,151	\$101,301
Restaurant	\$2,070,250	\$1,114,039
Retail	\$335,940	\$82,942
Other	\$4,822,012	\$1,999,877
Subtotals	\$10,918,195	\$5,561,448
Public Works	\$17,306,094	\$8,991,853
TOTALS	\$28,224,289	\$14,553,301

Self-Audits

The Division has emphasized to employers the use of self-initiated audits to augment the investigations conducted in response to specific complaints. A sampling of notable outcomes of payroll audits performed by the employer under the supervision and direction of Bureau staff which resulted in the payment of wages due to employees (included in the statistics above) includes:

- \$85,459 from a restaurant for failure to pay wages
- \$161,832 from a construction company for failure to pay wages
- \$90,779 from a service company for failure to provide meal and rest periods
- \$151,409 from a restaurant for failure to provide meal periods
- \$55,822 for a health care business for failure to pay overtime wages

⁷ Includes penalties for non-registration against car washes and garment manufacturers.

⁸ Wages collected fiscal year 2011-12 may include collection of wages found due in earlier reporting periods. This statistic is also inclusive of wages collected as the result of Bureau-assisted employer self-audits as well as actions taken by the Division's Legal Unit, including litigation, settlements, and Legal Unit-assisted employer self-audits, all of which were initiated by the Bureau.

- \$90,421 from a service company for failure to pay minimum wages
- \$222,256 from a service business for failure to pay overtime wages
- \$316,000 from a restaurant for failure to pay overtime wages
- \$230,534 from a restaurant for failure to pay overtime wages
- \$72,000 from a business in the agriculture industry for failure to pay overtime wages

DLSE required employers to conduct 192 self-audits in fiscal year 2011-2012; \$5,561,448 in wages was collected for workers through such audits. Wages collected by the Public Works Unit did not include any self-audits.

Targeted Unlawfully Uninsured Employer Enforcement Program

As previously mentioned, the lack of workers' compensation insurance continues to remain the violation most often identified in the Bureau's enforcement efforts. In 2008, as a result of the passage of Senate Bill 869 (Chapter 662), the Bureau began a new program utilizing a data-sharing partnership with the Employment Development Department (EDD), the Division of Workers' Compensation, and the Workers' Compensation Insurance Rating Bureau to be proactive in identifying employers who might be unlawfully uninsured, apart from its normal complaint-driven investigations. The process and results of those efforts will be discussed in a separate report. The Bureau issued 96 citations and assessed \$5,190,774 in penalties through the Uninsured Employer Enforcement Program for failure to provide workers' compensation insurance.

Car Wash

On January 1, 2007, the Bureau began a concerted enforcement effort to ensure compliance with the registration requirements of car washing and polishing businesses (Labor Code sections 2050-2067 and Title 8, California Code of Regulations [CCR], Division 1, Chapter 6, Subchapter 11, Sections 13680 through 13693). In this reporting period, staff received training on violations in the car wash industry and learned about effective tools for uncovering wage theft. Staff members also learned about the need to do more in-depth inspections and not to just examine registration when they suspect that other labor laws are being violated. As a result, in 2011-12, 162 inspections were conducted and 157 citations issued, which assessed \$2,013,065 for violations of various labor laws including non-registration and penalties. Additionally, the Division assessed \$652,389 in wages and \$74,665 was collected on behalf of workers as wages due. The results of total car wash inspections, inclusive of re-inspections included in the statistics above, are as follows:

2011-2012 Car Wash Program Activity Summary

Citation Total	157
Breakdown by Citation Type:	
Registration	63
Itemized Statement	22
Overtime	13
Workers' Compensation	43
Child Labor	6
Minimum Wage	10
Assessed Amount	\$2,013,065

Labor Enforcement Task Force

On January 1, 2012, the Labor Enforcement Task Force (LETF) was launched. It is an enforcement and education program that evolved from and shares the same mission as the EEEEC while incorporating new technology and innovative, refined targeting methodology. LETF is a partnership of state and federal agencies consisting of the EDD, the Division of

Occupational Safety and Health (DOSH), the Contractor's State License Board, the Franchise Tax Board, and the federal Department of Labor to address the "underground economy." LETF has concentrated its inspection and education efforts on the following areas: workers' compensation, child labor, the underpayment of minimum wage and overtime wages, and businesses operating without the licenses required by law (for instance, car washes, garment industry, farming, construction, and auto body repair). The details of the LETF's enforcement activities will be provided in a separate report.

