Case No. S246711

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ZB, N.A. and ZIONS BANCORPORATION,

Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO,

Respondent;

KALETHIA LAWSON,

Real Party in Interest.

After a Decision by the Court of Appeal
Fourth Appellate District, Division One

Case Nos. D071279 & D071376 (Consolidated)

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF *AMICUS CURIAE* BRIEF IN SUPPORT OF REAL PARTY IN INTEREST; PROPOSED ORDER GRANTING

BRYAN SCHWARTZ LAW
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Attorneys for Amicus Curiae **California Employment Lawyers Association**

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TO THE HONORABLE TANI G. CANTIL-SAKAUYE, CHIEF JUSTICE OF THE SUPREME COURT OF THE STATE OF CALIFORNIA, AND THE ASSOCIATE JUSTICES

Pursuant to Evidence Code sections 451, 452, 453, and 459, and rule 8.252 of the California Rules of Court, Amicus Curiae California Employment Lawyers Association hereby moves the Court to take judicial notice of the following documents in support of the Amicus Curie Brief in Support of Real Party of Interest, Respondent Kalethia Lawson:

1. The "State of California Department of Industrial Relations (DIR) 1998-1999 Biennial Report," published to the DIR website http://www.dir.ca.gov/od%5Fpub/biennial.htm (last visited August 29, 2018) ("1998-1999 DIR Biennial Report"), a true and correct copy of which is submitted herewith as **Exhibit A**.

2. The Enrolled Bill Memorandum to the California Governor, dated July 15, 1999 ("AB 60 Bill Memo"), regarding Senate Bill Number 60 found in the Governor's Chaptered Bill File, obtained from the California Secretary of State-State Archives stored on microfiche at the University of California, Berkeley, School of Law (July 30, 2018), a true and correct copy of which is submitted herewith as **Exhibit B**.

3. The letter from State Senator Joseph Dunn to Governor Gray Davis, dated Sept. 16, 2003 ("Dunn Letter"), regarding Senate Bill Number 796 found in the Governor's Chaptered Bill File, obtained from the California Secretary of State-State Archives stored on microfiche at the University of California, Berkeley, School of Law (July 30, 2018), a true and correct copy of which is submitted herewith as **Exhibit C**.

4. The report by Limor Bar-Cohen and Deana Milam Carillo titled "Labor Law Enforcement in California, 1970-2000," an excerpt of a *The State of California Labor*, a text edited by Paul M. Ong and James R. Lincoln as part of research conducted by the Institutes of Industrial Relations at University of California, Los Angeles and Berkeley, published by University of California Institute for Labor and Employment at

https://escholarship.org/uc/item/59c025gh on November 1, 2002 ("Institute of Industrial Relations Report"), a true and correct copy of which is submitted herewith as **Exhibit D**.

5. The DIR Memorandum from Miles E. Locker, Chief Counsel for the Labor Commissioner and Marcy V. Saunders, State Labor Commissioner, to All Department of Labor Standards Enforcement (DLSE) Professional Staff, Andrew Baron, Industrial Welfare Committee (IWC) Executive Secretary, subject titled "Understanding AB 60: An In Depth Look at the Provisions of the 'Eight Hour Day Restoration and Workplace Flexibility Act of 1999,'" dated December 23, 1999 published on the DIR website, https://www.dir.ca.gov/dlse/ab60update.htm (last visited August 29, 2018) ("1999 Labor Commissioner Memo"), a true and correct copy of which is submitted herewith as **Exhibit E**.

6. The Labor Commissioner's "2015–2016 Fiscal Year Report on the Effectiveness of the Bureau of Field Enforcement (BOFE) to the Governor," published on the DIR website https://www.dir.ca.gov/dlse/ BOFE_LegReport2016.pdf (last visited August 29, 2018) ("2016-2017 BOFE Report"), a true and correct copy of which is submitted herewith as **Exhibit F**.

7. The Assembly Republican Bill Analysis, dated Sept. 2, 2003, regarding Senate Bill 796, found in the Governor's Chaptered Bill File regarding Senate Bill Number 796, obtained from the California Secretary of State-State Archives stored on microfiche at the University of California, Berkeley, School of Law (July 30, 2018), a true and correct copy of which is submitted herewith as **Exhibit G**.

8. The letter from Senator Ellen M. Corbett to Senate Secretary Greg Schmidt, dated Sept. 9, 2011, regarding the intent of Senate Bill 459, published in the Senate Daily Journal for the 2011-2012 Regular Session at 2490-91 ("Corbett Letter"), obtained via WestLaw (secured access) website under "Statutes" content for the search term "California Labor Code s 226.8 Corbett" (last visited August 29, 2018), a true and correct copy of which is submitted herewith as **Exhibit H**.

9. The DIR Budget Change Proposal for fiscal year 2017, Budget Request Names 7350-003-BCP-DP-2016-GB & 0559-003-BCP-DP-2016-GB, dated Jan. 7, 2016, for the Division of Administration Program (No. 9900100) and the DLSE Program (No. 6105), regarding the Private Attorneys General Act (PAGA) resources, obtained from the archives of the State of California Department of Finance website at http://web1a.esd.dof.ca.gov/Documents/bcp/_1617/FY1617_ORG7350_BCP474.pdf (last visited on August 29, 2018) ("DIR Budget Change Proposal"), a true and correct copy of which is submitted herewith as **Exhibit I**.

Reference is made to these documents in the Amicus Curie Brief in Support of Respondent and they are relevant to the issues presented for this Court's consideration. This motion is based on the attached Memorandum of Points and Authorities, Declaration of DeCarol A. Davis, the complete records and files of this Court, and the accompanying proposed order granting this motion.

Respectfully submitted,

Dated: August 29, 2018

BRYAN SCHWARTZ LAW

By: _____

Bryan J. Schwartz
Eduard R. Meleshinsky
Logan T. Talbot
DeCarol A. Davis

MEMORANDUM OF POINTS AND AUTHORITIES

Under Evidence Code section 452(c), a court has discretion to take judicial notice. The underlying theory of judicial notice is that the matter being judicially noticed is a law or fact that is not reasonably subject to dispute. (Cal. Evid. Code, § 451(f); *Post v. Prati* (1979) 90 Cal.App.3d 626, 633.) Among the types of information that may be subject to judicial notice are facts and propositions that are common knowledge within the territorial jurisdiction of the courts. (*See, e.g.*, Cal. Evid. Code § 452(g).) Also, judicially noticeable are facts and propositions that are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (*See* Cal. Evid. Code § 452(h).)

A reviewing court may accept facts outside the record that are presented by amici if those facts are subject to judicial notice. (*See Pratt v. Coast Trucking, Inc.* (1964) 228 Cal. App. 2d 139, 143-144 (taking judicial notice of proceedings of the Public Utilities Commission); *see also Bily v. Arthur Young & Co.* (1992) 3 Cal. 4th 370, 405, fn. 14 (deciding that an appendix attached to an amicus brief that included several declarations and factual statements outside of the record were subject to judicial notice and facilitated informed judicial considerations).)

The documents to be noticed were not presented to the trial court. Reference is made to these documents in the Amicus Curie Brief in Support of Respondent, and they are relevant to the issues presented for this Court's consideration as all of the documents pertain to the creation and enforcement of Section 558-derived PAGA penalties, the interpretation of which is at issue here.

A. The Court Should Take Judicial Notice of Exhibits A, E, F, and I Because These Exhibits Are Official, Publicly-Available Agency Reports.

The Court may take judicial notice of plans, reports, and other specified documents created by government agencies. (*See Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 423 (finding that a regional planning agency's transportation plan, which included some analysis of the transportation plan's

consistency with state's environmental goals reflected in executive order, was judicially noticeable); *Etcheverry v. Tri-Ag Service, Inc.* (2000) 22 Cal.4th 316, 331 (taking judicial notice of a document issued by the Environmental Protection Agency to interpret state registration and labeling processes); *Empire Properties v. County of Los Angeles* (1996) 44 Cal.App.4th 781, 788, fn. 2 (taking notice of the report of a task force commissioned by the Legislature); *San Mateo County Coastal Landowners' Assn. v. County of San Mateo* (1995) 38 Cal.App.4th 523, 552–553 (trial court properly took notice of letter from the Secretary of Resources to the Executive Director of the California Coastal Commission); *People v. Goodloe* (1995) 37 Cal.App.4th 485, 493–494 (notice taken of Department of Corrections' administrative bulletin).) Government documents are properly subject to judicial notice as official acts of an agency. (*Etcheverry*, 22 Cal.4th at 330–331; *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 483.)

Moreover, information on government agency websites has been treated as a proper subject for judicial notice. (*See, e.g., All One God Faith, Inc. v. Organic & Sustainable Industry Standards, Inc.* (2010) 183 Cal.App.4th 1186, 1198 fn. 12 (taking judicial notice of various documents posted on the United States Department of Agriculture website and links to public comments made in response to a notice of meeting of the National Organic Standards Board); *see also, e.g., Seifert v. Winter* (D.D.C. 2008) 555 F.Supp.2d 3, 11, fn.5; *People v. Mitchell* (2010) 403 Ill. App.3d 707, 709, 344 Ill. Dec. 130, 936 N.E.2d 659 (both stating courts may take judicial notice of information published on official government websites).)

Exhibit A (the 1998-1999 DIR Biennial Report), **Exhibit E** (the 1999 Labor Commissioner Memo), **Exhibit F** (2016-2017 BOFE Report), and **Exhibit I** (the DIR Budget Change Proposal) are all noticeable as official agency reports and documents, published on credible government websites. All of the reports provide information about public agencies' procedures and the state of the public enforcement of wage and hour laws. The reports were distributed for public interest purposes, and there is no reason to question

the truthfulness of the documents. Thus, they are noticeable government reports and memoranda.

B. The Court Should Take Judicial Notice of Exhibit D Because It Is a State-Sanctioned Publication Regarding the Effectiveness of California Government Wage and Hour Law Enforcement.

The Court may take judicial notice of articles published throughout the state for public interest purposes. (*See, e.g., Sonoma County Employees' Retirement Assn. v. Superior Court* (2011) 198 Cal.App.4th 986, 1006 (taking judicial notice of media articles concerning asserted pensions abuses in various jurisdictions around the state, in which it is alleged named individuals were able to unfairly boost their retirement income at the public's expense through controversial practices) (citing *Int'l Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 334 (declaring the public's interest in "articles published throughout the state that used information concerning public employee salaries to illustrate claimed nepotism, favoritism, or financial mismanagement in state and local government.").)

Exhibit D, the article titled, "Labor Law Enforcement in California, 1970-2000," is an excerpt of a *The State of California Labor*, a text edited by Paul M. Ong and James R. Lincoln, as part of research conducted by the Institutes of Industrial Relations at University of California, Los Angeles and Berkeley. The article is publicly available through the University of California Institute for Labor and Employment at https://escholarship.org/uc/item/59c025gh. The facts contained in the article speak to the effectiveness of State government in enforcing wage and hour laws. The report is the result of research, survey, and reporting conducted by California public universities. The article was written to inform the public of the state of employment and labor law enforcement in California. The article contains rules and procedures of State enforcement and summaries of statutes, regulations, and ordinances.

C. The Court Should Take Judicial Notice of Exhibits B and G Because These Exhibits Constitute Official Acts of the Legislature in Enacting

the Private Attorneys General Act of 2004 ("PAGA") and the Civil Penalties Thereunder.

Judicial notice may be taken under Evidence Code section 452(c) of "[o]fficial acts of the legislative, executive and judicial departments of the United States, or any state of the United States." (*People v. Snyder* (2000) 22 Cal.4th 304, 315 fn.5; *Delaney v. Baker* (1999) 20 Cal.4th 23, 30; *Post,* 90 Cal.App.3d at 634.) Judicial notice of legislative history is appropriate where statutory language is ambiguous. (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 29–30.) Legislative history is of vital importance to the court because the court's primary objective is to determine the legislative intent of the enactment, and the presumption is that all other rules should yield. (*See* Code Civil Procedure section 1859 ("In the construction of a statute the intention of the Legislature...is to be pursued, if possible.").) The "touchstone of statutory interpretation" is the "probable intent of the Legislature." (*California Teacher's Assn. v. Governing Board of Rialto United School District* (1997) 14 Cal.4th 627, 632.) The judicial role is "limited" in the process of interpreting legislative enactments of the political branch of government. *Id.* "It cannot be too often repeated that due respect for the political branches of our government requires us to interpret the laws in accordance with the expressed intention of the Legislature." *Id.*

"[A] simple citation to 'published' legislative documents is sufficient to bring the legislative history to a court's attention." *Sharon S. v. Superior Court (Annette F)* (2003) 31 Cal.4th 417, 440, fn.18.); *Quelimane Company Inc. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 46, fn.9). "Published" legislative history documents which this Court may consider include legislative bills, committee and floor analyses, and any other documents published in book format, or on the web by the Legislature. (*Sharon*, 31 Cal.4th at 440.)

The Court should take judicial notice of **Exhibit B**, the Enrolled Bill Memo for SB 60, because it is an "enrolled bill report," and courts have relied on these reports to

determine legislative intent. *Kaufman & Broad Communities*, 133 Cal.App.4th at 41; *Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211, 218-19; *People v. Carmony* (2005) 127 Cal.App.4th 1066, 1078. In 2004 (the same year the Legislature enacted PAGA), the California Supreme Court in *Elsner v. Uveges* took judicial notice of an enrolled bill report prepared by the DIR. (34 Cal.4th 915, 934.) The Court stated, "we have routinely found enrolled bill reports, prepared by a responsible agency contemporaneous with passage and before signing, instructive on matters of legislative intent. [Citations.]" (*Id.* at 934, fn.19.)

The Court should also take judicial notice of **Exhibit G** (the Republican Bill Analysis) because it is a bill analysis developed by Republican Assembly members to understand the bill during the legislative process. (*People v. Allen* (2001) 88 Cal.App.4th 986, 995, fn.16; *Golden Day Schools, Inc. v. Department of Education* (1999) 69 Cal.App.4th 681, 691-92; *Forty–Niner Truck Plaza, Inc. v. Union Oil Co.* (1997) 58 Cal.App.4th 1261, 1273.)

D. The Court Should Take Judicial Notice of Exhibits C and H Because the Documents Are Both Letters from Legislators Relating to the Legislative Process and Expressed in Argument to the Legislature.

The Court may take notice of official letters from legislators that help illuminate the purpose of a bill and the state of affairs when the bill is undergoing consideration (*See, e.g., Heavenly Valley Ski Resort v. El Dorado County Bd. of Equalization* (2000) 84 Cal.App.4th 1323, 1341 (the Court of Appeal taking judicial notice, as legislative history, of language from a letter from State Board of Equalization to Governor, opposing amendment); *see also California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699–700 ("A legislator's statement is entitled to consideration...when it is a reiteration of legislative discussion and events leading to adoption of proposed amendments rather than merely an expression of personal opinion.") (citing, *inter alia*, *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 284); *Stanton v. Panish*

(1980) 28 Cal.3d 107, 114 (declaration of chairman of California Constitution Revision Commission considered insofar as it chronicled events leading to proposed amendment).)

The Court should take judicial notice of **Exhibit C**, Senator Dunn's Letter to the Governor regarding AB 796, and **Exhibit H**, Senator Corbett's letter to the Senate Secretary, because both letters contain information relating to the legislative process, have been expressed in testimony and argument to the Legislature, and possess assurance that the rest of the Legislature knew of the arguments. Moreover, Senator Corbett's letter is noticeable because "[t]he statement of an individual legislator has also been accepted when it gave some indication of arguments made to the Legislature and was printed upon motion of the Legislature as a 'letter of legislative intent.'" (*California Teachers Assn.*, 28 Cal.3d at 699–700 (citing *In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 590-591).) Senator Corbett expressly stated in her letter than she was "providing this letter to the [Senate Daily] Journal to document my intent as author of Senate Bill 459." Corbett Letter at 1.

For the aforementioned reasons, amicus curiae CELA hereby moves the Court to take judicial notice of the Exhibits listed above in support of its Amicus Curiae Brief in Support of Respondent.

Dated: August 29, 2018

Respectfully submitted,
BRYAN SCHWARTZ LAW

By: _____
Bryan J. Schwartz
Eduard R. Meleshinsky
Logan T. Talbot
DeCarol A. Davis

DECLARATION OF DECAROL A. DAVIS

[Cal. Rules of Court, rule 8.54, subdivision (a)(2)]

I, DECAROL A. DAVIS, declare as follows:

1. I am an attorney licensed to practice law in the State of California and before the Court and counsel of record for Amicus Curiae California Employment Lawyers Association.

2. Attached hereto as Exhibit A is a true and correct copy of the "State of California Department of Industrial Relations (DIR) 1998-1999 Biennial Report." I obtained the document from the DIR website at http://www.dir.ca.gov/od%5Fpub/biennial.htm, which I last visited on August 29, 2018.

3. Attached hereto as Exhibit B is a true and correct copy of the Enrolled Bill Memorandum to the California Governor, dated July 15, 1999 ("AB 60 Bill Memo"), regarding Senate Bill Number 60 found in the Governor's Chaptered Bill File. I obtained the document on July 30, 2018 by manual scan of the microfilm records stored at the University of California, Berkeley, School of Law library.

4. Attached hereto as Exhibit C is a true and correct copy of the letter from State Senator Joseph Dunn to Governor Gray Davis, dated Sept. 16, 2003, found in the Governor's Chaptered Bill File regarding Senate Bill Number 796. I obtained the document on July 30, 2018 by manual scan of the microfilm records stored at the University of California, Berkeley, School of Law library.

5. Attached hereto as Exhibit D is a true and correct copy of the report by Limor Bar-Cohen and Deana Milam Carillo titled "Labor Law Enforcement in California, 1970-2000," an excerpt of a *The State of California Labor*, a text edited by Paul M. Ong and James R. Lincoln as part of research conducted by the Institutes of Industrial Relations at University of California, Los Angeles and Berkeley. I obtained the report from the

University of California Institute for Labor and Employment at https://escholarship.org/uc/item/59c025gh (last visited August 29, 2018).

6. Attached hereto as Exhibit E is a true and correct copy of the DIR Memorandum from Miles E. Locker, Chief Counsel for the Labor Commissioner and Marcy V. Saunders, State Labor Commissioner, to All Department of Labor Standards Enforcement (DLSE) Professional Staff, Andrew Baron, Industrial Welfare Committee (IWC) Executive Secretary, subject titled "Understanding AB 60: An In Depth Look at the Provisions of the 'Eight Hour Day Restoration and Workplace Flexibility Act of 1999'" dated December 23, 1999. I obtained this memorandum on the DIR website at https://www.dir.ca.gov/dlse/ab60update.htm, which I last visited August 29, 2018.

7. Attached hereto as Exhibit F is a true and correct copy of the Labor Commissioner's "2015–2016 Fiscal Year Report on the Effectiveness of the Bureau of Field Enforcement (BOFE) to the Governor." I obtained this report from the DIR website https://www.dir.ca.gov/dlse/BOFE_LegReport2016.pdf (last visited August 29, 2018) under the Labor Commissioner's publications regarding the Bureau of Field Enforcement Reports submitted to the Legislature.

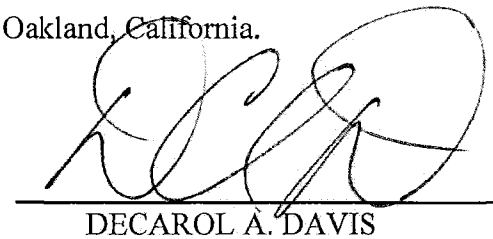
8. Attached hereto as Exhibit G is a true and correct copy of the Assembly Republican Bill Analysis, dated Sept. 2, 2003, regarding Senate Bill 796. I obtained the document on July 30, 2018 by manual scan of the microfilm records stored at the University of California, Berkeley, School of Law library.

9. Attached hereto as Exhibit H is a true and correct copy of the letter from Senator Ellen M. Corbett to Senate Secretary Greg Schmidt, dated Sept. 9, 2011, regarding the intent of Senate Bill 459, published in the Senate Daily Journal for the 2011-2012 Regular Session at 2490-91 ("Corbett Letter"). I obtained the letter through the WestLaw (secured access) website under "Statutes" content using the search term "California Labor Code s 226.8 Corbett." I last visited the website source on August 29, 2018.

10. Attached hereto as Exhibit I is a true and correct copy of the DIR Budget Change Proposal for fiscal year 2017, Budget Request Names 7350-003-BCP-DP-2016-GB & 0559-003-BCP-DP-2016-GB, dated Jan. 7, 2016, for the Division of Administration Program (No. 9900100) and the DLSE Program (No. 6105), regarding the Private Attorneys General Act (PAGA) resources ("DIR Budget Change Proposal"). I obtained the electronic document from the archives of the State of California Department of Finance website at http://web1a.esd.dof.ca.gov/Documents/bcp/1617/FY1617_ORG7350_BCP474.pdf, which I last visited on August 29, 2018.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 29, 2018 at Oakland, California.



DECAROL A. DAVIS

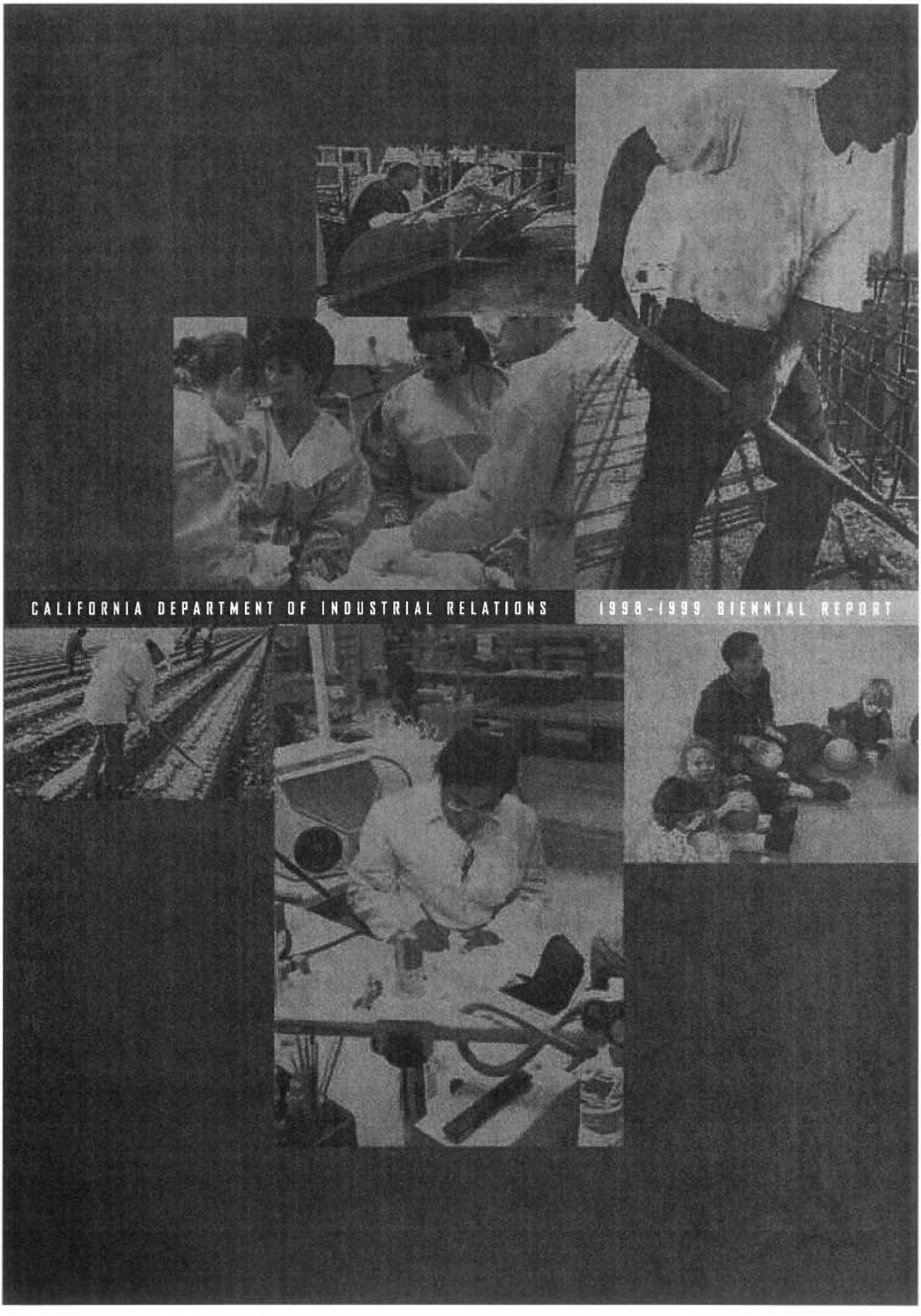
[Proposed]

ORDER

For good cause shown, Amicus Curiae California Employment Lawyers Association's motion for judicial notice is granted. The Court takes judicial notice of the matters described in the motion.

