

P.O. Box 420603
San Francisco, CA 94142
Tel: (415) 703-4810
Fax: (415) 703-4807

**Julie A. Su**

*California Labor Commissioner
Division of Labor Standards Enforcement*

**2012 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 section 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 provided DLSE a randomly-selected list of 500 employers from the EDD database. To increase the effectiveness of the program, and consistent with this Administration's commitment to better targeting

and smarter enforcement, in September 2011, DLSE asked EDD to only include on the list employers who reported 5 or more employees. Additionally, DLSE requested an increase in the number of employers provided and refined the criteria for identifying non-compliant employers. Beginning with the three quarters for this reporting period and going forward, EDD provides a list of 1,250 employers; 500 random, 250 new, and 250 each in two designated industries, per quarter, or on a rotational basis.¹ The industries were selected due to their connection to the underground economy. All 1,250 employers for the represented quarter are screened through the WCIRB for evidence of workers' compensation insurance coverage. DLSE then mails SB 869 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 coverage² 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 3,745 randomly selected referrals from EDD, reflecting employer information from records for the fourth quarter of 2010, first and second quarters of 2011. 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. EDD and DLSE are expediting the referrals to eliminate the delay or lag time in which DLSE receives the representative quarterly 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 2012 EDD provided referrals covering the third quarter of 2011. 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 February 19, 2013. 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.²

¹ The front end compilation and referral of data to WCIRB and assignment to staff was such that DLSE was only able to assign and investigate 3 quarters of referrals. The process has been modified and we expect to complete all quarters moving forward. Industries included were restaurants, carwash, construction, agriculture, automotive, janitorial, hotel/motel, medical offices and garment.

² 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.

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.	3,745
Employers identified from records of EDD that were matched to the WCIRB records evidencing insurance coverage or self-insurance.	3,061
Employers identified from records of EDD that were notified by DLSE that there was no record of their insurance coverage and assigned for investigation.	684
The number of employers responding for verification.	
• Employers responding who verified they had workers' compensation insurance.	277
• Employers responding who obtained insurance upon receipt of letter.	33
• Employers acknowledging lack of workers' compensation insurance.	27
Inquiries returned by the post office as undeliverable.	72
Number of inspections completed.	585
Number of employers pending investigation.	50
Number of employers continuing or ongoing investigation	49
Number of citations issued per Labor Code section 3722(a).	51
Number of citations issued per Labor Code section 3722(b).	45
Employers not cited following investigation. <i>(See Table 2 for nature of responses)</i>	488
Amount of workers' compensation penalties assessed.	\$5,190,773.72
Amount of penalties collected.	\$340,142.24
Amount of citations administratively dismissed. ³	\$1,638,259.38

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 subsequently submitted proof of insurance valid for the date of inspection.

The following table summarizes the reasons why the 488 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	88
No employees	22
Verified workers' compensation insurance coverage	296
Self-insured	30
Out of state	3
Still under investigation	49
Total number of employers not cited for lack of workers' compensation insurance	488

DLSE provided WCIRB a list of 111 investigated employers based on the results collected as of December 11, 2012. The list comprised of employers that were able to provide proof of insurance coverage for the period of time in which the WCIRB initially indicated it was unable to verify coverage. In the duration of WCIRB review of the follow-up list, additional cases (185 cases) with proof of coverage were obtained, which reflects the 296 cases indicated in Table 2. Due to timing of this report, the following table summarizes WCIRB's responses for the initial 111 employers reported.

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.	6
DLSE found coverage after date of submission to WCIRB.	8
Coverage found under another name or address.	15
Coverage found by DLSE but policy not received by WCIRB.	23
Coverage found by DLSE not found in WCIRB first review but was found in follow-up review.	35
DLSE reported finding coverage but did not provide sufficient information to WCIRB to confirm coverage.	3
Total number of employers with verified coverage⁶	58

⁶ Verified coverage includes cases where (1) DLSE found coverage after the date of submission to WCIRB, (2) coverage was found under another name or address, or (3) coverage was found by DLSE that was not found in the first WCIRB review but found in the follow-up review.

Referencing records from the Uninsured Employers' Benefits Trust Fund and the Division of Workers' Compensation, 65 employers were identified as unlawfully uninsured during the timeframe covered in this report. Of businesses that were identified as unlawfully uninsured, 12 employers were identifiable from the records of the Employment Development Department following the data-matching process for the same time period. Based on these data, 82 percent of unlawfully uninsured employers also did not report wages to the Employment Development Department for the reporting timeframe covered, suggesting these businesses were at least partially engaging in underground economy activity.

Summary

DLSE is committed to refining the Unlawfully Uninsured Employer Enforcement Program to improve results of the investigations. These referrals are included in DLSE targeting for concentrated enforcement to enhance efficiency and effectiveness for the benefit of both employees and employers.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Julie A. Su", with a stylized, flowing script.

Julie A. Su
Labor Commissioner