Public Works

The Bureau investigates complaints arising from violations of the state's prevailing wage laws and conducts payroll audits on behalf of California's workers for back wages owed. Public works statutes have undergone many changes in recent years. Labor Code section 1775 penalties for failing to pay the correct prevailing wages quadrupled for public contracts entered into on or after January 1, 2012. Penalties have also quadrupled and new debarment language was added within Labor Code section 1776 for contractors failing to provide the Division with certified payroll records after a written request effective January 1, 2013. These statutory changes will result in increases in the amount of penalties assessed in future years. For fiscal year 2011-2012, the Public Works Unit reported the following in enforcement activities⁹:

2011-12: Public Works Program Activity Summary

Cases Opened	1,622
Cases Closed	1,392
CWPAs Issued	290
Settlements	90
Wages Found Due	\$17,306,094
Wages Recovered ¹⁰	\$8,991,853
Penalties Assessed	\$6,333,748
Penalties Collected	\$1,394,754

Additionally, in fiscal year 2011-12 the Labor Commissioner signed Orders of Debarment for 7 contractor companies and their principals. All of these Orders imposed the maximum statutory debarment period of three years, rendering each of the individuals and entities ineligible to bid on or be awarded a contract for a public works project or to perform work as a subcontractor on those projects.

The focus on debarments of contractors attempting to gain competitive advantage at the expense of workers, along with a concerted effort to process complaints to recover wages on behalf of workers not paid prevailing wage as discussed above, sends a very strong message to the contractors within the public works industry that the Labor Commissioner will utilize all avenues available to ensure the protection of workers from unlawful labor practices and to protect honest employers from being undercut by noncompliant contractors when bidding for public works contracts.

Judgment Enforcement Unit

The Division's Judgment Enforcement Unit (previously called the Collections Unit) has continued to increase monies collected from Bureau's citations. The Judgment Enforcement Unit processed 3,184 judgments for fiscal year 2011-12, with total penalty collections by the Unit of \$3,035,190.

⁹ The statistics reported here are included in the overall results of the Bureau summarized earlier in this report.

¹⁰ Wages recovered and penalties collected may include monies found due in earlier reporting periods.

Legal Unit

The Bureau continues to work closely with the Legal Unit in developing investigations in preparation for lawsuits as well as defending writs on Bureau citations. Legal Unit staff spends a significant amount of time assisting the Bureau investigators in obtaining tolling and settlement agreements for the collection of wages.¹¹ Selected results highlighting these efforts include the following:

- Legal assisted the Bureau in drafting settlement agreements with two restaurants and collected over \$400,000 in wages.
- Two car wash lawsuits were also filed for non-payment of wages. Those cases are still pending in the courts.
- Legal assisted in reaching settlement of Bureau citations of \$450,000 in the warehouse industry wherein \$135,000 in wages was distributed to workers.
- Another warehouse case settled, with Legal Unit assistance, for \$1,231,650 in wages and \$100,000 in civil penalties.

Transfers to the General Fund

In Fiscal Year 2011-12, the Division deposited into the General Fund \$4,673,270 in fines and penalties it collected.

Respectfully Submitted,



Julie A. Su
Labor Commissioner

¹¹ It should be noted that the resulting penalties and/or wages collected are included in the Bureau statistics above, dependent upon the process utilized to achieve the end results.