Dated: August ___, 2018 By:_____
Chief Justice

EXHIBIT A



CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS

1998-1999 BIENNIAL REPORT

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS

1998-1999 BIENNIAL REPORT

Established to improve working conditions for
California's wage earners and to advance opportunities
for profitable employment in California,
DIR has these major areas of responsibility:

LABOR LAW

WORKPLACE SAFETY AND HEALTH

APPRENTICESHIP TRAINING

WORKERS' COMPENSATION

STATISTICS AND RESEARCH

MEDIATION AND CONCILIATION

On the Internet—http://www.dir.ca.gov

Director's Report

As California enters a new century under a new administration, the Department of Industrial Relations has renewed its commitment to the working people and employers of the state. Our purpose remains as singular as it was when the Legislature incorporated it into the state's labor code during the 1930s: to improve working conditions for California's wage earners and to advance opportunities for profitable employment in California.

Stephen J. Smith – Director, Department of Industrial Relations

There is no better time to underline the new administration's commitment to expanding economic opportunity and enforcing labor and workplace health and safety laws in California. The state's economic recovery, which began in the late 1990s, heralded the new century. Over the past two years total employment in the civilian labor force increased more than 2 percent to an unprecedented 16 million. The construction industry led in growth with an 11.1 percent increase in the number of employed, outstripping even California's service sector with its 3.6 percent employment expansion.

Prosperity has driven a demand for workplace equity under the administration of Gov. Gray Davis. In the first year of his administration, the governor expanded resources of the department, allowing it to increase services and expand worker protections for the first time in almost a decade. Legislation signed by Governor Davis strengthened current labor laws and instituted provisions that offered increased workplace flexibility in the face of new demands on workers and their employers as the technology and service sector flourished.

WORKPLACE RIGHTS

The Eight-Hour-Day Restoration and Workplace Flexibility Act or Assembly Bill 60, authored by Assemblymember Wally Knox and signed by the governor in 1999, signaled the administration's support of the eight-hour workday as a basic right of California's working people. After a series of public hearings and deliberations, the Industrial Welfare Commission, revived under the Davis administration, issued new wage orders implementing AB 60. The wage orders extend the state's overtime protection to its 680,000 construction workers, provide flexibility to individual workers and increase flexibility to industry and labor by permitting alternative work schedules of 10- and sometimes 12-hour days when both workers and management agree.

The Division of Labor Standards Enforcement, responsible for protecting the California work force, is the primary enforcer of the state's labor laws. Increased resources allowed the division to expand the number of labor law enforcement agents by 20 percent. Meanwhile, new legislation expanded and strengthened the state's labor laws, increasing the division's enforcement responsibilities. Assembly Bill 613 added building maintenance as a targeted industry along with the garment, agriculture and restaurant industries. Assembly Bill 633 expanded enforcement in the garment industry and improved procedures for handling wage claims of garment workers. Assembly Bill 109 mandates that employers who provide sick leave allow employees to use that sick leave for the care of an ailing child, parent or spouse and bars employers from retaliating against employees who use sick leave for this reason.

With changes in public works laws—primarily the ability to prohibit contractors and subcontractors found in willful violation of public works laws from bidding on new public works projects—the division increased its staff dedicated to the enforcement of prevailing wage provisions from 16 to 40 during 1999.

WORKPLACE SAFETY AND HEALTH

Funding for Cal/OSHA's Targeted Consultation and Targeted Inspection Programs was stabilized in 1999. Targeting employers in the highest-hazard industries—such as construction, agriculture, manufacturing and nursing care services—has proved what Cal/OSHA officials have long recognized: employers with workplaces containing the highest proportion of fatalities, injuries, illness and workers' compensation losses often benefit the most from Cal/OSHA's assistance.

Cal/OSHA's studies show workplaces subjected to targeted inspections and consultations experienced a drop in illness and injury rates of more than 40 percent. The reductions in lost workdays were 75 percent greater than that experienced by other California employers. Targeted employers saved money on medical and disability costs. Most important, their employees worked in a safer environment. In the end, 97 percent of the 393 employers using the Cal/OSHA Consultation Service reported they would recommend targeted Cal/OSHA consultations to other employers.

For the first time in many years Gov. Davis hiked Cal/OSHA's general fund budget, allowing it to hire an additional 52 health and safety inspectors and consultants.

Because of this support, Cal/OSHA last year launched its Agricultural Safety and Health Inspection Project during the peak harvesting seasons. As a result Cal/OSHA almost tripled its field inspections to more than 800 this past year, focusing on hazardous conditions for workers—such as being maimed by heavy equipment, not having access to toilet and drinking water facilities and suffering back injuries from the use of short-handled agricultural tools.

Cal/OSHA's penalty deterrents now are stronger than ever because of Assembly Bill 1127, legislation authored by Assemblymember Darrell Steinberg and signed last year by Gov. Davis. The ability to enforce in public jurisdictions, increased fines assessed on health and safety violators and beefed up enforcement staff are all results of AB 1127. Add to that the fact that California also is the first jurisdiction in the country to enact and enforce both a bloodborne pathogen and an ergonomics standard, and the conclusion is inescapable. Using the carrot of increasing consultation with willing employers and the stick of stronger enforcement against law violators, Cal/OSHA again is emerging as a national pioneer in workplace safety and health.

APPRENTICESHIP TRAINING

The Division of Apprenticeship Standards celebrated the 60th anniversary of the landmark Shelley-Maloney Apprentice Labor Standards Act as it positions itself to offer an expanded apprenticeship training program to California's employers and youth. New legislation raised the bar for apprenticeship training in the state and allowed the division new tools to ensure quality in apprenticeship programs.

The division's participation in the statewide

School-to-Career program and its involvement with the governor's appointed Workforce Investment Board provides it further opportunities to promote apprenticeship training as a tried and true method for acquiring skills through a combination of classroom instruction and on-the-job training.

WORKERS' COMPENSATION

The Division of Workers' Compensation continues to work at improving the system to better serve California's injured workers.

In addition to its regional call center in San Bernardino, the division has increased access to the public by opening a new regional center in Walnut Creek and is preparing another center in Van Nuys. The regional centers were inaugurated to provide more timely and accurate information to injured workers. The division recently distributed more than 100,000 copies of its newly-published *An Employer's Guide to Workers' Compensation in California*, a 56-page manual aimed at increasing employer understanding of the requirements, responsibilities and functions of the state's workers' compensation system. The Workers' Compensation Information System or WCIS became operational for the first time early this year, permitting insurers to submit electronic rather than paper reports and offering more coherent information about the system to policy makers.

OUR COMMITMENT TO OUR CONSTITUENTS

The Department of Industrial Relations' constituency encompasses working Californians, their employers, contractors, medical providers, insurers, bargaining agents, researchers and the press as well as other branches and departments of the local, state and federal governments.

We intend to improve services to our constituency in the upcoming years.

The department, for example, will increase opportunities for those businesses which adhere to California's labor and health and safety laws by expanding our consultation and outreach services. Cal/OSHA already offers incentives to those employers who earn its Voluntary Protection Program status by adhering to stringent workplace safety and health guidelines. Cal/OSHA removes VPP employers from scheduled inspection lists and promotes these employers through the department's Web site.

The department is working with other offices in state government to implement the governor's e-government initiatives to further ease service to Californians. We are exploring ways to develop a more interactive Web site by posting our licensing, registration and complaint functions online. We intend to standardize and centralize our data analysis functions to offer ease and one-stop service for users. In addition we are expanding our external communications program to increase the information flow to employers and workers about the department's consultation services and California workplace safety and health and labor laws.

California workers and employers have benefited from stronger labor and health and safety laws after one year of the Davis administration. Our commitment is to ensure that progress continues throughout the Davis administration.

DIR 1998-1999 Biennial Report

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Division of Labor Standards Enforcement

California labor commissioner's office

DLSE

The Division of Labor Standards Enforcement, headed by the state labor commissioner, investigates and works to resolve wage claim disputes and discrimination complaints, and enforces California's labor laws, prevailing wage laws and Industrial Welfare Commission (IWC) orders. The IWC orders regulate the state minimum wage, overtime, meals and lodging, rest periods, change rooms, uniforms and equipment, and other standards for working conditions in California's industries and occupation groups.

DLSE also registers garment manufacturers and contractors, licenses farm labor contractors, industrial homeworkers and talent agents, certifies studio teachers, and issues entertainment work permits to minors as well as permits to employ to their employers. To serve California's culturally diverse population, bilingual staff work in nearly every DLSE office statewide.

The division's goals are twofold: to vigorously enforce labor standards with special emphasis on payment of minimum and overtime wages in low-paying industries; and to work with employer groups, expanding their knowledge of labor law requirements, with the aim of creating an environment in which law-abiding employers no longer suffer unfair competition from employers who follow unlawful practices. To realize its goals, DLSE continues to partner with federal and local agencies to heighten enforcement in businesses that operate in the underground economy, have a history of violating labor laws, and pay less than the minimum wage.

During calendar years 1999-2000 the division received a $5 million augmentation by the state Legislature, resulting in a 20 percent staffing increase that helps DLSE meet the challenges of a robust economy and growing work force in California, carry out its statutory mandates and improve service to the public.

The chief deputy labor commissioner oversees the public works program along with day-to-day DLSE operations. Four assistant chiefs are in charge of the Bureau of Field Enforcement activities, wage claim adjudication offices, a statewide collections unit designed to improve the rate of collections on penalties, a public information unit providing information on California labor law and IWC orders, and headquarters administrative services that support the field operations.

NEW LEGISLATION STRENGTHENS LABOR LAW ENFORCEMENT

During 1998 and 1999 a substantial number of laws were enacted that positively affect the wages, working conditions and rights of California workers.

On July 20, 1999, California's commitment to uphold the eight-hour workday as a fundamental protection for working people was confirmed when the governor signed into law **Assembly Bill 60** (Knox), the Eight-Hour-Day Restoration and Workplace Flexibility Act. This law's principal provi-

sion is the restoration of overtime payment after eight hours in one workday.

Assembly Bill 744 (Washington) added Section 1308.8 to the Labor Code. This law prohibits a minor under the age of one month from being employed in the entertainment industry unless a licensed physician or surgeon, who is board-certified in pediatrics, certifies in writing that the infant was carried to full term and is of normal birth weight, at least 15 days old and physically developed enough to withstand the potential stress of filmmaking.

Assembly Bill 1570 (Bustamante) amended Labor Code Section 450 to specifically prohibit an employer from requiring of an applicant for employment any payment of a fee or other compensation for applying, receiving, submitting or processing an application for employment.

Assembly Bill 279 (Wayne) amended Labor Code Section 3700.5 to increase the penalties for an employer who fails to provide workers' compensation coverage—from a fine of $1,000 and/or six months in jail to a fine of up to $10,000 and/or one year in jail.

Assembly Bill 633 (Steinberg) substantially revised state regulation of garment manufacturing.

PUBLIC WORKS ENFORCEMENT EXPANDED

DLSE is charged with enforcement of prevailing wage provisions of the public works statutes. The division investigates construction contracts, with some exceptions, that are paid for in whole or in part by public funds. The statutes require payment of prevailing wages and regulate the hiring, payment and training of apprentices on these jobs.

Labor Code Section 1777.1 had been added in 1989 to exclude, through formal debarment procedures, contractors or subcontractors from bidding on public works projects if they were found in willful violation of public works laws. Effective January 1999, this section was amended to deny the bidding of debarred contractors or subcontractors on public works projects for one to three years.

Significant legislative changes in calendar year 2000 that affect public works enforcement are: inclusion of refuse hauling from public works project sites in the definition of public works; guarantees that the identity of employees who report prevailing wage violations will be kept confidential; definition of the term "responsible bidder" in the Labor Code as "...a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract."

DLSE's public works enforcement unit grew toward the end of 1999 from a staff of 16 to more than 35 deputy labor commissioners, payroll auditors

Assembly Bill 60: Eight-Hour-Day Restoration and Workplace Flexibility Act

AB 60 offers more options for work schedule flexibility—including a mechanism for an employee to take time off for personal needs and then make up that time within the same workweek without payment of overtime compensation, except for hours worked in excess of 11 in one workday or 40 in one workweek.

AB 60 also requires employers to provide employees with a minimum half-hour meal period after five hours of work, establishes a civil penalty citation system for enforcing California's overtime provisions, and requires the Industrial Welfare Commission to study the qualifying duties for executive, administrative and professional staff exemptions from overtime.

Assembly Bill 633 substantially revised state regulation of garment manufacturing. This new law:

- Amends the definition of the term "contractor"—now any person who performs any activities of garment manufacturing for another person with the assistance of employees is considered a contractor.
- Creates new procedures for handling the wage claims of garment industry workers, including time lines for completing specified steps that lead to claim resolution and issuance of an order, decision or award.
- Makes liable for payment of minimum and overtime wages any person (guarantor) who contracts with another to make garments if the other person fails to pay the employees who performed those operations. The wage liability is limited to the guarantor's proportionate share of the wages owed.
- Authorizes the labor commissioner to set new garment registration fees at a level sufficient to recover costs of administering the law. Based on an applicant's annual volume, fees are not less than $250 nor more than $1,000 for a contractor or more than $2,500 for other registrants.
- Increases from $25 to $75 the portion of the license fee allocated to the Garment Manufacturer's Special Account fund, which is used to help pay wages owed to garment workers.
- Grants the labor commissioner authority to confiscate the equipment and property of a contractor found in violation of the garment manufacturing laws when the contractor had garments confiscated in the preceding five years.
- Establishes liability of a successor employer for the unpaid wages of garment workers.

and clerical support staff. The unit implemented a centralized case tracking system and automated payroll audit program, and is making good progress toward reducing the public works case backlog. Division staff expect to see an increase in the year 2000 collections for wages and penalties, resulting from the increased enforcement activity beginning in late 1999.

Public Works	1998	1999
Public works cases opened:	1,172	1,559
Wages collected:	$ 4,003,754	$ 3,210,944
Penalties collected:	$ 1,048,262	$ 894,335
Number of contractors debarred:	3	4

DLSE BUREAU OF FIELD ENFORCEMENT

DLSE investigates complaints and takes enforcement action to ensure that employees are not required or permitted to work under unlawful conditions. Enforcement covers child labor laws, worksite inspections, audits of payroll records, collecting unpaid minimum and overtime wages, issuing civil and criminal citations, confiscating illegally manufactured garments, and injunctive relief to preclude further violations of the law.

For the past seven years the division has participated in two major joint enforcement programs, the Targeted Industries Partnership Program (TIPP) and the Joint Enforcement Strike Force (JESF). Both programs are designed to maximize enforcement efforts in industries identified as having a history of labor law violations and employing significant numbers of lower paid workers. TIPP focuses on the garment, agriculture and restaurant industries while JESF targets auto body repair shops, bars, and to some extent construction.

Beginning January 2000 with passage of **Assembly Bill 613** (Wildman), investigations of the janitorial and building maintenance industry are now included in TIPP and JESF.

Bureau of Field Enforcement	1998	1999
Inspections conducted:	4,876	5,229
Penalties collected:	$ 2,822,060	$ 3,859,556
Wages collected:	$ 3,418,422	$ 3,905,868

WAGE CLAIM ADJUDICATION

DLSE investigates wage claims on behalf of workers who file complaints for nonpayment of wages, unreimbursed business expenses, overtime and vacation pay. Division deputies hold informal conferences between employers and employees to settle wage disputes.

If a matter cannot be resolved at the informal conference, an administrative hearing is held. By statute, these claims must be processed within a 120-day time limit, from the date a claim is filed to the date a hearing is held. DLSE has authority to enter judgments in superior court against employers failing to comply with the labor commissioner's final order.

Division staff also provide information to the public on wages, hours, working conditions and other labor law matters.

Wage Claim Adjudication	1998	1999
Wage claim cases opened:	42,933	42,898
Administrative hearings held:	10,452	10,273
Hearing wages collected:	$ 5,818,076	$ 7,708,547

LICENSING AND REGISTRATION

DLSE's licensing and registration unit registers garment manufacturers and contractors in California, and licenses farm labor contractors, talent agents, supervisors and managers of minors in door-to-door sales, and industrial homework firms throughout the state. The unit also issues sheltered workshop and subminimum wage permits, and certifies studio teachers.

The division has a memorandum of understanding with the federal Internal Revenue Service (IRS) in which applicants for a garment manufacturer registration and farm labor contractor license are checked by the IRS for outstanding employment tax liabilities before a license or registration can be issued. DLSE also requires applicants for a farm labor contractor license to be fingerprinted and cleared through the state Department of Justice.

Licensing and Registration	1998	1999
Garment registrations issued:	5,906	6,565
Farm labor contractor licenses issued:	1,429	1,239
Talent agent licenses issued:	628	585
Studio teacher certificates issued:	135	90
Special minimum wage permits issued:	1,047	1,237

DISCRIMINATION COMPLAINTS

Employee activities that are covered by the anti-discrimination statutes enforced by the labor commissioner are numerous. These statutes protect employees who report unsafe or unhealthy working conditions as well as those who disclose information to government or law enforcement agencies concerning a violation or noncompliance with a state or federal law or regulation.

Also protected from discrimination and retaliation are: employees who serve on a jury or appear as a witness in a trial; parents, guardians and custodial grandparents who take time off from work to participate in activities of a child attending school or a licensed day care facility; and employees who seek literacy education assistance.

A number of anti-discrimination bills were signed into law during 1998-99. **Assembly Bill 1127** (Steinberg) extended the period for filing a discrimination and retaliation complaint from 30 days to six months.

Assembly Bill 109 (Knox) added Section 233 to the Labor Code, requiring employers who provide sick leave to allow employees to use that leave for taking care of an ill child, parent or spouse. The law also bars employers from taking retaliatory action against employees who use sick leave for this purpose.

Labor Code Section 96 was amended to authorize the labor commissioner to accept claims from employees who lose wages due to demotion, suspension or discharge from employment for engaging in lawful conduct away from the employer's premises during nonworking hours.

Labor Code Section 230 was amended to extend prohibition of discrimination and retaliation against an employee for taking time off work to appear in court as a witness, including an employee who is a victim of a crime. Section 230 was also amended to provide protections to victims of domestic violence, allowing them to take time off from work to obtain relief such as temporary restraining orders to help ensure their welfare or that of a child.

Labor Code Section 1102.1, which prohibited discrimination in employment based upon sexual orientation, was repealed when an equivalent prohibition was incorporated into the California Fair Employment and Housing Act.

During 1999 the division investigated 795 discrimination complaints and closed 607. Of the 232 written decisions rendered in these cases, 88 were appealed and only one was overturned.

Discrimination Complaints	1998	1999
Discrimination complaints filed:	653	795
Discrimination complaints closed:	565	607

DLSE LEGAL UNIT

Division attorneys present civil cases at both the trial and appellate levels. The majority of the cases involve issues of unpaid wages that arise as a result of an appeal taken from an order, decision or award of the state labor commissioner.

Public Information

DLSE's four public information hubs serving the state are located in:

Sacramento	916-323-4920
San Francisco	415-557-7878
Los Angeles	213-620-6330
San Diego	858-467-3002

The system offers pre-recorded information on labor statutes and Industrial Welfare Commission wage orders in three languages: English, Spanish and Chinese. The recorded messages are accessible 24 hours a day, seven days a week, and the system includes a voice mail box in which callers can leave their name and address for a claim form or information to be mailed to them.

The legal unit also pursues cases involving violations of the prevailing wage laws, and through court proceedings enforces the discrimination complaint decisions of the labor commissioner. Other services provided by the legal unit include writing opinion letters that interpret California labor law for the general public, and providing day-to-day legal counsel to division deputies.

Legal Unit	1998	1999
Legal cases opened:	2,325	2,451
Legal cases closed:	1,811	1,691
Wages and penalties collected:	$ 7,445,074	$ 6,790,814

ON THE INTERNET FROM DLSE:

http://www.dir.ca.gov—select Labor Law—select Division of Labor Standards Enforcement

- Child Labor Law Manual 2000
- information on recent legislation
- wage claim processing procedures
- Public Records Act policy
- reports: Targeted Industries Partnership Program (TIPP), Bureau of Field Enforcement (BOFE), discrimination complaints
- databases: garment manufacturers, farm labor contractors, talent agents, studio teachers
- Title 8 regulations
- links to Industrial Welfare Commission for viewing and downloading its wage orders, and to Department of Industrial Relations resources
- office locations statewide

Email questions and comments to DLSE: dlseinfo@dir.ca.gov on the Web site.

Industrial Welfare Commission

Minimum wages, maximum hours, standards for working conditions

IWC

Revitalization of the Industrial Welfare Commission in 1999 coincided with changes in labor law for working Californians. The IWC is a five-member commission appointed by the governor with senate consent and supported by staff within the Department of Industrial Relations. Under authority vested in it by the California Constitution and by statute, the IWC incorporates minimum wages, maximum hours and standards for working conditions into occupation and industry wage orders impacting upon millions of employees statewide.

The Eight-Hour-Day Restoration and Workplace Flexibility Act of 1999, **Assembly Bill 60**, reinstated the 8-hour workday and introduced more protections for California workers (see Division of Labor Standards Enforcement report). In effect since January 1, 2000, this legislation also required the IWC to review the working standards of specified industries and occupations in addition to those covered by the longstanding 15 wage orders.

The IWC initiated public hearings and meetings in October 1999 and after gathering public comment from around the state, adopted Interim Wage Order 2000, which carries out AB 60 provisions. The commission then adopted further changes to all the wage orders in accordance with AB 60.

In addition, the IWC held public hearings and then convened wage boards to consider the adequacy of California's minimum wage, and to consider instituting a new wage order for on-site occupations in the construction, drilling, mining and logging industries, following which the commission has set forth proposed regulations for public comment.

ON THE INTERNET FROM THE IWC:

http://www.dir.ca.gov—select Labor Law—select Industrial Welfare Commission

- commission and member information
- notices, transcripts and minutes of public hearings and meetings
- wage board information
- full text of all industry and occupation wage orders
- Interim Wage Order 2000
- Minimum Wage Order MW-98 and any update
- links to Department of Industrial Relations resources

Email questions and comments to IWC: iwc@dir.ca.gov on the Web site.

Division of Occupational Safety & Health

Safe and healthful working conditions

DOSH

The Division of Occupational Safety and Health works to improve safety and health in the workplace through standards enforcement, consultation assistance and training programs. In addition to its scheduled inspections of high-risk workplaces, DOSH investigates worksite fatalities, serious injuries or illnesses and complaints about hazards on the job.

DOSH aims to have the safest workplaces in the world here in California, and seeks to achieve this goal by creating a safe and healthful work environment and an informed work force. Effective enforcement of standards with emphasis on rapid abatement of hazards is foremost in the accomplishment of this goal. Recent budget augmentations increased enforcement and consultation staff, and **Assembly Bill 1127** signed into law in 1999 greatly increases the effectiveness of DOSH enforcement efforts—and in doing so, will increase safety and health protections for California workers. DOSH enforcement is supported by voluntary protection programs, employer and employee training and consultation services.

Since 1973 California has operated its own federally monitored safety and health program, known as Cal/OSHA. Formed before passage of the national Occupational Safety and Health Act of 1970, the DOSH safety inspections unit dates back to 1945. Cal/OSHA now receives approximately $20 million in federal funding from the U.S. Department of Labor through its annual Section 23(g) operations grant. An additional contract with federal OSHA, approved under Section 21(d) of the act, provides funding of nearly $4 million for consultations to private industry.

According to the national OSH Act, a state plan with job safety and health standards that employers are required to meet must be "at least as effective" as the federal OSHA standards. Benefits of the state plan include coverage for public sector employees, and developing standards or innovative programs addressing hazards unique to California workplaces.

Major department units in the program are the:

- Cal/OSHA Enforcement Unit—enforces workplace safety and health regulations.
- Cal/OSHA Consultation Service—offers free training and consultation to help employers and their employees comply with workplace safety and health regulations.
- Occupational Safety and Health Standards Board—adopts, amends and repeals the standards and regulations.
- Occupational Safety and Health Appeals Board—hears appeals regarding Cal/OSHA enforcement actions.

In addition, the Hazard Evaluation System and Information Service (HESIS) is administered by the departments of Industrial Relations and Health Services as an information resource and worker hazard warning system.

DOSH has some other responsibilities mandated by state law. The division has permit and certification programs as well as responsibility for inspecting elevators, amusement rides, pressure vessels, and underground and surface mines. DOSH units include high hazard enforcement, health and engineering services. Within the health and engineering services unit are the elevator, pressure vessel and loss control certification staff.

INSPECTING PRESSURE VESSELS

Division safety engineers conduct field and shop inspections of pressure vessels. Their other activities include permit issuing, consultations and education, plan and code reviews, accident investigations, boiler and fired/unfired pressure vessel safety orders. Fees charged for inspection work go into the Pressure Vessel Inspection Account, which is used to help fund the program.

A computerized pressure vessel tracking system went online in July 1998 for inspections and record invoicing of the 250,000 vessels for which the unit is responsible. Not only is this data system accurate and reliable, collection of invoice payments increased from about 84 percent to the current 97.5 percent because of automatic invoice and reminder mailings.

DOSH's pressure vessel unit helped Cal/OSHA investigate the February 1999 Tosco Avon refinery flash fire that killed four workers. Pressure vessel engineers reviewed the new design information before the vessel at the center of the accident, along with 11 others, was allowed to return to use in July. A thorough engineering analysis was required to confirm that the refinery vessels were safe to operate at the pressure and temperature under which they were used, and which were found to exceed their design and rating conditions. An inspection during the refinery shutdown revealed that the butadiene reactor was not the same vessel described in the company's documentation. This vessel was subsequently rebuilt and inspected for reuse.

Pressure Vessel Unit	1998–1999
Boilers inspected	2,428
LPG tanks inspected	9,035
Air tanks inspected	28,085
Shop inspections to check adherence to ASME manufacturing standards	Time: 11,265 hours

ELEVATORS, AMUSEMENT RIDES, AERIAL PASSENGER TRAMWAYS

Division safety engineers specializing in the work of DOSH's elevator unit conduct inspections of elevators, aerial tramway equipment such as ski lifts, amusement rides and construction personnel hoists. This program also calls for related consultation and education, safety code and equipment approval plan reviews, accident and complaint investigation. Fees charged for inspection work are deposited in the Elevator Safety Inspection Account, which is used to fund the program.

Assembly Bill 850 (Torlakson) establishes a DOSH safety inspection and permit program for permanent amusement rides. To carry out the new legislative mandates, the division is proposing regulations for the administration of the program and for safe installation and operation, maintenance and repair, and inspection of permanent amusement rides.

Elevator, Ride and Tramway Unit	1998–1999
Elevators inspected	105,760
Tramways inspected	1,159
Amusement rides:	
Inspections	1,385
Annual permits issued	1,318
Temporary permits issued	460

INSPECTING MINES AND TUNNELS

Underground mines are inspected four times per year, surface mines once per year. Pre-job conferences, answering complaints and requests, investigating accidents, licensing blasters, certifying safety representatives and gas testers, classifying underground operations, environmental surveys and developing proposed safety orders are also done by DOSH's mining and tunneling unit staff.

Their work includes providing ongoing training and engineering and accident prevention for the mine safety engineers. Tunnel inspections are part of the Cal/OSHA program.

Staff monitored the Seven Oaks Dam and Tunnel and the Eastside Reservoir Project, which employed a combined total of 2,075 workers at the peak of construction, in addition to monitoring the North Hollywood extension of subway tunnels and stations in the Los Angeles Metro Rail system. Of the more than a dozen major storm drains and sewer tunnels under construction for the City and County of Los Angeles, the Inland Feeder Project was charged with building 44 miles of water tunnels. The mining and tunneling unit provided safety and health oversight for these projects, as well as more than 1,000 smaller tunnels under construction statewide.

Unit staff continued to provide the state's mineral industry with safety and health training, assisted through a Federal Mine Safety and Health Administration grant. This training was expanded under the grant to the sand and gravel industries, crushed stone and limestone.

Mining and Tunneling Unit	1998–1999
Mine and tunnel inspections	1,053
Employees affected	14,998
Pre-job safety conferences	776
Blasters licensed	714
Gas testers certified	192
Safety representatives certified	142
Mine and tunnel evaluation/classifications	1,078

CERTIFYING LOSS CONTROL SERVICES OF WORKERS' COMPENSATION CARRIERS

Under the 1993 legislative reforms, workers' compensation carriers must provide loss control services without charge to employers, and submit to DOSH an annual loss control plan that identifies policyholders with the greatest losses and most preventable safety and health hazards.

DOSH's loss control certification unit staff meet regularly with representatives of insurers, employers and organized labor to promote understanding of this process.

A study by the unit, *A Sample Summary of Insured Employers' Experience* completed in 1999, assessed the certification program experience of a sampling of 1994-1997 insurer plans. The study indicated that most of the California workers' compensation carriers provided loss control services to a majority of the insureds they selected for their certified annual plans. Several insurers stated that the process of certification and evaluation helped them focus on the insureds who need loss control

New law gives Cal/OSHA more enforcement authority

Assembly Bill 1127 (Steinberg), signed into law October 6, 1999, makes statutory changes that are among the most significant since Cal/OSHA's inception. Bills of comparable importance are the California Occupational Safety and Health Act of 1973, which created Cal/OSHA, and legislation which expanded the requirement that all employers establish, implement and maintain a written injury and illness prevention program.

AB 1127 increases the effectiveness of Cal/OSHA's enforcement efforts, which in turn increase safety and health protections afforded California workers. Major changes:

- Increase the maximum statutory civil penalty for a serious violation from $7,000 to $25,000. A serious violation exists if there is substantial probability that death or serious physical harm could result from a workplace condition, including toxic exposures exceeding the permissible exposure limit or conditions that exist from worksite practices, methods, operations or processes.
- Increase the maximum penalty for a failure-to-abate violation from $7,500 to $15,000 per day. Failure to abate exists when evidence obtained by DOSH demonstrates that the employer failed to correct a previously cited workplace hazard by a specified date.
- Delete the longstanding statutory exemption for government entities from imposition of Cal/OSHA civil penalties, including failure-to-abate penalties.
- Increase the criminal penalties of fines and prison terms that a court may impose for certain Cal/OSHA violations.

Information on the AB 1127 implementation plan is on the department's Web site at http://www.dir.ca.gov.

Agricultural Safety and Health Inspection Project (ASHIP)

In 1999 the division inaugurated ASHIP, the Agricultural Safety and Health Inspection Project. This emphasis program is designed to compensate for the fact that agricultural production is one of the most hazardous industrial activities in California, yet DOSH receives few complaints from agricultural workers.

During the summer and fall seasons, agricultural production activities are at their peak and a large number of employees are exposed to serious hazards, which include: machinery-related accidents such as tractors, field sanitation hazards such as absence of toilet and drinking water facilities, heat stress, back injuries from using short-handled agricultural tools, and skin conditions such as lacerations from exposure to pruning knives and dermatitis from exposure to soil contaminants.

ASHIP Activity	1999
Total inspections	505
Total violations	749
Serious/willful/repeat violations	136
Total penalties	$ 349,410

consultative services and may have been overlooked.

However, loss control consultants working either for the insurer or under contract from outside sources were found in need of more training on provisions of insurers' certified plans and the purpose of loss control regulations—and insurers did not always intervene in a timely manner to see that the planned services were actually provided. The study found that when loss control services were provided as mandated, a significant percentage of selected employers achieved reductions in accident frequency.

DOSH found that insurer selection methods for targeting their insureds often failed to identify those who have the most significant workers' compensation losses or preventable safety and health problems. Numerous insurers used either selection criteria too broad to be effective, or data too old to show the current loss experience of their insureds. Methods using policy premium or experience modification as a single criterion were proved the most unreliable. These DOSH findings prompted the division to propose changes in loss control regulations on selection methodologies.

As of December 1999, 120 insurer group plans were recertified. Ten became uncertified because they either failed to achieve certification prior to the plan's expiration, their application for recertification was denied, or their certification was rescinded for failure to perform. These insurers were eventually able to achieve recertification. Loss control staff conducted 94 evaluations of insurers' annual loss control plans.

CAL/OSHA ENFORCEMENT

DOSH is authorized to conduct workplace inspections to enforce occupational safety and health standards. Every workplace covered by Cal/OSHA may be subject to these inspections, which are conducted by DOSH safety engineers and industrial hygienists from district offices throughout California. Mining and tunneling enforcement is handled by a separate unit, and a high hazard unit makes targeted inspections in high-hazard industries such as construction and agriculture.

Complaint, referral and accident inspections, as well as scheduled compliance inspections, are conducted by the district offices.

Cal/OSHA Compliance Inspections	1998–1999
Total workplace inspections	18,813
Workplace safety inspections	13,559
Workplace health inspections	5,254
Total violations cited	40,632
Serious violations	9,336
Violations other than serious	31,296
Proposed penalties	$ 18,904,537
Workers covered	4,488,632

LEAD-IN-CONSTRUCTION SPECIAL EMPHASIS PROGRAM

During fiscal year 1999 DOSH opened 132 inspections for which the lead in construction standard was evaluated in construction-related trades. Of the total, 59 inspections resulted in one or more violations and 73 resulted in no violations.

During this time, DOSH changed its programmed inspection emphasis from reliance on sites identified by Dodge Reports to local, more successful sweep activities.

The Dodge Report is a bidding service that lists large construction projects—typically over $500,000—and identifies major components of the bid package, including lead abatement and removal. In spite of substantial efforts to identify start dates for lead paint removal, DOSH found it very difficult to coordinate inspections with times when lead paint removal was actually taking place. The division also found that when inspections were conducted during actual lead paint work, the large contractors involved in such work were often seemingly in compliance with the Cal/OSHA lead standard.

In July-August 1999, DOSH conducted sweep operations in municipal and suburban areas with known older housing and commercial building stock in three compliance regions of the state. This two-

month activity resulted in 42 sweep inspections, a better investment in time compared to the year and a half of 45 Dodge Report inspections.

By the end of September 1999, cumulative results produced by the special emphasis program since its inception in July 1996 showed 252 total inspections, 36 serious and 357 other-than-serious violations of the lead in construction standard, and about $64,000 in proposed penalties for those violations.

HIGH HAZARD ENFORCEMENT UNIT

Building on its success with special emphasis programs in lead exposure, the DOSH unit conducted new programs for marine cargo handling in water transportation service companies that showed high injury rates. The unit also inspected companies manufacturing automotive trimmings, sporting and athletic apparel, and sports equipment such as golf clubs and baseball bats.

Lack of an injury and illness prevention program was the most frequently cited violation.

High Hazard Unit	1998–1999
Total workplace inspections	582
Total violations cited	2,769
Proposed penalties	$ 1,782,133

BUREAU OF INVESTIGATIONS (BOI)

The DOSH Bureau of Investigations, which determines criminal violations, is required to investigate accidents involving violations of standards, orders or special orders where there is a fatality, serious injury or illness to five or more employees, or a request for prosecution from the division's civil compliance staff. BOI also reviews the inspection reports regarding violations where serious injury or exposure occurred.

In cases involving serious injury or death BOI is required to refer the results of its investigation to the appropriate prosecuting authority, unless the bureau determines that there is legally insufficient evidence of a violation of the law. Cases referred for prosecution during 1998-99 totaled 108, and cases filed by prosecutors numbered 28. The AB 1127 legislation, which increases criminal penalties, provides a statutory vehicle for seeking more substantial sanctions where applicable.

With the San Diego district attorney's office, BOI sponsored a statewide prosecutors conference in November 1998 on the subject of occupational safety and health prosecutions. Bureau staff also participated in law enforcement task forces and a seminar sponsored by the California District Attorneys Association.

Targeted Inspection and Consultation Fund

Assembly Bill 1655 (Hertzberg) deleted the January 2000 sunset date to levy and collect assessments from employers for the Cal/OSHA Targeted Inspection and Consultation Fund, which collected $7,862,223 in 1999. Reform legislation requires DOSH to annually identify insured employers who have a workers' compensation experience modification rating of 125 percent or greater in the previous policy year, and to levy an assessment on those employers to support the targeted inspection and consultation program.

WORKPLACE SECURITY

DOSH has been conducting inspections of violent worksite events since 1993. In 1998-99 DOSH conducted 23 inspections and found 40 violations, of which two were classified as serious. Proposed penalties totaled $10,680.

In response to the growing recognition of violence in the workplace, government agencies that oversee workplace safety are incorporating security issues into safety plans.

Fatalities resulting from assaults and violent acts were 18.8 percent of the 1999 California workplace fatality total, down from 23.4 percent in 1998. These workplace fatalities have been decreasing steadily:

	1995	1996	1997	1998	1999
Assaults and violent acts	194	185	174	146	111

Technology and training for field operations

DOSH enforcement officers, whose main focus is workplace safety and health, generate documentation from the field on laptop computers and portable printers—from such sources as statements by witnesses, experts, police and fire personnel, and observations in the field. Information on subjects associated with a particular industry or the applicability of a safety/health standard is accessed in the field by modem through the laptop computer.

DOSH is using digital photography in evidence gathering, a system both time-saving and resource efficient. Digital cameras are being used in educational efforts by the consultation staff, who also use presentation software as a powerful teaching tool to educate employers and their employees on safety and health issues.

In response to its need to increase staffing, DOSH mounted an extensive information campaign focused on working professionals and new college graduates. Part of this effort is the Cal/OSHA Junior Program, a one-year training program intended to transform college graduates into field personnel ready to support the division's work.

Based in Los Angeles, the Junior Program combines classroom and on-the-job training. DOSH staff from the regional offices currently teach the nine junior industrial hygienists and three junior safety engineers, who also report to DOSH district offices throughout California for gaining experience on the job as part of their curriculum.

CAL/OSHA CONSULTATION SERVICE

The Consultation Service offers employers and employees:

- Free on-site assistance.
- Participation at seminars.
- Educational outreach on workplace safety and health.
- Positive incentives for employers who improve safety and health at their worksites.

The Consultation Service works cooperatively with industry and labor to improve safety and health conditions in workplaces throughout the state. It is not connected in any way with DOSH enforcement operations—consultants do not take part in enforcement activities, communications between the employer and consultation staff are held in confidence and not shared with enforcement staff, and on-site consultation visits do not result in citations or penalties from the Consultation Service. Only in those rare instances where an employer refuses to correct identified hazards are referrals made for enforcement actions.

INFORMATION AND EDUCATION

Consultation Service staff participated in seminars statewide on subjects related to high incidences of workplace injuries and illnesses such as fall injury prevention, ergonomic and agricultural hazards. Nearly 11,500 employers and employees attended outreach sessions during 1998-99—the employers represented an estimated 590,000 employees.

Materials available from the Consultation Service range from model programs and booklet guides to training videos. Recent additions are the *Easy Ergonomics* guide for general industry that won national acclaim, *Managing Stress Arising from Work* booklet, *Confined Space* guide, *California Hazard Communication* guide and *Agricultural Safety and Health Inspection Project* booklet. Forthcoming are guides on bloodborne pathogen exposure control and easy ergonomics for small businesses.

To help California employers understand the benefits that they and their employees can derive from the Consultation Service, the unit recently released a new video featuring employers from many of the state's diverse industries who explain how the service has helped them attain their safety and health objectives, heightened employee morale and helped their bottom line.

CAL/VPP

The California Voluntary Protection Program (Cal/VPP) recognizes worksites with exemplary safety and health programs that get tangible results from reducing industrial hazards and occupational disease, evidenced in an injury/illness rate below the average within their industry. Initiated in California, the concept was adopted by the federal government and is now successful nationwide.

The final phase of the Cal/VPP pilot project, certifying non-fixed worksites of construction contractors, is underway. The contractors enrolled in this program who demonstrate exemplary workplace safety and health performance will be given state and national recognition.

Cal/VPP candidates who achieve Cal/Star status are removed from DOSH scheduled inspection lists. Cal/Star members must have injury and illness rates well below the industry average and demonstrate extraordinary commitment to workplace safety and health.

Cal/VPP Star sites:

- Bestfoods Baking Company, Placentia—Thomas' English muffin production—Bakers, Confectioners & Tobacco Workers Local 31
- Eastern Municipal Water District, Perris—provides water, sewage collection and treatment, recycled water distribution—EMWD Association
- GE Flight Test Operation, Kern County Airport—flight test operation
- Gencorp Aerojet, Azusa—design, development, testing and manufacture of spaceborne electro-optical, microwave and millimeter-wave sensors—International Association of Machinists & Aerospace Workers
- Gillette, Santa Monica—writing instruments manufacturer
- Huntsman Packaging, Merced—plastic food wrapping (films) manufacturer
- IBM, San Jose—computer disc drive manufacture
- Lockheed Martin Skunk Works, Palmdale—design, development, manufacture and maintenance of air platforms—IBEW Local 2295; Engineers and Scientists Guild; IUOE Local 501 (Stationary Engineers and Welders); Aeronautical Industrial District Lodge 725, IAM & W
- Pactiv Corp, Bakersfield—plastic fabrications
- 3M Dental, Irvine—dental products manufacture
- Tropicana, City of Industry—orange juice manufacture and distribution—Teamsters Union Local 848

Cal/OSHA Process Safety Management Standard

In the aftermath of two major accidents at refineries in Contra Costa County, DOSH received a budget augmentation for fiscal year 1999-2000 to conduct more inspections of high-hazard industries and programmed inspections of petroleum refineries and chemical processing plants.

The division previously had established investigatory task forces in northern and southern California. The additional resources fund two new process safety management offices focused on inspecting high-hazard industries, including refineries and chemical plants.

Process hazard analysis

The Cal/OSHA process safety management standard provides requirements for managing the danger associated with use of highly hazardous substances in chemical plants, refineries and other facilities. The key is process analysis: careful review of what could go wrong and what safeguards must be in place to prevent releases of dangerous substances and the fires that could result from such releases.

The standard requires employers to consult with employees and their representatives on the process hazard analyses and other elements of process management, to which employees and representatives must have access.

ON THE INTERNET FROM DOSH:

http://www.dir.ca.gov/dosh

- information on recent legislation
- safety and health alerts, information on bloodborne pathogens standard, asbestos regulations and resources
- reports: Agricultural Safety and Health Inspection Project, Loss Control Certification Program, High Hazard Targeted Inspection and Consultation Program
- databases: asbestos contractor registrants, certified asbestos consultants and site surveillance technicians
- health and safety publications
- Title 8 workplace safety and health regulations
- links to Cal/OSHA Consultation Service, Cal/OSHA Special Emphasis Program, Hazard Evaluation System and Information Service (HESIS), occupational safety and health resources on the Internet
- office locations statewide

TOSCO REFINERY ACCIDENT INVESTIGATION

DOSH spent six months on an exhaustive investigation of the February 23, 1999, Tosco accident, which killed four workers and seriously injured a fifth. Staff interviewed management and employees, emergency responders and others. Several weeks were spent examining the burnt scaffolding. Materials were stored in locked storage units during this phase of the investigation.

DOSH conducted an in-depth process safety management investigation into the underlying cause of the Tosco accident—for example, examining safeguards either in place or missing, inspecting and testing for mechanical integrity, studying the operating procedures to determine what had caused the pipe to corrode and leak.

The division's investigations found that Tosco failed to shut down the naphtha piping operations prior to maintenance work that involved cutting into and removing a portion of the line—so that naphtha flowed through the line onto hot surfaces of the adjoining fractionator tower and ignited, causing a fire that spread up and down the tower and engulfed the four workers.

The Cal/OSHA team coordinated its on-site investigations with federal OSHA and the U.S. Chemical Safety and Hazard Investigation Board, Bay Area Air Quality Management District and Contra Costa County Department of Health Services.

HIGHEST CAL/OSHA PENALTY

DOSH cited Tosco Refining Company for 33 alleged violations of state workplace safety and health regulations. The total amount of the proposed penalties was $810,750—the highest penalty amount ever issued against a single employer by Cal/OSHA. DOSH also conducted a concurrent criminal investigation through its Bureau of Investigations. As a result of the criminal investigation, the case was referred to the district attorney's office for prosecution.

Three contractors hired by Tosco were also alleged to be in violation of regulations, which contributed to creating an unsafe work environment for their employees. All three contractors failed to instruct their employees on how to recognize and avoid possible hazards associated with the work they were doing. DOSH issued citations for $28,025.

The Contra Costa County District Attorney filed five criminal charges against Tosco, which pleaded no contest and agreed to pay the maximum fine of $945,000. In addition, Tosco reimbursed Contra Costa County up to $100,000 for its investigative and legal costs. Tosco offered to contribute $1 million to the county to aid in development of the Los Medanos Health

Clinic, which the county identified as a needed facility because of the recent closure of Los Medanos Community Hospital.

Tosco shut down the Avon refinery in March 1999 at the request of the Contra Costa County Board of Supervisors while county, state and federal agencies conducted their investigations. A safety consultant hired by the county found serious shortcomings in the refinery's safety emphasis and labor-management communications, and Tosco agreed to implement 72 recommendations aimed at improving its operations. The plant reopened in July 1999.

Six additional inspections of Tosco's refineries have been conducted since the February 1999 Avon plant accident. On March 22, 2000, two workers were injured at the Rodeo refinery when fuel was inadvertently mixed in the firewater used to douse welding sparks—which brought about another accident investigation. Southern California inspections of Tosco Wilmington and Tosco Arroyo Grande were also conducted in 1999.

Information on the Tosco investigation is on the department Web site at www.dir.ca.gov—select News Releases. The August 4, 1999, news release links to information on the time line leading to the accident, citations and investigation summary—clicking on the word "fractionator" accesses a diagram of the fractionator overhead accumulator.

CAL/OSHA BLOODBORNE PATHOGENS STANDARD

In July 1987 a young nurse was finishing the 11th hour of a 12-hour shift in the AIDS unit at San Francisco General Hospital. As she withdrew an unsheathed needle from an intravenous line connected to a patient, the needle went through the bag and into her finger. Six weeks later she tested positive for the AIDS virus and became the first documented case of a medical worker at the hospital to be infected with HIV through a needle injury. By 1999 the national Centers for Disease Control and Prevention confirmed 55 similar cases of HIV transmission through occupational exposure. Cases of Hepatitis B and C are still occupational risks to health care workers.

In July 1999 DOSH adopted major revisions to its bloodborne pathogens standard to strengthen worker protection from transmission of bloodborne pathogens,

particularly HIV, Hepatitis B and C. California is first in the nation to place stronger requirements on employers to use needles and other "sharps" devices engineered to reduce the chances of needlestick injuries.

Many factors prompted the revised standard, including a bill passed by the California Legislature requiring amendments to the standard, a Cal/OSHA advisory committee, demands by unions representing health care workers for protective action, intensive media coverage and industry input. In amending its bloodborne pathogens standard, the division followed an advisory committee process whereby the health care industry, labor representatives and government agencies worked together to develop a consensus standard considered reasonable and protective.

Approximately 700,000 health care workers in California are at risk of workplace exposure to life-threatening bloodborne pathogens. The vast majority of these exposures are caused by needlestick injuries. Annually at least 100,000 California health care workers are injured by accidental needlesticks. Many workers do not report these injuries, so the actual number may be even greater. Although the risk of disease transmission is low for most types of needlesticks, all needlestick injuries have the potential for transmitting bloodborne pathogens such as the HIV, Hepatitis B and C viruses—and health care workers are most at risk for occupationally-acquired infection.

Health care workers view the revised California requirements and new federal compliance directive as an important milestone in their effort to obtain protection from life-threatening exposures to bloodborne pathogens. Issues remaining to be resolved are employee training, including frontline workers in decisionmaking, and ensuring that employers select the best and safest devices available.

Revisions to the bloodborne pathogens standard focus on needlesticks and other sharps injuries, which in health care delivery settings typically occur when a health care worker inadvertently punctures his/her skin with a hypodermic syringe or other sharp device—hence the term "sharps"—that was used on a patient and became contaminated with the patient's blood or other body fluids. Sharps injuries are the primary mode of transmission of bloodborne pathogens in the workplace.

Needle devices designed to minimize the risk of needlestick injuries recently were introduced into the market. Some of these needle devices are of a self-sheathing design, others employ different strategies to protect against needlesticks. The specific medical procedure for which a device is used affects the device's effectiveness in preventing needlesticks, as well as its medical efficacy. Systems without needles—called needleless systems—are also now available for some medical procedures.

Health care providers are the primary focus of the revised standard. The new requirements govern the medical procedures of withdrawing body fluids, accessing a vein or artery, administering medications or fluids, and any procedure with potential for a sharps injury exposure.

The revised standard covers employers whose employees may be reasonably anticipated to have contact with blood or other potentially infectious material. This includes emergency and public safety services, correctional and custodial care facilities, and providers of services to these covered employers—such as plumbers and launderers—whose employees could be exposed to bloodborne pathogens. A comprehensive response to 110 questions on the bloodborne pathogens standard is available on the DOSH Web site at www.dir.ca.gov/dosh.

Occupational Safety & Health Standards Board

Cal/OSHA workplace standards

OSHSB

The Occupational Safety and Health Standards Board, a seven-member board appointed by the governor and required to adopt workplace standards as effective as those adopted by federal OSHA, also protects the safety and health of workers on the job by adopting additional orders when no comparable federal standards apply. When workers are exposed to serious hazards or life-threatening danger, emergency regulations are adopted to take immediate effect while a permanent standard is under development.

The following new standards carry far-reaching significance:

- Bloodborne pathogen standard to prevent sharps injuries—this first-of-its-kind regulation was permanently adopted June 17, 1999, and became effective July 30 that year. The board's process had included an emergency adoption on January 20, 1999.
- In 1998 California became the first state in the nation to have regulations for special access lifts serving people with disabilities.
- In 1999 the board strengthened regulations for escalators and moving walks, to protect against accidental entrapment of body parts, clothing or shoes.
- In 1998 the board adopted a comprehensive update of California's elevator regulations.
- The board revised its standards to be as protective as new federal OSHA standards for methylene chloride, permit-required confined spaces, respiratory protection and powered industrial truck operator training.

OSHSB may grant a permanent variance from a workplace safety or health regulation, only when the employer requesting the variance can demonstrate by a preponderance of evidence that the alternative measures provide equal or superior protection for workers. During 1998-99 the board docketed 147 variance applications and granted 82 permanent variances.

Those who seek regulatory changes may petition OSHSB verbally or in writing, and the board has six months following receipt of a petition to report its decision. During 1998-99 the board received 28 petitions, of which 16 were granted.

The public may ask to take part in standards development as members of advisory committees, and may comment on proposed, new or revised standards at the OSHSB monthly public meetings held on a rotating basis in Sacramento, Oakland, Los Angeles and San Diego.

REGULATORY CHANGES

OSHSB lists more than 50 proposed regulations on its projected rulemaking calendar for 2000.

The board is updating Title 8 building standard requirements to coordinate with Title 24 building standards for purposes of consistency and clarity. OSHSB is also considering a comprehensive update of the Title 8 standards for explosives.

The board is considering a Division of Occupational Safety and Health proposal to implement **Assembly Bill 850** (Torlakson) by adopting regulations that govern permanent amusement rides. OSHSB will set another precedent for California when it considers proposed standards for use of mountain climbing equipment and rope access techniques as a method of protecting workers from falls.

ON THE INTERNET FROM OSHSB:

http://www.dir.ca.gov—select Occupational Safety & Health—select Occupational Safety and Health Standards Board

- proposed regulations with supporting documentation
- proposed permanent variance decisions
- notice of monthly public hearings, roster of board members
- agenda and summary of actions taken at monthly meetings
- monthly calendar of activities with schedule of advisory committees
- approved regulations
- publications: guidelines for petition process, variance process, advisory committee process, OSHSB role and responsibilities
- Title 8 workplace safety and health regulations

Email questions and comments to OSHSB: oshsb@dir.ca.gov on the Web site.

Occupational Safety & Health Appeals Board

Appeals from DOSH enforcement actions

OSHAB

The Occupational Safety and Health Appeals Board, a three-member board appointed by the governor from management, labor and the general public, functions independently of the Division of Occupational Safety and Health (DOSH). OSHAB resolves appeals from DOSH enforcement actions. The board's mission is to handle appeals fairly and in a timely manner as well as provide the public with clear and consistent guidance.

Any employer may appeal a DOSH-issued citation, proposed penalty, special order or abatement requirements, including the reasonableness of changes required by DOSH as well as notices of failure to abate original citations. The employer must initiate an appeal to OSHAB by mail, telephone or fax within 15 working days of receipt of the issued citation.

The board achieved an average six-month turnaround time from appeal docketing to calendared hearing for first level appeals, except for appeals sent to DOSH's Bureau of Investigations, appeals venued in remote areas of the state, complex appeals that necessitate a lengthy discovery process, and appeals for which good cause continuances were granted. Compared to the average14-month turnaround in 1996, this is a dramatic shortening of the time to get appeals heard.

In 1998 OSHAB docketed 4,338 appeals and disposed of 4,839 appeals. In 1999 it docketed 3,490 appeals and disposed of 4,655 appeals. More than 50 percent of the appeals during 1998-99 were resolved at telephone prehearing conferences before administrative law judges (ALJs), which eliminated the need for formal hearings. The board continued its one-month turnaround time for reviewing settlements of docketed appeals between DOSH and employers outside the prehearing and hearings processes.

Within 30 days of serving an order or decision issued by an ALJ, an aggrieved party may file a petition for reconsideration directly with the three members of OSHAB for their review. Within 30 days of serving a board-issued Decision After Reconsideration, which follows the petition seeking reconsideration process, an aggrieved party may file a petition for writ of mandamus in superior court.

HIGHEST PERFORMANCE YEAR

In 1999 OSHAB issued 55 Decisions After Reconsideration, its highest performance year since the program's inception.

Assembly Bill 1127 (Steinberg), legislation that became effective January 2000, may significantly increase appeals received by OSHAB because the maximum civil penalty for serious violations increased from $7,000 to $25,000. In 1998-99 more than 60 percent of all serious citations were appealed to the board. With enactment of this law that percentage may climb.

Another change will affect employers as a result of AB 1127, a revised definition of the term "serious violation." The employer now has the burden of proving that they did not know and could not have known with the exercise of reasonable diligence of a serious violation.

ON THE INTERNET FROM OSHAB:

http://www.dir.ca.gov–select Occupational Safety & Health–select Occupational Safety and Health Appeals Board

- information on the board, its members and the appeal process
- OSHAB Appeals Information Booklet
- employer video: Handling Your Appeal before the California OSHA Appeals Board
- schedule of public hearings and meetings
- decisions after reconsideration
- Title 8 Appeals Board regulations

Email questions and comments to OSHAB: oshab@dir.ca.gov on the Web site.

Division of Apprenticeship Standards
California Apprenticeship Council

California apprenticeship system

DAS
CAC

The Division of Apprenticeship Standards administers California law governing standards for wages, hours, working conditions and the specific skills required for state certification at the journey level of apprenticeable occupations. Within the industry-driven system of apprenticeship training, DAS works with program sponsors and monitors their programs of on-the-job training coupled with supplemental classroom instruction to ensure established high standards.

The California Apprenticeship Council is a 14-member council appointed by the governor, plus one representative each of the director of industrial relations, chancellor of the California community colleges, and superintendent of public instruction. The chief of DAS serves as secretary to the council and the division provides staff services.

The CAC holds quarterly meetings to: conduct the business of apprenticeship in California; issue regulations to carry out the intent of apprenticeship legislation; conduct appeals hearings on apprenticeship agreement disputes, standards and program administration; and advise the director of industrial relations, who is the state administrator of apprenticeship.

The more than 60,000 apprentices in California registered in some 1,400 programs are maintaining a time-honored system that has proved extremely adaptable to changes in the world of work. As traditional manufacturing jobs disappear, new high-tech and service jobs take their place. California's workers need to achieve a higher level of skills than ever before to earn a living in the global marketplace.

What every employer needs is a motivated worker with the skills necessary to do the job. What every worker needs are the skills to get and keep a decent paying job. It is the DAS goal to match the needs of workers with those of employers, and to strengthen the apprenticeship alliance among

Apprentices	1995	1996	1997	1998	1999
Total	41,360	46,172	49,468	52,453	60,403
Non-minority	21,612–52.3%	23,762–51.5%	24,960–50.5%	25,927–49.4%	28,882–47.8%
Minority	19,748–47.7%	22,410–48.5%	24,508–49.5%	26,526–50.6%	31,521–52.2%
Women	4,466–10.8%	5,222–11.3%	5,266–10.6%	5,006–09.5%	5,422–09.0%

60th anniversary of California's apprenticeship system

Celebration of the 60th anniversary of the landmark Shelley-Maloney Apprentice Labor Standards Act began with the governor's proclamation declaring October 1999 "Apprenticeship Month" in California. Authored by state Senator Jack Shelley and Assemblymember Thomas Maloney, the 1939 legislation established the administrative structure and uniform training standards of California's apprenticeship system.

DAS observed the anniversary by sponsoring a reception the following month in the San Francisco headquarters of the Department of Industrial Relations. Assemblymember Kevin Shelley, son of state Senator Jack Shelley, delivered a legislative resolution commemorating the occasion, which his sister Joan, a retired teacher and leader of the local teacher's union, also attended. Culinary apprentices from City College of San Francisco developed the reception menu, prepared and served the food to the 150 guests, who included former division chiefs, labor representatives, employers and educators.

industry, labor, education and government for recruiting workers and teaching the skills they and their employers need. A governor-approved budget increase for the 1999-2000 fiscal year, the first in a decade, allowed the division to hire new staff including five apprenticeship consultants.

NEW LEGISLATION BRINGS NEW ENFORCEMENT TOOLS

In 1999 the Legislature passed **Assembly Bill 921** (Keeley), which strengthens DAS authority to raise the standards for apprenticeship training in California. The law also gives the division new enforcement tools that should increase compliance and simplify the process for imposing penalties on contractors who willfully violate the law.

The bill increases penalties for violation of the law while providing that a general contractor is not liable for the actions of a subcontractor if the general contractor monitors the actions of the subcontractor. This provision should encourage the general contractor to see that subcontractors are following the law and providing apprentice opportunities on public works projects.

DAS will work to ensure compliance with state standards and increase the quality of apprenticeship programs through new provisions providing for program audits every five years. The bill also adds a provision for training grants to apprenticeship programs from monies collected by the California Apprenticeship Council.

In the construction industry AB 921 slows formation of new apprenticeship programs where an existing program is already approved. Another provision of the bill should increase the quality of programs by requiring meaningful representation of apprentices in program management. AB 921 prevents exploitation of apprentices by requiring that an employer who is a party to an apprentice agreement employ an apprentice only as an apprentice.

Assembly Bill 931 (Calderon) concerns apprenticeship standards for electricians. The bill requires DAS to appoint an advisory committee for establishing and validating minimum standards for the competency and training of electricians through a system of testing and certification, and to set fees for the program.

PUBLIC WORKS APPRENTICES

DAS monitors public works projects by investigating complaints. From July 1, 1998 through June 30, 1999 the division received 426 complaints from compliance program organizations and committees concerning contractors not following regulations for public works projects. Of the total, 261 complaints were closed and 165 remain open.

DAS also investigates complaints filed by apprentices. From July 1, 1998, through June 30, 1999, the division received 11 complaints from apprentices who charged that actions by their program sponsors were unfair or unreasonable, ranging from selection procedures to dismissal from a program. Of these complaints, six cases were closed and five are still under investigation.

SCHOOL-TO-CAREER/APPRENTICESHIP

The California Apprenticeship Council is represented on the employer/labor committee of School-to-Career, a network of local partnerships involving parents, educators, business, labor and communities in a method of teaching that prepares students for

college and the job market by integrating academic studies with real-world applications and work-based learning experiences. Work-based learning includes job shadowing, interning with local employers and organizations, and participating in school-based business enterprises.

California's apprenticeship training system is a natural fit with school-to-career, easing the transition from education to employment and increasing graduation rates while giving students expanded career options.

The DAS mailing of the award-winning video *Apprenticeship, California's Best Kept Secret* with bulletin board materials went to 1,500 high school principals throughout the state. In addition to the high school pilot programs underway, a pre-apprenticeship guide and curriculum models for earlier grade levels are under review as a means to increase awareness of the apprenticeship concept.

JOB TRAINING FOR VETERANS

DAS approves and monitors job training programs for veterans, under a federal contract with the U.S. Department of Veterans Affairs, to make sure veterans receive their educational benefits. The federal/state partnership dates back to the GI Bill of Rights signed into law in 1944. In its advocacy role the division is responsible for:

- Program approval, reviewing and evaluating the quality of education and training according to state and federal criteria, revising when needed to remain current with rapid technology changes and school-to-work programs.
- Facility oversight, annual on-site classroom and training center visits to determine compliance with state and federal regulations and evaluate new programs.
- Technical assistance, conducting approval workshops and assisting with applications for approval, assisting the Department of Veterans Affairs with certification workshops, informing schools of their approval status and changes in the laws.
- Outreach, working with transition assistance offices on military bases to provide information about approved training opportunities for veterans.
- Liaison, acting as the state liaison between military installations and schools, employers, labor groups and state veterans organizations to provide information and promote GI Bill use.
- Contract management, establishing a plan of operation, performance standards and employee qualification standards to ensure effectiveness and efficiency, and providing required reports.

Child care provider apprenticeships

DAS is expanding the child care provider apprenticeship standard with the advice and assistance of members of the child care industry, labor organizations, child care advocacy organizations and regulatory bodies. The current apprenticeship in child care requires 2,000 hours on the job and 120 hours of related and supplemental coursework.

To help meet the growing demand for quality child care in California, DAS established the Child Care Apprenticeship Advisory Committee in December 1999. It is studying and recommending how to develop a new child care provider apprenticeship program that meets the needs of child care centers and family day care providers. DAS expects the new standard to parallel or exceed the federal child care apprenticeship standard—4,000 hours of on-the-job training and 144 hours/year of related and supplemental instruction in early childhood education and child development—and to track the child care provider permit requirements in California.

In March 2000 DAS hosted workshop discussions and an information table about child care apprenticeships for the 5,000 attendees at the annual conference of the California Association for Education of Young Children in Sacramento. A large number of child care and family day care center operators were very enthusiastic about expanding the number of child care apprentices in California. The division's goal is to implement a new child care apprenticeship standard during 2000 and to double the number of registered child care apprenticeships in California by the summer of 2001.

INMATE APPRENTICESHIP TRAINING

The Correctional Institutions Apprenticeship Committee of the California Apprenticeship Council was revived as a CAC standing committee after several years of inactivity. Some of the state's correctional facilities have an active relationship with outside apprenticeship programs for providing transition to life on the outside, and some have internal inmate apprenticeship programs.

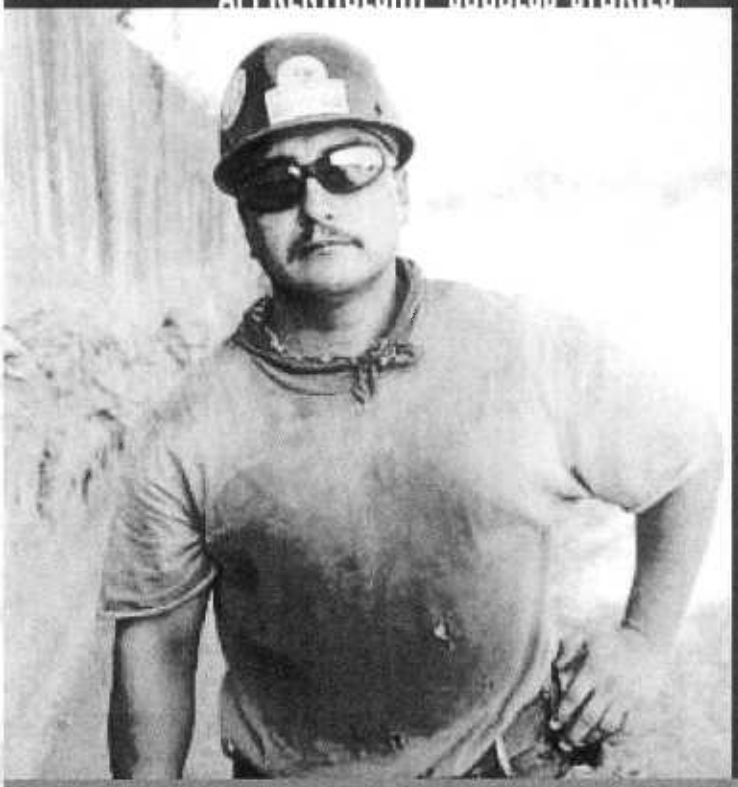
Immediate committee goals are to conduct surveys of program sponsors and inmate facilities with trade affiliation, reestablish inter-agency relationships between DAS and the California Department of Corrections (CDC), and review the CDC *Inmate Apprenticeship Handbook*.

ON THE INTERNET FROM DAS AND CAC:

http://www.dir.ca.gov—select Apprenticeship

- activity reports
- apprentice testimonials
- Title 8 regulations
- office locations statewide

APPRENTICESHIP SUCCESS STORIES



IRONWORKER

The ironworker apprenticeship is a three-year apprenticeship. It's like adding another tool to your belt. We have semesters. Now we're going three weeks in a row and then we're off a week or two and then we're back. There's a lot of things you need to know in the field. But combine that with your books and you're a professional. The guys respect you more because you've gone to school for your trade.

Sam Apodaca, ironworker apprentice, Fresno

CHEF

A person really has to be serious about a culinary apprenticeship because it takes three years. It goes quick, but it's not a small chunk of your life. We have a class once a week at City College of San Francisco. We go about four hours. The hotel I work at will accommodate us for this class. In class we get more technical information, mostly lecture, mostly book stuff. I was always interested in food, but never took it seriously. I went to UC Davis for four years and majored in textiles and interior design. I thought I wanted to do interior design but at the end of school I didn't want to. I went into the garment industry for three different companies. At the time I quit it was a rough time for the fashion industry in the early '90s. When the last place I was at closed it got me thinking that design was not where I wanted to stay and not what I wanted to do.

Sandy Lowe, culinary apprentice, San Francisco

CARPENTER

I went through a free apprenticeship program. It helps to have that pre-apprenticeship. As a beginner you need to get out there and hustle your own work, get out there and knock on doors three times per week. I worked the whole year, all but two months at the beginning of the summer.

I personally haven't found it being a problem finding work. I worked on bridges and school buildings. I don't think I'd really like to be anywhere else. This is something I enjoy. I'm learning so much. You need to keep an open mind about what it is you really want to do in your life. Right now I'm living my dream. I've always had my eye on construction sites.

Candy Lane, carpenter apprentice, Fresno

Division of Workers' Compensation

Workers' compensation system

DWC

The Division of Workers' Compensation monitors administration of workers' compensation claims and assists in resolving disputes over claims for workers' compensation benefits.

DWC's goals are to ensure that the state's workers' compensation system functions as one in which injured workers receive the benefits to which they are entitled with minimum delay from disputes and with minimum expense to employers. To this end, the division's plans for the immediate future are: to focus on improving the judicial system that helps resolve disputed workers' compensation claims, including a major study on this subject using the expertise of nationally recognized authorities; and to further refine its audit regulations to identify the worst offenders and encourage proper claims handling at claims adjusting locations throughout the state.

During 1998-99 DWC continued implementing 1993 legislative reforms that had added new programs and redirected the emphasis of the state's workers' compensation system to better serve the California public. Highlights of this two-year period include:

- Developing the Workers' Compensation Information System (WCIS), the first phase of which became operational in early 2000. This system provides information to policy makers, and will replace paper submissions of mandated reports with electronic submissions using standards set by the International Association of Industrial Accidents Boards and Commissions.
- Reorganization of the district and regional office network, creating three regional call centers to receive incoming calls to DWC, provide information and assistance to the callers, and perform disability ratings for unrepresented injured workers.
- Providing more information services to the public: publishing *An Employer's Guide to Workers' Compensation in California*, producing fact sheets and guide materials for injured workers, updating the DWC Web site, and hosting the division's annual educational conference—one of the premier state-run conferences in the country.
- Continuing improvements and support for the audit program, which was established to ensure that claims administrators are managing workers' compensation claims in accordance with state laws and regulations.
- Adopting new medical fee schedules to reflect current practice in treating industrial injuries and illnesses.
- Establishing a task force of workers' compensation community members to suggest ways to achieve uniformity of forms and procedures at the division's district offices statewide.

Workers' compensation community task force on uniformity

During 1999 DWC's administrative director began a new initiative to achieve greater uniformity in some forms and procedures used at district offices.

This effort led to forming a team of workers' compensation administrative law judges who took on the project of developing uniform settlement guidelines as well as new continuance and minutes forms for use by the judge and parties in a case.

Their work was reviewed by a task force representing applicants' attorneys, defense attorneys, the insurance industry, self insured employers and medical provider organizations—who made further recommendations. This joint effort proved successful, and the new documents were adopted and put into use at the beginning of 2000.

DWC efforts to achieve further consistency will continue, making it easier for members of the workers' compensation community who practice before workers' compensation judges at the district offices.

CLAIMS ADJUDICATION

At DWC district offices the number of new filings, which had been declining steadily after they peaked in 1995, leveled off and began rising again during 1998-99. A large part of the reduction in the prior three years was due to fewer cases involving medical liens only, brought about by new lien procedures and special lien calendars during that time. The number of requests for hearings through the Declaration of Readiness to Proceed remained relatively stable during these years.

In 1998 there were 174,549 conferences set for hearing and 64,117 cases set for trial, a total of 238,666 formal hearings before workers' compensation judges in California. This is 6 percent less than the prior year. In 1999, 170,880 conferences were set for hearing, 58,402 cases set for trial, and 7,247 expedited hearings held, for a total of 236,529 formal hearings. It appears that most of this decrease is from a reduction in the number of continuances and second conferences and trials.

The length of time between request and hearing dropped steadily. In 1997 it took an average 71 days from request to scheduled hearing, and 159 days to scheduled trial. By 1999 these times were cut to an average 67 days to hearing and 115 days to trial. At the end of 1996 only 14 percent of the hearings were held within 30 days of request, and only 15 percent of the trials within 75 days. During calendar year 1999, these times had improved to 19 percent of hearings and 32 percent of trials held within their respective time goals.

In 1998, 153,886 closing decisions were made, a 6.4 percent reduction from the prior year, and in 1999, 147,331 closing decisions were made. In both years about 90 percent of the cases were closed with a settlement approval. Fewer than one in 10 cases were closed with a judge's decision following a hearing.

INFORMATION AND ASSISTANCE

DWC's information and assistance unit provides information on the rights, benefits and obligations under California's workers' compensation laws to workers, their employers, labor unions, insurance carriers, physicians, attorneys and other interested parties.

This unit plays a major role in reducing WCAB litigation, and district offices are often the first contact between injured workers and the division.

During 1998 information and assistance officers at DWC district offices and headquarters responded to more than 392,000 phone calls, handled more than 42,000 letters from the public, and assisted another 53,000 injured workers in person.

The unit's activities are supplemented by a centralized toll-free number, which has the capacity to handle multiple calls simultaneously and gives information to as many as 1,000 callers daily.

During 1998 the toll-free information and assistance line handled approximately 240,000 calls. About two-thirds of the callers were seeking information on injured worker benefits and claims processes. Eleven percent requested information on workers' compensation insurers, 9 percent on employer rights and responsibilities, 5 percent on medical care fees and information for providers, 5 percent on how to report fraud or complain about claims handling, and 3 percent on locations of WCAB offices.

Calendar Year	Total New Filings	Declarations of Readiness	Hearings Held
1997	197,599	232,742	254,012
1998	187,959	230,653	238,666
1999	189,917	232,705	236,529

Sources, DWC/WCAB Online Data System: New Filings Report 10; Declarations of Readiness Report 13 - Quarterly; Hearings Report 20.

REHABILITATION

DWC's rehabilitation unit determines services needed to help injured workers return to gainful employment when unable to work in their former jobs, and resolves disputes regarding rehabilitation benefits and services. As part of DWC's reorganization, those district offices that previously had no full-time rehabilitation consultant on site received such staffing to provide better service to the public.

In 1998 the unit opened 23,804 new cases involving plans filed by unrepresented workers or where there was a dispute to be resolved. The unit approved 9,697 plans and disapproved 1,828. During the year 5,735 workers returned to work after completing an approved plan, while rehabilitation services were terminated in 852 cases. Another 9,813 plans were filed that did not require approval by the unit because the injured worker was represented by an attorney and the parties had agreed upon the plan. In addition, 3,646 injured workers were offered modified or alternative work with their same employer.

In 1999 the unit opened 24,244 new cases, approved 8,866 plans and disapproved 1,980. Of workers in approved plans, 4,959 returned to work after completing their plan, while rehabilitation services were terminated in 670 cases. Another 12,840 plans were filed that did not require approval by the rehabilitation unit. In addition, 4,100 injured workers were offered modified or alternative work with their same employers.

Rehabilitation program regulations were revised during 1998. Commonly used rehabilitation terms, such as "modified work" and "alternate work," were defined. Entitlement of employees to living expenses, English language training, vocational rehabilitation temporary disability, and vocational rehabilitation maintenance allowance were clarified.

DWC procedures for determining the cost effectiveness of rehabilitation plans outside of California were addressed. New timeframes for parties to file position statements and for the unit to issue determinations are also covered in these regulations.

For employees injured on or after January 1, 1994, who initiate rehabilitation benefits or services on or after January 1, 1998, the period of job placement in a rehabilitation plan may be up to 90 days where the plan exclusively uses the employee's transferable skills and experience for direct placement—under prior law the limit was a 60-day job placement. The change in the law is intended to reduce unnecessary efforts and expenses associated with providing extra services to injured workers who are job ready.

Regional centers bring immediate help to callers

The first DWC regional center opened in San Bernardino in November 1997 and by the end of 1999 handled nearly 250,000 calls from the public. In July 1999 the Walnut Creek regional center opened and is currently handling approximately 15,000 calls per month. The third center is scheduled to open in Van Nuys. Regional centers are staffed to expeditiously handle the large volume of calls DWC receives daily. They are open during extended office hours of 7:00 a.m. to 6:00 p.m.

Previously, each district office staffed usually one or two information and assistance officers whose responsibilities involved speaking on the phone in addition to dealing with persons directly at the counter, answering correspondence and assisting workers' compensation judges. Callers were often automatically redirected to a menu-driven general information service, to voice mail, got busy signals, or were put on long holds. The regional centers are staffed so that callers, many of them newly injured workers with many questions, now reach a person who can help immediately.

DISABILITY EVALUATION

DWC's disability evaluation unit recommends permanent disability ratings by assessing physical and mental impairments. The evaluations are used by judges, injured workers and workers' compensation insurance administrators to provide permanent disability benefits.

Reform legislation established a new method for determining permanent disability through reliance on reports issued by qualified medical evaluators, who are selected by the Industrial Medical Council. DWC is expected to prepare summary evaluations of permanent disability within 20 days of receiving the employer-employee forms and qualified medical evaluator's report. Most of the summary ratings are done

Worker education materials and workers' compensation training conferences

In response to legislative mandates, the information and assistance staff developed and distributed to employees new pamphlets and packets including information on other state and federal rights for disabled persons. Division staff are also working closely with the Commission on Health and Safety and Workers' Compensation to produce other worker education materials and useful guides to the California system.

Due to the changes brought about by legislative reform, DWC considered ways to instruct all segments of the workers' compensation community on regulatory and statutory changes that affect claims handling. The first educational conference given in 1993 was so successful it became an annual event. The two-day programs now take place at two locations and feature courses on updated case law, audit procedures, new regulations, medical report writing, use of fee schedules, rehabilitation, and other changes that occurred over the prior year. Partnered with the International Workers' Compensation Foundation, these educational events generally attract an enrollment of more than 1,000 participants.

DWC Audit Unit Annual Summary 1995-1999	1995	1996	1997	1998	1999
Total audits completed	64	55	39	34	30
Number of cases audited in completed audits	16,261	12,436	8,504	6,493	5,743
Compensation due cases as % of indemnity cases reviewed	12 %	13 %	16 %	16 %	19 %
Average amount unpaid per case with unpaid compensation	$ 886	$ 819	$ 896	$ 843	$ 1,009
Total unpaid compensation	$ 644,943	$ 473,961	$ 455,401	$ 356,787	$ 499,291
Number of penalty assessments	8,481	9,030	9,324	7,774	10,232
Amount of penalty assessments after mitigation	$ 1,099,610	$ 1,164,120	$ 1,269,370	$ 1,069,285	$ 1,532,540
Average total assessed per audit	$ 17,181	$ 21,166	$ 32,548	$ 31,454	$ 51,085
Percentage of randomly selected files with TD payments in which first payment was late	16 %	22 %	21 %	29 %	30 %

for workers who are not represented by an attorney. Written consults are also requested by parties to workers' compensation cases who seek a formal rating of physician-submitted medical evaluations.

During 1998 unit staff received 39,548 requests for written consultations on medical reports, 33,518 unrepresented summary requests and 5,554 requests for represented summary ratings and other reports—a total of 78,620 incoming files. During 1999 they received 44,824 requests for written consultations, 33,392 unrepresented summary requests and 3,038 requests for represented summary ratings and other reports—totaling 81,254 incoming files.

The unit issued a total of 110,472 ratings during 1998 and 106,866 during 1999. About 60 percent of these were consultative ratings prepared at the request of the parties in litigated cases, and 35 percent were unrepresented summary ratings based on panel QME or treating physician reports. The rest were formal ratings done at the request of a judge. The unit also assisted parties to workers' compensation proceedings by providing 29,021 verbal consultations in 1998 and 18,178 in 1999.

AUDIT AND ENFORCEMENT

DWC's audit and enforcement unit—promoting prompt payment of workers' compensation benefits to injured workers—audits the compliance of insurance companies, self insured employers and third party administrators with the Labor Code and DWC regulations.

The unit assesses penalties and orders that unpaid compensation be paid. Penalties range from $100 to a maximum of $5,000 per violation. Audit regulations clarify claims administrator responsibilities and specify in detail how factors are applied to determine penalty amounts. In addition to these penalties, a civil penalty of up to $100,000 may be assessed if improper claims handling is found to constitute a business practice.

In late 1999 the unit established a civil penalty investigation section of six additional workers' compensation compliance officers and one investigator. They intend to thoroughly investigate credible complaints and information received indicating claims practices for which the assessment of a civil penalty may be warranted.

CLAIMS UNIT

DWC's claims unit authorizes payment of workers' compensation benefits to injured workers under two special programs.

Uninsured Employers Fund (UEF)

Claims are paid from the UEF when illegally uninsured employers fail to pay workers' compensation benefits awarded to their injured employees by the Workers' Compensation Appeals Board. In 1998, 1,012 UEF cases were opened, and in 1999 the number of new cases rose to 1,208. Total benefits paid out during 1998 by the UEF were $19.3 million, while in 1999 this amount increased to $26.1 million.

The UEF receives revenue from: uninsured employer recoveries and penalties; benefits returned to the UEF because they were unpayable; and benefits that were being received by injured workers who subsequently became incarcerated and had no dependents. In 1998 collections by the unit came to $5.3 million, and in 1999 the amount was $5.9 million.

Subsequent Injuries Fund (SIF)

The SIF is a source of additional compensation to injured workers who already had a disability or impairment at the time of injury. For benefits to be paid from the SIF, the combined effect of the injury and the previous disability or impairment must result in a permanent disability of at least 70 percent. The fund enables employers to hire disabled workers without fear of being held liable for the effects of previous disabilities or impairments. SIF benefit checks are issued by State Compensation Insurance Fund after issuance of an award by the Workers' Compensation Appeals Board and upon DWC authorization.

There were 482 new SIF cases in 1998 and 536 cases in 1999. Benefit payments for 1998 totaled $7.6 million, and $7.8 million for 1999. The SIF receives revenue from cases in which there are occupational fatalities without any payments to dependents. In 1998 the unit collected $2.9 million from such sources, and in 1999 the amount came to $3.3 million.

LEGAL UNIT

For DWC's legal unit the high pace of regulatory activity continued during 1998-99 to interpret and clarify the statutory intent of reform legislation.

This activity encompassed: start-up of the Workers' Compensation Information System, updating medical fee schedules, revisions to regulations for treating physicians, two new physician reporting forms, improving the effectiveness of the audit program, clarifying rehabilitation regulations for modified and alternate work and providing a new fee schedule, and revisions to the DWC utilization review standards.

The legal unit also reviews petitions for orders requiring an employee to select an employer-designated treating physician. The majority of the petitions allege inadequate or untimely reporting by the treating physician. Many petitions also allege that the treatment provided is inappropriate, or that the treating physician is not within a reasonable distance of the employee's residence.

A total of 948 petitions were filed with the division in 1998, an increase of nearly 50 percent from the 637 petitions filed in 1997. In 1999, 915 petitions were filed.

DWC initiative: construction carve-out projects

The division monitors and approves participation in the construction carve-out program, which allows unions and contractors to create alternatives to the traditional, state-supervised process. The law allows collective bargaining agreements to establish alternative dispute resolution and exclusive lists of medical providers and examiners for injured workers within a specified construction work force.

The DWC administrative director reviews collective bargaining agreements negotiated under the provisions, and by the end of 1999, the division had issued letters of eligibility to the parties of 16 collective bargaining agreements.

Six of the agreements are project labor agreements covering all the construction employees who work at any time on the covered project. The first two project agreements covered massive reservoir construction projects lasting several years. Other large project labor agreements cover construction workers on the National Ignition Facility at Lawrence Livermore National Labs, the Inland Feeder Project of the Metropolitan Water District of Southern California, and the Emergency Storage Project of the San Diego County Water Authority.

The other agreements between unions and contractors are of two types: the first is a single employer and a union engaged in construction; the second involves a construction trade union and multiple employers all participating in a collective bargaining agreement. Building trades involved in these projects include electricians, painters, laborers, pipe trades and carpenters unions.

In 1998 there were 12 agreements in effect, covering approximately 9,500 employees. In 1999 the number of agreements increased to 14. Although it is still too early to come to any definitive conclusions, to date the construction carve-out projects seem to be meeting the main objectives of the program, such as reduced litigation and expedited dispute resolution.

The legal unit reviews and rules upon requests for reconsideration of permanent disability ratings issued to workers not represented by an attorney (summary ratings). A request can be made if either party disputes the medical evaluation report upon which the rating is based or feels the rating was inaccurately calculated.

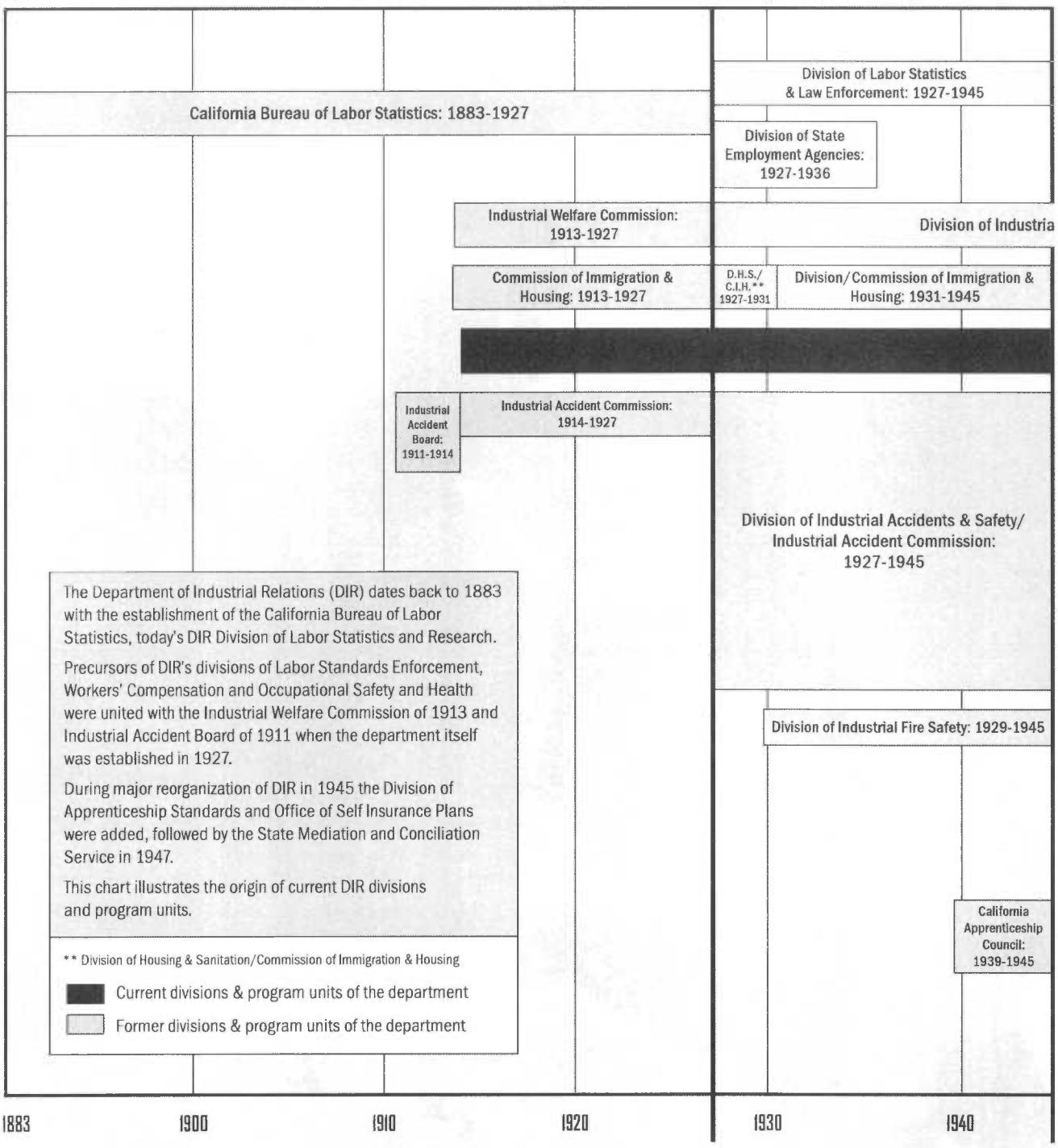
The unit received and processed 1,737 requests in 1998 and 1,315 in 1999, a significant decrease since the high point of more than 4,000 petitions received in 1995. In 1998, 1,353 requests were denied, 520 were granted, and 402 were closed when cases went before the WCAB. In 1999, 721 requests were denied, 311 granted and 645 closed.

Ethics Advisory Committee

The nine-member DWC Ethics Advisory Committee, appointed by the administrative director, reviews and monitors complaints of misconduct filed against workers' compensation administrative law judges. The committee meets periodically to review the complaints and make recommendations regarding formal investigation by the DWC administrative director's staff.

During 1998 the committee received a total of

OVER A CENTURY OF SERVICE T



The Department of Industrial Relations (DIR) dates back to 1883 with the establishment of the California Bureau of Labor Statistics, today's DIR Division of Labor Statistics and Research.

Precursors of DIR's divisions of Labor Standards Enforcement, Workers' Compensation and Occupational Safety and Health were united with the Industrial Welfare Commission of 1913 and Industrial Accident Board of 1911 when the department itself was established in 1927.

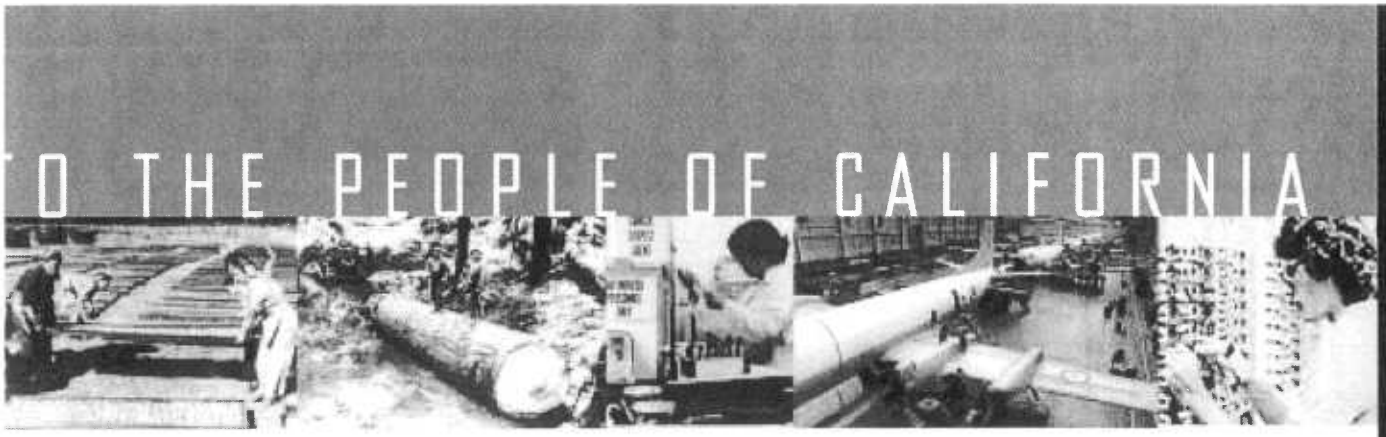
During major reorganization of DIR in 1945 the Division of Apprenticeship Standards and Office of Self Insurance Plans were added, followed by the State Mediation and Conciliation Service in 1947.

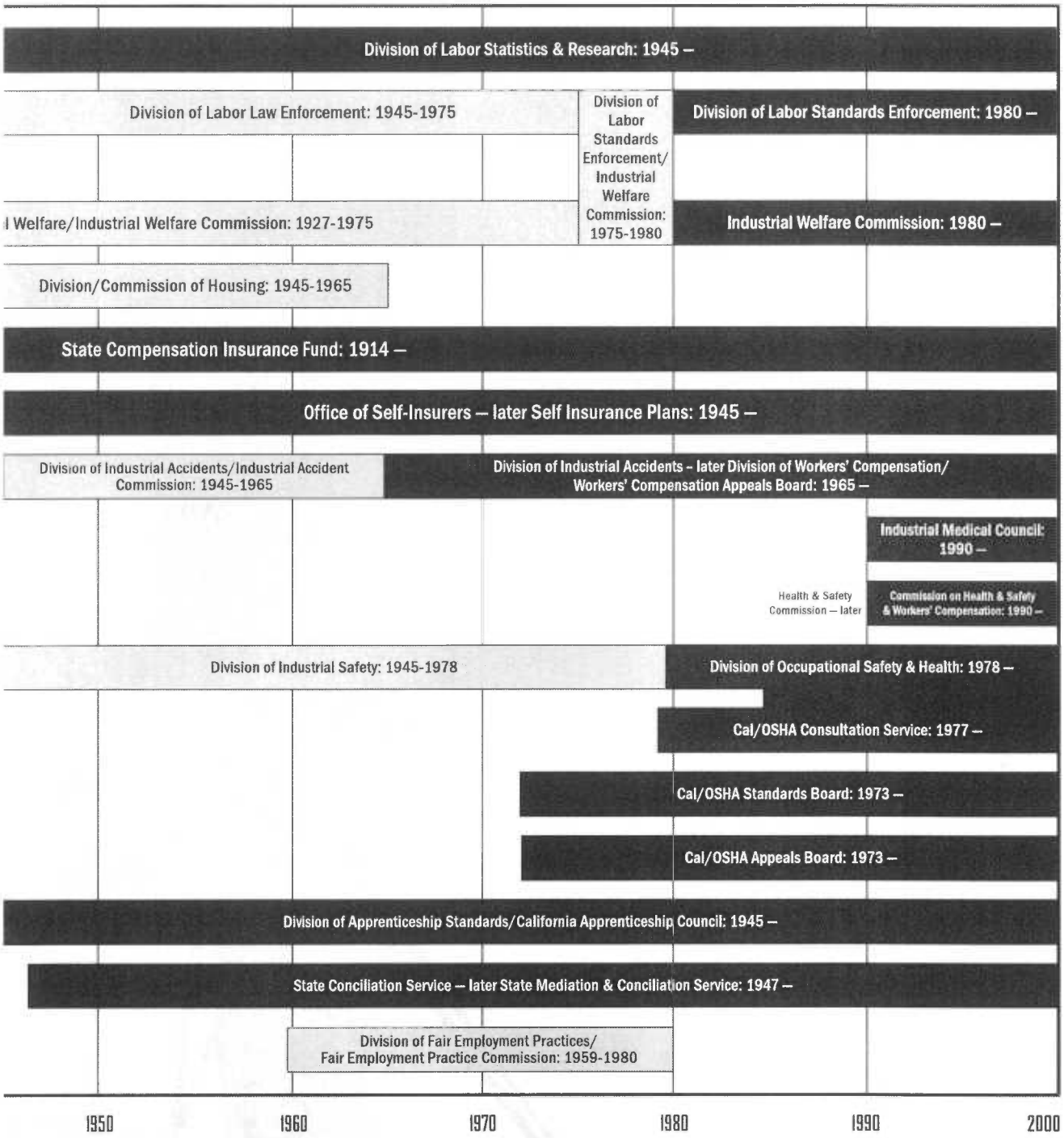
This chart illustrates the origin of current DIR divisions and program units.

** Division of Housing & Sanitation/Commission of Immigration & Housing

Current divisions & program units of the department

Former divisions & program units of the department





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Workers' Compensation Information System

Background

The Legislature in 1993 directed the DWC to put together comprehensive information about workers' compensation in California. The result is the WCIS—the Workers' Compensation Information System. Developed in 1995, its design was shaped by a broad-based advisory committee. The WCIS objectives are: to help DWC manage the workers' compensation system efficiently and effectively, to facilitate evaluation of the benefit delivery system, to assist in measuring benefit adequacy, and to provide statistical data for further research.

WCIS components

The core of the WCIS is standard electronic data on every California workers' compensation claim, such as employers' and physicians' first reports of injury and benefit notices. DWC has extensive computerized files on adjudicated cases and on claims submitted for disability evaluation or review of vocational rehabilitation plans. This information linked with other electronic data can show the differences between adjudicated and non-adjudicated cases.

The WCIS is used to conduct periodic surveys of injured workers, their employers and medical providers to supplement the standard data, and address questions of policy.

18 complaints concerning DWC employees, a decline from the 33 complaints filed during 1997. In eight of the 16 complaints reviewed, the committee found insufficient showing of ethical misconduct to warrant further investigation. The committee recommended formal investigation in 10 cases, including two carried over from 1997.

The committee received 30 complaints during 1999 and found insufficient showing of ethical misconduct to warrant further investigation in 15 of the complaints. It recommended formal investigation in the other 15 cases.

MANAGED CARE

DWC's managed care unit reviews applications from health care organizations and certifies them for delivery of managed care services under California workers' compensation law.

The Workers' Compensation Health Care Organization (HCO) program is designed to help lower employers' workers' compensation costs and assure quality of care for injured workers by bringing managed care techniques into the workers' compensation arena.

Self insured employers and insurers may contract with a certified HCO to provide medical and disability management services to injured workers. Employees must be provided a choice of at least two HCOs, and an open enrollment process is required—employees offered a choice of HCOs must also be given the option to pre-designate their own personal physician. Once enrolled in an HCO, those services and providers must be used for 90 to 365 days after an on-the-job injury or illness occurs.

At the beginning of 1998 nine HCOs were certified, eight of them workers' compensation health care provider organizations and one an HMO. During the year three more were certified and four withdrew from the program for business reasons. During 1999 four new HCOs were approved for operation, and in early 2000, several additional applications for certification were under review.

In December 1999 HCOs began reporting a surge in enrollment, and it was estimated that the number of employees enrolled grew from less than 40,000 to about 100,000 over the next few months.

During 1998 the division released a report on the development of a survey to gauge patient satisfaction for injured workers receiving medical care in the workers' compensation system. The survey methodology, one of the first for this specific audience to be developed nationwide, will be used by HCOs and is available for use by employers, claims administrators and medical care providers.

ON THE INTERNET FROM DWC:

http://www.dir.ca.gov—select Workers' Compensation—select Division of Workers' Compensation

- information on recent legislation
- guides for injured workers
- Q & A for questions frequently asked by injured workers, employers, claims administrators and service providers
- overview of California workers' compensation system
- information on DWC programs, office locations statewide
- forms, reports and publications
- links to Labor Code and Title 8 regulations, Department of Industrial Relations resources and other agencies

Email questions and comments to DWC: dwc@dir.ca.gov on the Web site.

Workers' Compensation Appeals Board

Petitions for reconsideration of workers' compensation judge decisions

WCAB

The Workers' Compensation Appeals Board is a seven-member board appointed by the governor with senate consent and supported by staff within the Department of Industrial Relations. The WCAB reviews petitions for reconsideration of decisions issued by state workers' compensation administrative law judges. The WCAB also participates in appellate proceedings before the district courts of appeal and state supreme court, and regulates the adjudication process by adopting rules of practice and procedure.

During 1998 and 1999 the primary challenge for the WCAB concerned issues arising from the legislative reforms to California's workers' compensation system. The WCAB's written decisions serve as guidelines for the compensation community, along with its updated regulations in response to the changing needs of the system.

MEETING THE DEMAND

The WCAB received approximately 9,500 petitions—such as petitions for reconsideration, petitions for removal, petitions for disqualification—during 1998-99. Written decisions are issued in response to all petitions, and more than 84 percent of the petitions were decided within 60 days.

During 1998-99 the WCAB continued its role of providing guidance to the compensation community through legal decisions and participation in educational conferences. Legal opinions dealt with:

- Psychiatric claims under Labor Code Section 3208.3, which covers issues such as establishing whether actual events in the workplace contributed to the psychiatric claim—and potential denial of the claim if it is attributed instead to lawful, non-discriminatory, good faith personnel actions.
- Proper procedures for obtaining and submitting medical reports as described under Labor Code Sections 4060, 4061 and 4062.
- Implementing and interpreting the proper scope of the anti-fraud provisions as described under Insurance Code Sections 1871.4 and 1871.5.
- Properly applying the presumption of compensability of an injury as provided under Labor Code Section 5402, including the conditions under which the presumption arises.
- The proper scope of Labor Code Section 3600(a)(10) concerning post-termination claims.

ON THE INTERNET FROM THE WCAB:

http://www.dir.ca.gov–
select Workers' Compensation–
select Workers' Compensation Appeals Board

- information on WCAB organization, function, procedure
- case decisions and petitions for reconsideration
- links to Labor Code and Title 8 regulations, Division of Workers' Compensation
- office locations statewide

Industrial Medical Council

Improving the quality of industrial medicine

IMC

The Industrial Medical Council is a 20-member council of health care professionals appointed by the governor and Legislature and supported by staff within the Department of Industrial Relations. The IMC regulates physicians—called qualified medical evaluators (QMEs)—who examine injured workers, evaluate disability and write reports used to determine eligibility for workers' compensation benefits.

The council administers the QME competency exam, certifies QMEs and conducts disciplinary proceedings. The IMC also provides unrepresented injured workers with a QME panel, regulates QME advertising as well as continuing education courses, advises DWC on medical fee schedules and investigates complaints about QME misconduct. Since its formation in 1990, the IMC certified 6,447 QMEs, and at the end of 1999 about 4,100 of them were in active practice.

The IMC adopts and revises treatment guidelines for industrial injuries and occupational diseases. Current guidelines cover treatment of low back problems, occupational asthma, contact dermatitis, post traumatic stress disorder, and injury to the neck, shoulder, elbow, hand, wrist and knee. The advisory guidelines assist health care providers in the California workers' compensation community. Guideline text is on the IMC Web site and available upon request to the IMC office.

2000-2001 FOCUS

To raise the quality of workers' compensation medical evaluations and improve services to injured workers, the IMC is expanding its education program to include treating physicians and producing a guide for improved reporting. Work is also underway to revise the well-received second edition of *The Physician's Guide to Medical Practice in the California Workers' Compensation System.* The number of medical-legal reports evaluated by the IMC quality review process is increasing, and the council continues to produce and revise disability evaluation and treatment guidelines.

Communication and education are key to the quality of medical treatment and disability evaluation in the workers' compensation system. Following its first educational conference for treating physicians, a second IMC conference was held in October 1998. The conferences were fully attended and enthusiastically received. The council met its goal to establish a benchmark for other continuing education course providers in the field of workers' compensation.

The IMC makes its forms available to the public through its fax-on-demand system, and IMC publications and forms have been added to its Web site.

1998-99 PROGRAM DEVELOPMENT

The Legislature directed the IMC to develop protocols reflecting accepted health care practices for evaluating common industrial injuries. During 1998 the council was advised by the workers' compensation community on updating its guideline for evaluating cardiac disabilities.

Protocols were previously published on evaluating immunologic, psychiatric, neuromusculoskeletal and pulmonary disabilities, and the IMC issued policy statements on return to work and thermography.

QME review

The IMC quality review of a QME medical-legal report checks 25 essential elements, evaluates the physician's discussion of complex subjects such as the subjective factors of disability, and checks for adherence to the council's disability evaluation guideline for that type of report. The IMC then sends a letter to the physician who wrote the report, either to acknowledge passing its review or summarizing the report's deficiencies and directing the physician to use reporting resources.

Reports containing ethical breaches or egregious mistakes are referred to the IMC discipline section. The council reviewed 1,000 reports in 1998 and 1,003 in 1999. Review results are reported annually to DWC and posted on the IMC Web site.

The IMC investigations unit uses the cross-disciplinary expertise of a supervising attorney, staff physician, investigator and support staff to investigate and resolve complaints. A toll-free complaint phone number is also in use.

In 1998-99, 951 complaints were received and 752 resolved—175 cases remain open. Seven IMC investigations cases were referred to licensing boards or other agencies with jurisdiction over the QME, five QMEs were terminated, five placed on probation and seven suspended with probation. The council meets with other medical licensing agencies in the state to improve agency coordination in efforts to take action against physicians engaged in illegal or harmful conduct.

Fee schedule and rulemaking

During 1999 the IMC continued focusing on revision of the Official Medical Fee Schedule. A council-commissioned study is reviewing methodology adopted by other states and the federal government to ensure fairness in reimbursing medical providers for their services.

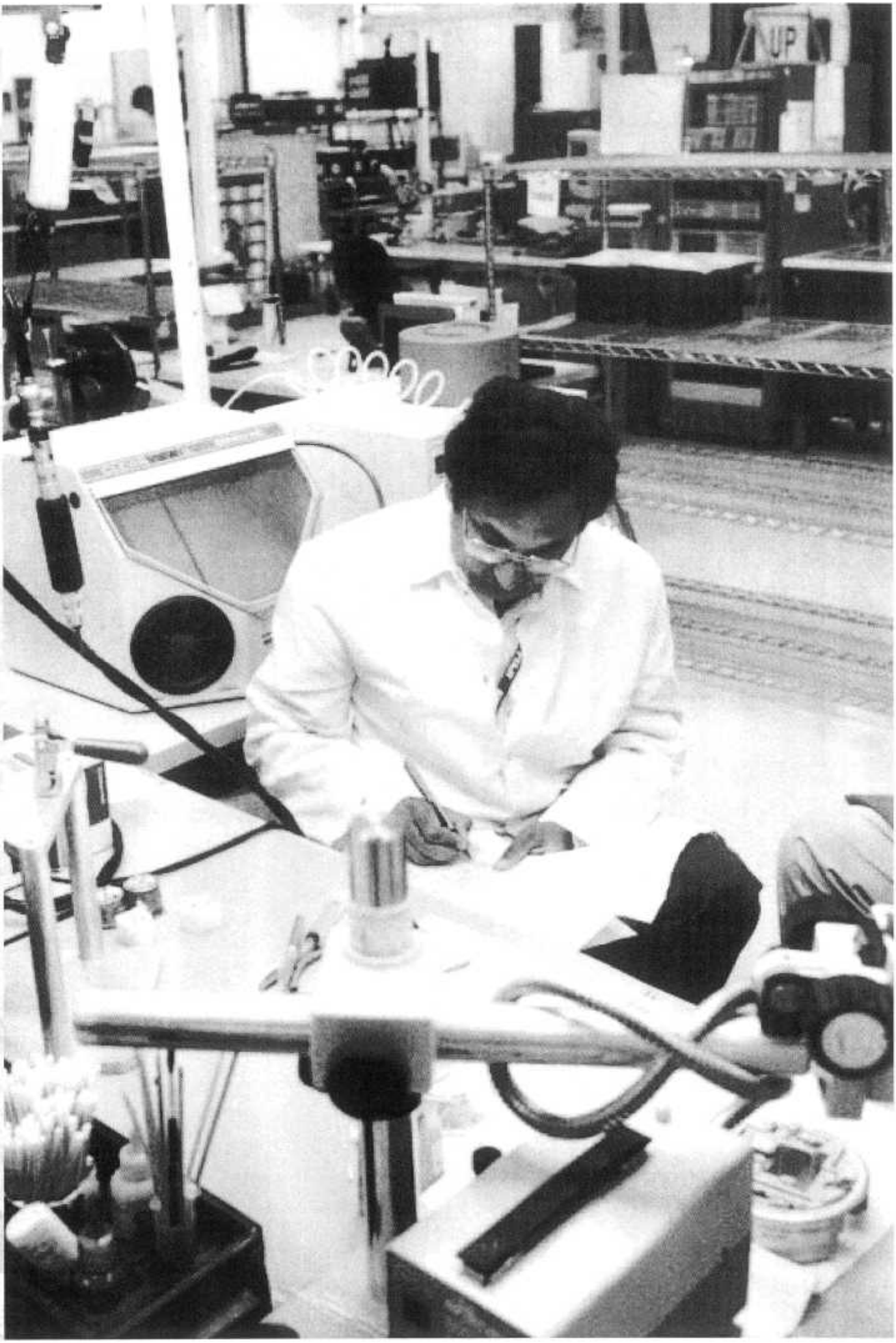
In 1999 the IMC undertook major rulemaking to clarify the obligations of QME appointments, guidelines for QME reporting, ethical conduct and advertising, and to modify QME forms.

The IMC sanction guidelines are the first of their kind for physicians in the workers' compensation system and provide a framework for IMC disciplinary actions. The rules became effective in April 2000.

ON THE INTERNET FROM THE IMC:

http://www.dir.ca.gov—select Workers' Compensation—select Industrial Medical Council

- council meeting calendar, committees, member information
- Q & A for questions frequently asked by injured workers and physicians
- forms used by injured workers, QMEs, treating physicians
- checklist of required elements for a QME report
- regulations governing QME appointments, reporting, conduct, advertising, discipline
- list of QMEs disciplined by the IMC
- approved course providers of continuing medical education for QMEs
- The Physician's Guide to Medical Practice in the California Workers' Compensation System: what physicians need to know as medical-legal evaluators in workers' compensation
- Medical Examiner: IMC newsletter for QMEs
- protocols: full text of IMC guidelines for disability evaluation and treatment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Self Insurance Plans

Self insurance for workers' compensation

SIP

The Office of Self Insurance Plans, within DIR's Office of the Director, certifies employers who qualify to provide their own workers' compensation coverage. The director of industrial relations is responsible for certifying self insurers in the private and public sectors, individual claims adjusters and third party claims adjusting agencies that oversee self insurance programs.

At the close of 1999, self insured employers totaled 342 in the private sector and 307 in the public sector. An additional 1,274 public agencies were self insured as affiliated members of 60 joint powers authorities that function as group self insurers. No similar group self insurers formed in the private sector, though private groups have been authorized since 1993. SIP also licensed 212 third party claims administration agencies to handle the claims of self insured employers.

At the end of 1999, about 3.2 million members of California's work force were covered by self insured workers' compensation. Of this total, some 1.8 million worked in private sector companies and about 1.3 million were employed by public agencies.

Private sector self insurers are required to post a security deposit, which is adjusted annually to cover their workers' compensation liabilities—and to submit to SIP audits, which are conducted on a three-year cycle to ensure that the liabilities were accurately reported for security deposit purposes. During 1998, 128 routine and 26 special audits were conducted, finding a total of $106 million in understated liabilities. In 1999, 180 routine and 43 special audits were conducted, which found a total of $124 million in understated liabilities.

Twice a year SIP conducts examinations that are required for certifying individual claims adjusters to administer the claims of a self insured employer. Of the 744 who took this examination in 1998-99, 465 passed and were certified.

NEW LEGISLATION

One major piece of legislation affected self insurance programs: the 1999 passage of **Assembly Bill 1309** (Scott), which changes Labor Code Section 3702.8 to permit both private and public sector self insurers to sell off any or all of their workers' compensation claims liabilities to a workers' compensation insurance carrier through the carrier's issuance of a special excess workers' compensation insurance policy. The legislation also permits the self insurer to remain self insured if desired.

Prior statutory language had limited the use of special excess policies to private sector self insurers, who were required to leave the self insurance

program before purchasing the special excess policy, and the policy had to cover all claims for the entire self insured period. The new legislation is expected to result in a much broader use of special excess policies by self insurers.

REGULATORY CHANGES

SIP is working on a number of regulatory changes in the following subject areas:

Special excess policies

As required by the new legislation, regulations will be proposed to address the selling off of claims by self insurers to carriers via a special excess workers' compensation insurance policy.

Annual reports

The regulatory requirement in Title 8, Section 15402.1 of the California Code of Regulations for an interim self insurer's annual report when a self insurer returns to fully insured status will be repealed. In addition, partial reports will be permitted for the first time to address changes in claims administrators or changes in locations where claims are handled. This will simplify reporting requirements.

Assessments

To be consistent with actual practice, SIP is amending its regulations under Title 8, Section 15230 on the timing of assessments billed annually to self insurers.

Letters of credit

A new code of uniform practices for handling standby letters of credit was adopted, and SIP is updating its regulatory requirements in Title 8, Section 15215 to accept letters of credit issued under the new bank practices.

Electronic filing and applications

SIP will propose new regulations for permitting electronic claim filing, rather than the current process of requiring only hard copy paper files. SIP intends to begin testing of electronic filing for the self insurers' annual reports, maintaining its own files as imaged records, and processing over the Internet the different application forms to become self insured.

ON THE INTERNET FROM SIP:

http://www.dir.ca.gov—select Workers' Compensation—select Self Insurance Plans

- general information on California self insurance program
- rosters: private and public self insurers, third party claims administrators
- information bulletins on posting the security deposit
- annual report forms
- application forms to: become self insured, administer workers' compensation self insurance claims, take the self insurance administrator's exam
- Title 8 SIP regulations, Labor Code statutes

Email questions and comments to SIP: sip@dir.ca.gov on the Web site.

Commission on Health & Safety & Workers' Compensation

Workers' compensation and job injury/illness prevention studies

CHSWC

The Commission on Health and Safety and Workers' Compensation is an eight-member commission appointed by the governor and Legislature and supported by staff within the Department of Industrial Relations. The commission examines the state's workers' compensation system and activities to prevent industrial injuries and occupational diseases, recommends administrative or legislative modifications to improve their operation, and studies such programs in other states.

From its inception, CHSWC began assessing the impact of California's workers' compensation reform legislation, several bills that made widespread changes to the state workers' compensation system.

Commission projects and studies are key to this ongoing evaluation.

PERMANENT DISABILITY STUDY

The manner in which California rates and compensates injured workers for total or partial permanent disability affects the adequacy of their benefits, their return to gainful employment, the operation of the Division of Workers' Compensation (DWC) adjudication system and costs to employers.

The commission engaged in a study which found that permanently disabled workers of insured employers experience significant uncompensated wage loss.

RETURN TO WORK PROJECT

The commission concurs with the Industrial Medical Council that an injured worker should return to work as soon as medically feasible, which also reduces uncompensated wage losses.

Looking at strategies for injured workers' prompt return to work, a CHSWC project is analyzing legal and policy issues, assessing needs in the workers' compensation community and the practical implications of research conducted to date.

The commission is studying the effectiveness of the primary treating physician in facilitating return to work after a compensated low back injury, looking for correlations between physician backgrounds/perspectives and patient outcomes. CHSWC also convened a task force including workers and employers to recommend alternate or modified work in the construction industry.

WORKER INFORMATION PROJECTS

To help injured workers understand their rights and responsibilities under the changing workers' compensation system, CHSWC engaged in a project to develop public outreach materials for copying and distribution by employers, insurers, labor unions, injured worker groups and other organizations. These materials are available from the commission and on its Web site.

To improve benefit notices to injured workers, a CHSWC project is reviewing and making recommendations on streamlining the benefit notice process, clarifying requirements, and ensuring that notices accurately and effectively communicate with injured workers. The commission is also proposing legislative language that specifies the information to be provided to workers.

VOCATIONAL REHABILITATION STUDY

The CHSWC-contracted study evaluating the impact of reform legislation on the vocational rehabilitation system is establishing baseline data for monitoring rehabilitation services and will estimate the impact of reform on DWC rehabilitation consultant workloads and caseloads in their dispute resolution process, as well as Workers' Compensation Appeals Board caseloads.

MEDICAL-LEGAL STUDIES

To reduce the cost and frequency of litigation, legislative reforms restricted the number and lowered the cost of medical-legal evaluations needed to settle disputed compensation issues, created the qualified medical evaluator (QME) designation, and increased the importance of the treating physician's reports in the dispute resolution process.

The commission's medical-legal study to evaluate the reform's effect finds that the costs and frequency of medical-legal evaluations have both declined dramatically.

Many of DWC's disability evaluators have stated that their biggest problem with the current system is the inadequate information in medical reports from which they derive permanent disability ratings. A CHSWC study of the physician report problem will give recommendations for improving the medical reports for disability evaluation purposes.

DISPUTE RESOLUTION STUDIES

The reform legislation enables authorized parties to agree, through collective bargaining, to alternative methods for resolving workers' compensation claim disputes. The commission engaged in a study of such "carve-out" programs in California as a first step in evaluating their effectiveness—including interviews with unions, employers, program administrators, workers who incurred claims, and service providers in carve-out programs.

The Division of Workers' Compensation/Workers' Compensation Appeals Board (DWC/WCAB) judicial function has been a focus of concern—lack of uniform policies and an inadequate infrastructure led to serious system problems in the resolution of disputed claims. The Department of Industrial Relations entered into discussions with the California workers' compensation community, and there was consensus that significant change was necessary.

The department and CHSWC agreed that an independent study of the DWC judicial process would help address problems. The commission's study will identify statutory changes to make the

system more efficient, and look at rules and practices of other jurisdictions that have addressed problems such as calendaring, casefile movement, staffing ratios and other issues of concern. The goal is to meet the constitutional mandate to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character..."

Disputes regarding workers' compensation claims are resolved through the services of DWC judges and staff in district offices statewide. To address the concern that forms and procedures vary from office to office, cause confusion to the parties and delays in case resolution, CHSWC organized a task force to review local forms and procedures.

New forms went into effect at DWC/WCAB district offices as the result of an initiative by the DWC administrative director to achieve uniformity in practices and procedures at the district office level.

WORKERS' COMPENSATION FRAUD PROJECT

Employers without coverage impose a burden on injured workers, on employers who comply with the workers' compensation insurance requirements, and on the state's taxpayers.

The commission conducted a very successful pilot project with the Workers' Compensation Insurance Rating Bureau and Employment Development Department to identify and bring into compliance employers who do not have workers' compensation coverage for their employees. The department is adopting those procedures.

The commission is recommending legislation to require that workers' compensation fraud notices or warnings similar to those given to workers be also given to employers and insurers. Such notices could be either specifically targeted or combined with current notices and sent to all parties and the public.

WORKERS' COMPENSATION COSTS AND BENEFITS STUDY

Proposals to increase workers' compensation benefits have been submitted to the Legislature. CHSWC studied the impact of increased benefits and projected a negligible effect on the state's economy. CHSWC found that the state's economy is strong and economic growth in California is expected to continue to exceed that of the nation as a whole.

Workers' compensation costs as a percentage of key economic indicators—such as total payroll, gross state product and total personal income—decreased significantly during the 1990s.

YOUNG WORKER HEALTH AND SAFETY PROJECT

The commission funds the California Study Group on Young Worker Health and Safety, which focuses on youth employment and education issues. The study group coordinates strategies to protect young people from work-related injury and illness.

CHSWC also contracted to develop a classroom video and discussion guide to teach students how to identify hazards at their jobs, and to understand their rights and responsibilities under Cal/OSHA and California's child labor laws.

WORKPLACE SAFETY AND HEALTH STUDY

California is a leader in developing models for cooperative safety and health programs involving management and labor, and targeting regulatory efforts and resources at industries where workplace safety and health improvement is critical.

The Legislature also enacted requirements for insurers' loss control efforts aimed at improving their insured employers' safety experience, assessing fees on employers to fund the program.

CHSWC initiated a study to evaluate the effectiveness of these statutorily-required workplace safety and health programs.

CALIFORNIA OCCUPATIONAL RESEARCH AGENDA (CORA)

The commission entered into a project to develop CORA to guide the state's research on preventing workplace injuries and illnesses and reducing their impact on workers and the California economy.

The project involves a diverse group of organizations in developing a framework for occupational safety and health research in California during the next decade.

ON THE INTERNET FROM CHSWC:

http://www.dir.ca.gov—select Workers' Compensation—select Commission on Health and Safety and Workers' Compensation

- commission reports, activities and member information
- notices of public meetings
- information bulletins, injured worker fact sheets, workers' compensation video

Email questions and comments to CHSWC: chswc@dir.ca.gov on the Web site.

Division of Labor Statistics & Research

Labor information

DLSR

The Division of Labor Statistics and Research—the department's oldest division, which began in 1883 as the California Bureau of Labor Statistics—conducts research and publishes information on economic, employment and workplace safety and health statistics.

DLSR conducts an annual survey of occupational injuries and illnesses in cooperation with the U.S. Bureau of Labor Statistics, and participates in federal research on work-related fatalities nationwide. The division also computes and publishes the California Consumer Price Index, which is statistically measured from regional reports of the U.S. Bureau of Labor Statistics.

The division's major aims are to provide information and statistics on economic and employment conditions in California. To this end, DLSR: collects, compiles and disseminates information pertaining to work-related injuries, illnesses and fatalities in the state; determines and publishes prevailing wage rates for the construction industry in all public works projects, while promoting efficient use of public funds; and conducts research on conditions of employment throughout the state.

DLSR plans to expand its information offered on the department's Web site and to streamline the process for responding to public inquiries. The increased Internet access to resources can effectively reduce the response time on many kinds of inquiries, and this will directly benefit the general public.

Weekly wages

Average weekly earnings in communications and public utilities registered the rate of $925 in 1999, a $7 increase over 1998 and $16 increase over 1997.

In the construction industry, average weekly earnings continued major gains, averaging $832 in 1999. This was a $20 weekly increase over the 1998 average of $812 and a $29 weekly increase over $803 in 1997. General building contractors posted the highest weekly wage of $885, an increase of $59 in 1998 and $48 in 1999.

Average weekly earnings in 1999 also include $583 in manufacturing and $639 in wholesale trade. Mining showed an average weekly wage of $836 in 1999, an increase of $32 over the 1998 weekly earning of $804 and a $30 increase over the 1997 weekly earning of $806.

The lowest recorded increase in all industries is for retail trade, posting an average weekly earning of $327 in 1999, a $13 increase over 1998 and $23 increase over 1997.

PREVAILING WAGES

DLSR is responsible for determining the rate of prevailing wages on public works projects, which are funded by public money. The California Labor Code requires that the prevailing rate of per diem wages be paid to workers on public works projects costing more than $1,000. The only exceptions are construction projects costing $25,000 or less and projects costing no more than $15,000 for alteration, demoli-

tion, repair or maintenance—in both cases, the awarding body must have an approved labor compliance program in place.

DLSR maintains files on collective bargaining agreements and conducts wage investigations. Staff routinely report construction industry wages to the director of industrial relations, who makes about 8,500 prevailing wage determinations per year.

Determinations are mailed to more than 8,000 unions, contractors, public agencies and other interested parties. Copies of the Director's General Prevailing Wage Determinations are available to the public free of charge and posted on the division's Web site.

DLSR also advises the director on legislative bills relating to public works, and with the director's office legal unit prepares determinations of coverage and craft/classification jurisdiction that are issued project-by-project. The division adopts prevailing wage regulations for wage determinations, petitions to review, volunteer labor and labor compliance programs.

NEW LEGISLATION

Assembly Bill 60 (Knox), the Eight-Hour-Day Restoration and Workplace Flexibility Act, changes general overtime rules and provides for reporting alternate work schedules to DLSR.

Assembly Bill 302 (Floyd) amends the definition of the term "public works" to include the hauling of refuse from a public works site to an outside disposal location—thereby requiring payment of prevailing wages in connection with these projects.

Senate Bill 16 (Burton) for prevailing wages on public works projects codifies the modal rate, requires payment of benefits on all classifications, codifies predetermined increases, changes filing requirements, and limits the credit for training payment to the costs related to training.

Assembly Bill 574 (Hertzberg) authorizes a public entity to require each prospective bidder for a contract to complete and submit a standardized questionnaire and financial statement. With a specified exception, it also requires the public entity to adopt and apply a uniform system of rating bidders on the basis of the questionnaires and financial statements.

AB 574 requires DLSR, in collaboration with other affected agencies and interested parties, to develop a standardized questionnaire that public entities may use, as well as develop guidelines for rating bidders. It also requires the public entity to establish a process for prospective bidders to dispute their prequalification rating. This bill provides for substitution when the awarding authority determines that a listed subcontractor is not a responsible one.

Labor market statistics

California's economic expansion continued in 1999. For that year 366,100 new jobs were created, a 2.4 percent increase over 1998. Six industries–construction, transportation and public utilities, trade, finance and insurance and real estate, services, government–posted gains that added 405,800 jobs. Mining and manufacturing were the only industries reporting a decline, with a decrease of 43,200 jobs.

The services sector maintained its lead in job creation, producing 153,600 jobs that accounted for 42 percent of all the new jobs in 1999. On the percentage of growth basis, employment in construction continued to show the strongest job growth, up 11.1 percent or an increase of 68,000 jobs over 1998. The Employment Development Department reported 70,100 new trade jobs and 23,000 new jobs in transportation and public utilities.

INFORMATION SERVICES

DLSR provides increasingly efficient delivery of services within the department as well as to the public. It continues to develop more organized databases to streamline tracking and monitoring of information requests submitted to the division. This has improved the timeliness of response to requests, and resulted in higher productivity and better service to the public. Added staff handle the increased front office workload and prevailing wage telephone hotline.

DLSR posts and updates its published information on the department's Web site, has expanded its California Consumer Price Index information to promote clearer understanding of the subject, and is also posting more detailed prevailing wage information.

The division receives more than 60,000 prevailing wage inquiries annually—by written, telephone or electronic request. DLSR assigned staff to respond to questions received via the Internet to ensure that the inquiries are handled within 24 hours of receipt.

ON THE INTERNET FROM DLSR:

http://www.dir.ca.gov–select Statistics & Research

- general prevailing wage determinations and information
- general prevailing wage apprentice schedules
- occupational injury and illness statistics
- California Consumer Price Index information
- Title 8 regulations

Prices

The California Consumer Price Index showed an increase above the U.S. city average, reversing its declining trend of previous years. It showed an increase of 2.9 percent for all urban consumers in 1999 and a 2 percent increase in 1998. The U.S. city average was 2.2 percent in 1999 and 1.6 percent in 1998.

According to the U.S. Department of Labor's Bureau of Labor Statistics and Research, the lowest increase in the California Consumer Price Index was reported from the Los Angeles-Anaheim-Riverside Consolidated Statistical Metropolitan Area (CSMA), posting a 2.3 percent increase in 1999. This low percentage was offset by the higher increase of 4.2 percent in 1999 for the San Francisco-Oakland-San Jose CSMA, raising the statewide average to 2.9 percent in 1999.

Within the expenditure categories, the U.S. city average for medical care recorded the highest increase, 3.5 percent in 1999. Housing increases of 6.4 percent in the San Francisco-Oakland-San Jose area were the highest in California, higher than the national increase of 2.2 percent in 1999.

The U.S. city average for food and beverages showed an increase of 2.2 percent in 1999. For California the food and beverages category in the San Francisco-Oakland-San Jose area showed a 2.7 percent increase, followed by the Los Angeles-Riverside-Orange Counties with a 1.6 percent increase in 1999.

The U.S. city average for transportation posted a 2 percent increase, a modest increase from a decline of 1.9 percent in 1998. Apparel showed a decline in expenditure well below the all-items average in 1999. Though apparel prices in the Los Angeles-Riverside-Orange Counties and San Francisco-Oakland-San Jose areas reflect the national trend, the San Diego metropolitan area increase in apparel expenditure rose to 5.2 percent, compared to a 0.8 percent increase in 1998.

Consumer Price Index for All Urban Consumers by Expenditure Category							Annual Percent Changes (APC) 1997-1999	
	Los Angeles, Riverside, Orange Counties		San Francisco, Oakland, San Jose		San Diego		U.S. City Average	
	1997-1998	1998-1999	1997-1998	1998-1999	1997-1998	1998-1999	1997-1998	1998-1999
All Items	1.4%	2.3%	3.2%	4.2%	2.0%	3.5%	1.6%	2.2%
Food and Beverages	2.5%	1.6%	3.9%	2.7%	2.2%	0.9%	2.2%	2.2%
Housing	2.2%	2.7%	5.3%	6.4%	4.0%	4.8%	2.3%	2.2%
Apparel	1.7%	-4.0%	-0.2%	-1.5%	0.8%	5.2%	0.1%	-1.3%
Transportation	-1.8%	2.9%	-1.2%	2.9%	1.8%	1.8%	-1.9%	2.0%
Medical Care	2.0%	3.3%	2.8%	2.0%	1.7%	2.6%	3.2%	3.5%
Recreation	a	0.9%	a	-1.6%	a	5.0%	1.5%	0.9%
Education and Communication	a	-0.3%	a	2.9%	a	a	1.9%	0.9%
Other Goods and Services	3.2%	10.7%	5.1%	10.1%	3.6%	11.4%	5.7%	8.7%

a - No comparison available
Source: U.S. Department of Labor, Bureau of Labor Statistics

California Labor Market Data			1998-1999
	Annual Average 1998	Annual Average 1999	Percent Change 1998-1999
Civilian Labor Force	16,323,900	16,585,900	1.6%
Total Employment	15,355,600	15,721,700	2.4%
Total Unemployment	968,200	864,200	-10.7%
Nonagricultural Wage/Salary Workers	**13,596,100**	**13,972,200**	**2.8%**
Mining	25,200	23,700	-6.0%
Construction	611,200	679,200	11.1%
Manufacturing	1,951,000	1,922,800	-1.4%
Transportation and Public Utilities	695,400	718,900	3.4%
Trade	3,123,600	3,193,700	2.2%
Finance, Insurance, Real Estate	799,400	821,500	2.8%
Services	4,224,300	4,377,900	3.6%
Government	2,166,100	2,234,600	3.2%
Agricultural Wage/Salary Workers	**406,200**	**418,000**	**2.9%**

Source: Employment Development Department

Consumer Price Index			All Urban Consumers	
Year	California Annual Average	Annual Percent Change	United States Annual Average	Annual Percent Change
1989	128.0	5.0%	124.0	4.8%
1990	135.0	5.5%	130.7	5.4%
1991	140.6	4.1%	136.2	4.2%
1992	145.6	3.6%	140.3	3.0%
1993	149.4	2.6%	144.5	3.0%
1994	151.5	1.4%	148.2	2.6%
1995	154.0	1.7%	152.4	2.8%
1996	157.1	2.0%	156.9	3.0%
1997	160.5	2.2%	160.5	2.3%
1998	163.7	2.0%	163.0	1.6%
1999	168.5	2.9%	166.6	2.2%

Source: Division of Labor Statistics & Reseach and U.S. Bureau of Labor Statistics

Annual Unemployment Rates			
Year	United States	California	Differential
1989	5.3	5.1	-0.2
1990	5.6	5.8	0.2
1991	6.8	7.7	0.9
1992	7.5	9.3	1.8
1993	6.9	9.4	2.5
1994	6.1	8.6	2.5
1995	5.6	7.8	2.2
1996	5.4	7.2	1.8
1997	4.9	6.3	1.4
1998	4.5	5.9	1.4
1999	4.2	5.2	1.0

Source: U.S. Bureau of Labor Statistics and Employment Development Department

Number & Percent Distribution of Fatal Occupational Injuries				California 1998–1999
	1998		1999*	
	Number	Percent	Number	Percent
Total	**625**		**591**	
By Event or Exposure				
Assaults and violent acts	146	23.4	111	18.8
Homicides	108	17.3	72	12.2
Self-inflicted injury	38	6.1	35	5.9
Transportation accidents	252	40.3	260	44.0
Contact with objects and equipment	69	11.0	85	14.4
Falls	83	13.3	71	12.0
Exposure to harmful substances or environments	59	9.4	41	6.9
Fires and explosions	9	1.4	17	2.9
By Selected Worker Characteristics				
Employment status				
Wage and salary workers	508	81.3	500	84.6
Self employed**	117	18.7	91	15.4
Gender				
Men	577	92.3	549	92.9
Women	48	7.7	42	7.1
Age				
Under 25 years	57	9.1	76	12.9
25 to 54 years	444	71.0	387	65.5
55 years and older	124	19.8	127	21.5
Ethnicity				
White	473	75.7	481	81.4
Black	28	4.5	26	4.4
Asian or Pacific Islander	54	8.6	56	9.5
Other or unknown	69	11.0	28	4.7
By Occupation* **				
Managerial and professional specialty	79	12.6	62	10.5
Technical, sales and administrative support	83	13.3	65	11.0
Service occupations	66	10.6	60	10.2
Farming, forestry, fishing	80	12.8	86	14.6
Precision production, craft, repair	104	16.6	94	15.9
Operators, fabricators, laborers	169	27.0	193	32.7
Military occupations	29	4.6	26	4.4
By Industry** **				
Agriculture, forestry, fishing	75	12.0	92	15.6
Mining	7	1.1	2	0.3
Construction	94	15.0	93	15.7
Manufacturing	50	8.0	61	10.3
Transportation and public utilities	82	13.1	92	15.6
Wholesale trade	20	3.2	17	2.9
Retail trade	78	12.5	52	8.8
Finance, insurance, real estate	13	2.1	11	1.9
Services	107	17.1	90	15.2
Government	86	13.8	79	13.4

* Figures for 1999 are preliminary and will be updated as new cases are determined to be work related.

**Includes paid and unpaid family workers—may include owners of incorporated businesses or members of partnerships.

***Based on 1990 Occupational Classification System developed by U.S. Bureau of the Census.

****Based on Standard Industrial Classification Manual, 1987 edition.

Note: Totals may include data for subcategories not shown separately. Percentages may not add to totals due to rounding.

Source: Division of Labor Statistics and Research with U.S. Bureau of Labor Statistics, Census of Fatal Occupational Injuries, 1998–99

Occupational Injury and Illness Incidence Rates Per 100 Full-time Employees					By Industry in California: 1997-1998	
	Total Cases		Lost Workday Cases		Cases Without Lost Workdays	
Industry	1997	1998	1997	1998	1997	1998
All Industries	7.1	6.7	3.6	3.3	3.5	3.3
Agriculture, Forestry, Fishing	7.8	7.6	4.5	4.4	3.2	3.2
Mining	3.7	5.2	2.4	3.1	1.2	2.1
Construction	9.7	9.7	5.3	5.2	4.4	4.5
Manufacturing	7.0	6.9	3.7	3.7	3.3	3.2
Transportation and Public Utilities	9.9	8.7	6.3	5.6	3.6	3.1
Wholesale Trade	6.0	5.2	3.0	2.8	3.0	2.5
Retail Trade	7.6	6.4	4.3	3.1	3.3	3.3
Finance, Insurance, Real Estate	3.7	2.7	1.4	1.1	2.3	1.7
Services	5.7	5.7	2.6	2.6	3.1	3.1
State and Local Governments	9.8	9.5	4.2	4.1	5.6	5.5

Source: Division of Labor Statistics and Research


DAVIS F D
AMERICAN
DARLING
VALVE

State Mediation & Conciliation Service

Labor-management disputes

SMCS

The State Mediation and Conciliation Service mediates labor-management disputes throughout California, primarily in the public sector. Skilled mediators assist labor and management in settling contract disputes in public schools, higher education, cities, counties, special districts, agriculture, public transit and state service.

Assistance of a state mediator at the appropriate juncture in difficult negotiations can often shorten or even avert a strike. During fiscal years 1997-98 and 1998-99 state mediators helped settle 1,058 contract disputes statewide, including several strikes.

In public schools and higher education, impasses in contract negotiations are referred to SMCS for mediation by the Public Employment Relations Board. If mediation fails, the dispute is released to factfinding, which is an advisory process.

During fiscal years 1997-98 and 1998-99 SMCS mediated nearly 400 school impasses. Approximately 85 percent of these impasses were settled during the initial mediation process, without the need to continue on to factfinding.

Another major arena for SMCS is grievance mediation services in the public and private sectors. Grievance mediation allows disputants to resolve their grievances quickly and inexpensively in mediation, thereby avoiding the uncertain outcomes associated with arbitration or litigation. In fiscal years 1997-98 and 1998-99 SMCS handled 1,362 grievance disputes, the vast majority of which were settled during the mediation process.

Unit disputes in cities, counties and special districts are specifically referred to SMCS under the Meyers Milias Brown Act, the applicable collective bargaining statute. As there is currently no administrative agency designated to hold union representation and agency shop elections under the statute, SMCS also performs these elections when all involved parties agree. SMCS conducted more than 250 such elections during fiscal years 1997-98 and 1998-99.

SMCS maintains a panel of labor relations neutrals for referral to labor and management practitioners proceeding to arbitration. In fiscal years 1997-98 and 1998-99 SMCS referred arbitrators for 1,764 disputes.

SMCS also provided assistance in labor-management relations in other ways:

- Collective bargaining consultation and advice for labor relations practitioners.
- Problem-solving workshops to deal with conflicts on the job.
- Mediation training for divisions of the Department of Industrial Relations (DIR).
- Facilitation of disputes using the principles of interest-based bargaining.

Achievements of the State Mediation and Conciliation Service during fiscal years 1997-98 and 1998-99 also include:

- Settling a three-week Marin County strike involving approximately 800 workers.
- Mediation training for the staff of DIR's Division of Workers' Compensation rehabilitation unit.
- Preventing a San Joaquin County strike involving 3,000 workers—just hours before the strike deadline.
- Settling the contract for 400 Monterey County social workers after they had given a 10-day notice of their intent to strike.
- Conducting the largest union representation election in modern U.S. history, which involved 75,000 home health workers in Los Angeles County.

ON THE INTERNET FROM SMCS:

http://www.dir.ca.gov—select Mediation & Conciliation

- office locations and mediators
- link to arbitration resume form

Office of the Director

PUBLIC INFORMATION

The public information office operates as DIR's press office and an information center for the public. It provides editorial services to DIR's divisions and units for producing public information materials, responds to written and telephone requests from the public, issues news releases and responds to media inquiries.

Under the new administration the public information office established a goal of generating an increased volume of written and electronic materials aimed at educating the public about labor laws and workplace safety and health regulations. The office is expanding distribution lists, developing an e-mail newsletter and coordinating reconstruction of the department's Web site to better reflect concerns of California workers and employers.

LEGISLATIVE

In the director's Sacramento office, DIR's legislative affairs unit serves as liaison between the department, the Legislature and the public. Staff review more than 3,000 bills introduced annually in the Legislature to identify those that affect DIR programs. They also sponsor legislation to improve the effectiveness of DIR programs, represent the department at legislative hearings, and respond to members of the Legislature regarding constituent requests.

The annual legislative summary is posted on the DIR Web site at http://www.dir.ca.gov.

LEGAL COUNSEL

DIR's legal unit advises and litigates for the director and divisions on labor law enforcement matters. DIR lawyers defend department decisions and policies in court or before state administrative tribunals.

ILLEGALLY UNINSURED EMPLOYERS

DIR's Division of Workers' Compensation (DWC) administers the Uninsured Employers Fund (UEF), which pays injured workers whose employers were illegally uninsured for workers' compensation (see DWC section of this report). Injured workers negotiate claims with DWC staff, and DIR attorneys appear daily before the Workers' Compensation

Appeals Board (WCAB). Since 1998 the UEF has focused on employer compliance with the legal requirement to provide workers' compensation through more collection efforts, more challenges to employers using federal bankruptcy law as an escape hatch, new targeting of these employers' licenses and coordination with the Division of Labor Standards Enforcement (DLSE) to shut down uninsured workplaces.

Employers who are not deliberately uninsured, or who find themselves uninsured when their insurer denies coverage, respond by handling the medical and wage replacement needs of their injured employees. It is the employers who force injured employees to file claims before the WCAB who come to DIR's attention. DIR discourages irresponsible passivity in the face of on-the-job injury claims by pointing out that employers may avoid large penalties and property attachments by paying the injured worker directly. This has caused more employers to address the employee's claim directly, or contest their insurance company's coverage denials, and finally to pay the injured worker what the WCAB would award.

In fiscal years 1998-99 and 1999-2000 the legal unit made about 5,900 appearances for the UEF, compared to about 6,700 in fiscal year 1997-98. Completed cases resulted in employers or their insurance carriers paying workers an estimated $4,143,047 in 1998-99 and $7,312,611 in 1999-2000 in wage replacements and medical benefits, more than 6.5 times what the UEF paid in place of defaulting uninsured employers. Before this improvement, the ratio was about 3-to-1 and both the injured workers and WCAB endured a higher number of appearances. UEF is driving a trend to get employers to participate and pay, as well as to reverse insurance companies' unjustified denials of coverage. The injured worker is paid directly, fairly and quickly, which also means a savings to the taxpayer.

Employers sometimes try to use the federal bankruptcy courts as a refuge from their UEF debts. Relying on a 1996 court of appeals decision that characterizes the debt to UEF as a tax, the legal unit began challenging the right of employers to shield themselves in bankruptcy. Efforts from 1999 to 2000 kept employers from having federal courts erase more than $8 million in debts to the UEF, and resulted in the collection of over a half million dollars.

With time saved from these measures and fuller staffing, DIR lawyers revived their cooperative efforts with DLSE field staff targeting employers who operate without insurance. The legal unit checks whether the employer is in business without workers' compensation insurance. Employers who continue to operate illegally are cited by DLSE. Almost every referral has resulted in citations and stop orders that close the business until there is insurance, and DLSE inspectors often find other labor law violations such as failure to pay wages or provide employees with pay stubs.

The legal unit gives training to workers' compensation judges and attorneys who represent both injured workers and employers to smooth their way through the WCAB procedures for law-abiding employers who have insurance. Shorter training programs are given to local county bar associations and applicant attorney groups on how to navigate their cases of uninsurance to a prompt conclusion. DIR attorneys also wrote a guide published in the summer 1999 *Workers' Compensation Quarterly:* "How to Properly Obtain Jurisdiction over an Uninsured Employer in Workers' Compensation Cases."

PREVAILING WAGE

In addition to the prevailing wage investigations of the Division of Labor Statistics and Research (DLSR—see statistics and research section of this report) and the director's determinations, the director further determines whether particular projects are public works, given the nature of the work and the source of funding. The director delegates drafting of these coverage determinations to the legal unit because of the complicated issues that arise. Administrative appeals of these determinations are also referred to the legal unit for response.

One of the commitments the current administration made to organized labor was reform of the prevailing wage system, clarification as to the scope of coverage and assuring that prevailing wage rates are set by following the traditional modal calculation method. In fiscal year 1999-2000 the director issued 67 determinations and decisions on appeal, and designated 50 precedential decisions with accompanying indexes. The director can annually designate new precedential determinations and decertify old ones. For example, activities previously seen as installation not at the level of construction are now viewed as either construction work or work performed in the execution of a larger public works contract for which prevailing wages must be paid—such as installation of relocatable classrooms and playground equipment, fencing, signage, lockers and shelving.

Division of Administration

ACCOUNTING

The accounting office staff perform the standard functions of contract control, general ledger, claim schedule processing, plans of financial adjustment, revolving fund, property accounting, disbursement/expenditure accounting, receipt and fund accounting. They also perform the fiscally sensitive activities of collections, cost and grant accounting, cash management, reimbursement control, systems design, trust accounting, federal grant management, and fiscal control reconciliation and reporting. While most state agencies have the general fund and one or two special funds, DIR's accounting office is responsible for revenue accounts of the general fund and 19 special funds.

The accounting office processes more than $225 million in payments and receipts annually. Typically, DIR operating programs generate $53 million, which accounting staff collect and remit annually into 40 revenue accounts. For fiscal year 1998-99, cash collections for all funds providing support for DIR operations totaled $66 million. This office also processes and reports collections of more than $28.5 million each year in fraud assessments on behalf of the California Department of Insurance.

Accounting reports from DIR offices statewide and for specific programs must be verified by the department's central accounting office, which is responsible for the accuracy of the reports. Subsidiary systems unique to DIR accommodate operational requirements of the divisions and programs as well as the accounting processes to track all accounts receivable.

Accounting staff prepare statements on DIR financial activities. For fiscal year 1997-98 the office received six "Awards for Achieving Excellence in Financial Reporting" from the State Controller.

BUDGET

The budget office monitors expenditures of all the DIR programs to ensure their conformity with funding priorities of the governor and Legislature. The office also prepares DIR's section of the annual governor's budget and assists in determining the funding requirements for carrying out administration initiatives and new legislation.

BUSINESS MANAGEMENT

The business management office provides the department's business support services statewide—covering contracts and procurement, inhouse printing and reproduction, telecommunications, property and recycling, fleet administration, facilities, warehousing and mail services.

Major relocations of DIR staff took place during 1998-99, as the new San Francisco, Los Angeles and Oakland state buildings opened. Staff are also moving into the new San Diego state building. Other relocations: DIR director's office, Cal/OSHA Standards Board and Appeals Board in Sacramento; Division of Workers' Compensation office moves in Pomona and from Santa Barbara to Goleta; Division of Occupational Safety and Health office moves in West Covina, from San Francisco to San Mateo and from Oakland to San Leandro.

PERSONNEL

The personnel office provides advisory and support services to department staff statewide, facilitating personnel actions and employee relations matters according to state regulations. Ongoing activities include administering the state's classification plan and decentralized civil service exam program, preparing notices of formal disciplinary actions and other actions affecting employee status, and processing personnel employment and benefit transactions.

The personnel office was instrumental in helping DIR gain approval for geographic pay differentials for some of the most difficult to recruit staff classifications in San Francisco. To meet the department's objective of filling its vacant positions, the examination and certification unit developed an exam schedule providing active eligibility lists for interviewing and hiring staff. Personnel also revised some specifications to provide for early competition of candidates in college who have not yet completed their degrees, and is developing a supplemental application process to screen and hire attorneys for the department.

INFORMATION SYSTEMS

The information systems office develops and maintains DIR's automated information systems and networks, and procures hardware and software for information management systems. It operates online and batch computing systems, provides training and technical support for DIR offices statewide, and manages the department's Internet and intranet services. It also provides, manages and coordinates telecommunications services, and protects the security and integrity of the department's information systems and data. Staff also completed and initiated a number of new information technology projects to benefit the department:

- Increasing the security of DIR's statewide computer network, adding technology that prevents parties outside the network from entering without proper authorization.
- Supporting staff relocations at DIR offices throughout the state. Over 75 percent of the department's 2,600 employees were relocated during 1998-99 to new state buildings, and this required reconfiguring DIR's computer network infrastructure for the new office locations as well as for full access by offices located in remote regions of the state.
- Implementing the first phase of the legislatively-mandated Workers' Compensation Information System, which allows workers' compensation insurers in the state to electronically transmit benefit notices and first reports of injury to DIR for statistical analysis.
- Improving DIR's Web site by providing online publications and order forms, posting searchable databases for certified asbestos consultants and asbestos site surveillance technicians in California, and posting a searchable database for current prevailing wages in California's 58 counties.

The department's information systems direction is toward e-government, with the ultimate goal of transacting all business with DIR over the Internet. Electronic media will provide information exchange between DIR offices and outside parties such as workers' compensation insurance companies or hazardous materials manufacturers. Internet technology and electronic data interchange will be used increasingly for sending/receiving the required information. Already in operation is the Workers' Compensation Information System, which uses electronic data interchange to receive the mandatory workers' compensation documentation from California workers' compensation insurers and third party administrators.

DIR Publications

Except where a fee per copy is stated, publications are free of charge.

Make check or money order payable to:
Department of Industrial Relations

Phone 415-703-5070 or mail your request to:
Department of Industrial Relations
Public Information Office
P.O. Box 420603 • San Francisco, CA 94142-0603

DIR POSTERS REQUIRED OF CALIFORNIA EMPLOYERS

Phone 415-703-5070 for:

- ***Safety and Health Protection on the Job***—Cal/OSHA poster—English, Spanish
- ***Industrial Welfare Commission Orders***—request applicable industry/occupation poster
- ***Pay Day Notice***—poster DLSE-8

OFFICE OF THE DIRECTOR

- *California Department of Industrial Relations (DIR) 1998-1999 Biennial Report*

DIVISION OF LABOR STANDARDS ENFORCEMENT

- *Child Labor*
- *Laws Relating to the Payment of Wages*
- *Policy and Procedures for Wage Claim Processing*
- *Discrimination Complaints: A Summary of Procedures*
- *Summary of Basic California and Federal Employment Requirements for Garment Industry Employers*
- *Enforcement Policies and Interpretations Manual* ($110.00 per copy)

DIVISION OF OCCUPATIONAL SAFETY & HEALTH

- *User's Guide to Cal/OSHA*
- *On-site Cal/OSHA Consultation*
- *Guide to Developing Your Workplace Injury & Illness Prevention Program*
- *Workplace Injury & Illness Prevention Model Programs:*
  - *For High Hazard Employers*
  - *For Non-high Hazard Employers*
  - *For Employers with Intermittent Workers*—English, Spanish
  - *For Intermittent Workers in Agriculture*—English, Spanish
- *Cal/OSHA Permit, Registration, Certification, and Notification Requirements*
- *Guide to the California Hazard Communication Regulation*
- *High Hazard Employer Program*
- *Cal/Voluntary Protection Program*
- *Cal/OSHA Guide for the Construction Industry*
- *Fall Protection—Construction Summary Packet*
- *Farm Labor Contractor Safety and Health Guide*—English, Spanish
- *Field Sanitation Guide to Compliance*
- *Agricultural Safety & Health Inspection Project*—English, Spanish
- *Job Safety: What You Should Know*—English, Spanish, Tagalog, Chinese, Korean, Vietnamese
- *Don't Risk Your Health!*—bloodborne pathogens—English, Spanish, Tagalog, Chinese, Korean, Vietnamese
- *Bloodborne Pathogens Resource Package*
- *Lockout/Blockout Methods and Sample Procedures*—English, Spanish
- *Is it Safe to Enter a Confined Space? Confined Space Guide*
- *Easy Ergonomics: A Practical Approach for Improving the Workplace*
- *Four Step Ergonomics Program for Employers with Video Display Terminal Operators*
- *A Back Injury Prevention Guide for Health Care Providers*
- *Managing Stress Arising from Work*
- *Cal/OSHA Guidelines for Workplace Security*
- *Model Injury & Illness Prevention Program for Workplace Security*
- *Guidelines for Security and Safety of Health Care and Community Service Workers*

- Fact sheets:
  - *Revised Respirator Regulation*
  - *Lead in Construction*
  - *Safety Needles & Needleless Systems*
  - *Field Sanitation*
- Tailgate/Toolbox Topics:
  - *Setting Up a Tailgate/Toolbox Safety Meeting*
  - *Roofing Safety: General Requirements*
  - *Roofing Safety: Slips and Falls*
  - *Power Press Safety*
  - *High Voltage Overhead Lines*
  - *Lockout/Blockout*
  - *Trenching Safety*
  - *Servicing Single, Split Rim & Multi-piece Rims or Wheels*
- *Agricultural-Industrial Tractors* poster—English, Spanish
- *Access to Medical and Exposure Records* poster—English, Spanish
- Emergency telephone numbers poster

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD

- Notice of public hearings that include proposed regulations and supporting documentation (interested parties can request to be automatically mailed these monthly notices)
- Monthly calendar of activities that includes a schedule of advisory committees
- Annual rulemaking calendar
- Advisory committee guidelines
- Variance application form
- Description of the variance process
- Petition process fact sheet
- *Occupational Safety and Health Standards Board's Role and Responsibilities*

OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD

- *Appeal Information for the Occupational Safety and Health Appeals Board*

DIVISION OF APPRENTICESHIP STANDARDS

- *Characteristics of Registered Apprentices in California*
- *List of Apprenticeable Occupations and Number of Apprentices Registered by the State of California*
- *The Apprenticeship Law in California*
- Excerpts: California Code of Regulations, California Apprenticeship Council
- *Apprenticeship, California's Best Kept Secret*—video with bulletin board materials

DIVISION OF WORKERS' COMPENSATION

- *An Employer's Guide to Workers' Compensation in California*
- *The Injured Worker*
- *Trabajadores con Lesiones*
- *Information and Assistance Unit's Injured Worker Guides*—English, Spanish
- *Help in Returning to Work-'94*
- *DWC 1998 Annual Report*
- *2000 Compilation of Changes in Workers' Compensation Laws*
- *Annual Report of Audit Findings*
- *The Construction Industry Carve-out Program Annual Report of Activities*
- *California EDI Implementation Guide*
- *Benefit Notice Manual, Forms and Fact Sheets*
- *Managed Care in California's Workers' Compensation System*
- *California Standards Governing Timeliness and Quality of Vocational Rehabilitation Services*
- *Rehabilitation Unit Administrative Guidelines*
- *Rehabilitation Unit Directory and Venue List*
- *Waiver of Qualified Rehabilitation Representative Services*—information sheet

The following publications are available for purchase from the Department of General Services-Procurement, Publications Unit, P.O. Box 1015, North Highlands, CA 95660, phone 916-928-4630. All prices include sales tax and shipping, make checks payable to "Procurement Publications."

- *1998 Official Medical Fee Schedule* ($38.15 per copy)
- *Permanent Disability Rating Schedule*—pre-1997 edition ($11.40 per copy)
- *Permanent Disability Rating Schedule*—1997 edition ($24.85 per copy)

INDUSTRIAL MEDICAL COUNCIL

- *For Injured Workers: Your Medical Evaluation*—English, Spanish
- *State of California Official Qualified Medical Evaluators* list ($25 per copy)
- *Medically Speaking* QME newsletter
- *The Physician's Guide to Medical Practice in the California Workers' Compensation System*, 2nd edition ($15 per copy)
- *Treating Physician's Alert*
- Guidelines adopted by Industrial Medical Council:
  - *Methods for Disability Evaluation*—cardiac disability, pulmonary disability, immunologic disease, psychiatric disability, neuromusculoskeletal disability
  - *Guidelines for Treatment*—low back problems, neck, shoulder, elbow, hand & wrist, knee, contact dermatitis, post traumatic stress disorder, occupational asthma

SELF INSURANCE PLANS

- *Private Sector Self Insurers* list ($5 per copy)
- *Public Sector Self Insurers* list ($5 per copy)
- *Third Party Claims Administrators* list ($3 per copy)

COMMISSION ON HEALTH & SAFETY & WORKERS' COMPENSATION

- CHSWC annual reports 1994-95 through 1999-2000
- *"Carve-outs" in Workers' Compensation: An Analysis of Experience in the California Construction Industry* (1999)
- *CHSWC Report on the Division of Workers' Compensation Audit Function* (1998)
- *Employers Illegally Uninsured for Workers' Compensation: CHSWC Recommendations to Identify Them and Bring Them Into Compliance* (1998)
- *Navigating the California Workers' Compensation System: The Injured Worker's Experience* (1996)
- *Evaluating the Reforms of the Medical-Legal Process* (report updated 1997)
- *Permanent Disability Study Report and Executive Summary* (RAND, 1997)
- *Does Modified Work Facilitate Return to Work for Temporarily or Permanently Disabled Workers?* (1997)
- *Report on CHSWC Fact-Finding Hearing on Workers' Compensation Anti-Fraud Activities* (1997)
- *Preliminary Evidence on the Implementation of "Baseball Arbitration" in Workers' Compensation* (1999)
- *Protecting and Educating California's Young Workers—Report of the California Study Group on Young Worker Health and Safety* (1999)
- *Report on Quality of Treating Physician Reports and the Cost-Benefit of Presumption in Favor of the Treating Physician* (1999)
- *Vocational Rehabilitation Benefit: An Analysis of Costs, Characteristics and the Impact of the 1993 Reforms* (1997 interim report)
- *Workers' Compensation Costs and Benefits after the Implementation of Reform Legislation* (1999)
- *Report on Campaign against Workers' Compensation Fraud* (2000)
- *Issue Paper on Labor Code Section 5814* (2000)
- *Vocational Rehabilitation Reform Legislation* (2000)
- *Study of the Cost of Pharmaceuticals in Workers' Compensation* (2000)
- *Workers' Compensation and the California Economy* (2000)
- Workers' compensation fact sheets (1998)
- *Introduction to Workers' Compensation*—video (1998)

DIVISION OF LABOR STATISTICS & RESEARCH

- *Director's General Prevailing Wage Determinations*
- *General Prevailing Wage Apprentice Schedules*
- *Director's Coverage Determinations*
- *Index of Current Precedential Public Works Decisions* (alpha and date index)
- *California Consumer Price Index*
- *Occupational Injuries and Illnesses Survey: California 1991* (statistical tables for 1992, 1993, 1994, 1995, 1996, 1997, 1998)
- *Census of Fatal Occupational Injuries 1992 & 1993* (statistical tables for 1994, 1995, 1996, 1997, 1998)

STATE MEDIATION & CONCILIATION SERVICE

- *The California State Mediation and Conciliation Service*
- *Grievance Mediation: It Just Makes Sense*

DIR Office Locations

DEPARTMENT OF INDUSTRIAL RELATIONS

Office of the Director 415-703-5050
455 Golden Gate Ave, 10th Floor
San Francisco, CA 94102

DIVISION OF LABOR STANDARDS ENFORCEMENT (DLSE)

For labor law information and assistance
24 hours a day, 7 days a week, call:

Santa Rosa, Eureka areas 707-445-9067

Sacramento, Redding, Marysville areas 916-323-4920

San Francisco, Oakland, San Jose, Salinas areas 415-557-7878

Los Angeles, Van Nuys, Long Beach, Santa Ana areas 213-620-6330

San Diego area 858-467-3002

Prevailing Wage Hotline 415-703-4774

Garment Hotline—toll-free 1-800-803-6650

Headquarters—San Francisco 415-703-4810
455 Golden Gate Ave, 9th Floor • CA 94102

Bakersfield 661-395-2710
5555 California Ave, Suite 200 • CA 93309

El Centro 760-353-0607
1550 W. Main St • CA 92243

Eureka 707-445-6613
619 Second St, Room 109 • CA 95501

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770 E. Shaw Ave, Suite 315 • CA 93710

Long Beach 562-590-5048
300 Oceangate, Room 302 • CA 90802

Los Angeles 213-897-5960
320 W. 4th St, Suite 450 • CA 90013

Marysville 530-741-4062
1204 "E" St • CA 95901

Oakland 510-622-3273
1515 Clay St, Suite 801 • CA 94612

Redding 530-225-2655
2115 Akard Ave, Room 17 • CA 96001

Sacramento 916-263-2841
2424 Arden Way, Suite 360 • CA 95825

Salinas 831-443-3041
1870 N. Main St, Suite 150 • CA 93906

San Bernardino 909-383-4334
464 W. 4th St, Room 348 • CA 92401

San Diego 858-467-3002
8765 Aero Dr, Suite 120 • CA 92123

San Francisco 415-703-5300
455 Golden Gate Ave, 8th Floor • CA 94102

San Jose 408-277-1266
100 Paseo de San Antonio, Room 120 • CA 95113

Santa Ana 714-558-4910
28 Civic Center Plaza, Room 625 • CA 92701

Santa Barbara 805-568-1222
411 E. Canon Perdido St, Room 3 • CA 93101

Santa Rosa 707-576-2362
50 "D" St, Suite 360 • CA 95404

Stockton 209-948-7771
31 E. Channel St, Room 317 • CA 95203

Van Nuys 818-901-5315
6150 Van Nuys Blvd, Room 100 • CA 91401

INDUSTRIAL WELFARE COMMISSION (IWC)

770 "L" St, Suite 1170 916-322-0167
Sacramento, CA 95814 **Fax: 916-324-1705**

DIVISION OF OCCUPATIONAL SAFETY & HEALTH (DOSH)

Headquarters—San Francisco 415-703-5100
455 Golden Gate Ave, 10th Floor • CA 94102

Anaheim 714-939-0145
2100 E. Katella Ave, Suite 140 • CA 92806

Concord 925-602-6517
1465 Enea Circle, Bldg E, Suite 900 • CA 94520

Foster City 650-573-3812
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Fresno 559-445-5302
2550 Mariposa St, Room 4000 • CA 93721

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320 W. 4th St, Room 850 • CA 90013

Oakland 510-622-2916
1515 Clay St, Suite 1301 • CA 94612

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9459 E. Slauson Ave • CA 90660

Sacramento 916-263-2800
2424 Arden Way, Suite 165 • CA 95825

San Bernardino 909-383-4321
464 W. 4th St, Suite 332 • CA 92401

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7807 Convoy Court, Suite 140 • CA 92111

San Francisco 415-703-5210
455 Golden Gate Ave, Room 1524 • CA 94102

San Jose 408-452-7288
2010 N. First St, Suite 401 • CA 95131

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1221 Farmers Lane, Suite 300 • CA 95405

Torrance 310-516-3734
680 Knox St, Suite 100 • CA 90502

Van Nuys 818-901-5403
6150 Van Nuys Blvd, Suite 405 • CA 91401

Ventura 805-654-4581
1655 Mesa Verde Ave, Room 150 • CA 93003

West Covina 626-472-0046
1906 W. Garvey Ave South, Suite 200 • CA 91790

Elevator, Ride & Tramway Unit
Headquarters 916-263-7995
2424 Arden Way, Suite 485 • Sacramento, CA 95825

High Hazard Unit
Headquarters 714-935-2726
2100 E. Katella Ave, Suite 205 • Anaheim, CA 92806

Mining & Tunneling Unit
Headquarters 530-895-6938
1367 E. Lassen Ave, Suite B-4 • Chico, CA 95973

Pressure Vessel Unit
Headquarters 510-622-3052
1515 Clay St, Suite 1302 • Oakland, CA 94612

CAL/OSHA CONSULTATION SERVICE

On-site Assistance—toll-free 1-800-963-9424

Headquarters—Sacramento 916-574-2555
2211 Park Towne Circle, Suite 4 • CA 95825

Fresno–Central Valley 559-454-1295
1901 N. Gateway Blvd, Suite 102 • Fresno, CA 93727

Oakland–San Francisco Bay Area 510-622-2891
1515 Clay St, Suite 1103 • Oakland, CA 94612

Sacramento–Northern California 916-263-0704
2424 Arden Way, Suite 410 • Sacramento, CA 95825

San Bernardino–Inland Empire 909-383-4567
464 W. 4th St, Suite 339 • San Bernardino, CA 92401

San Diego–Imperial Valley 858-467-4071
7827 Convoy Court, Suite 406 • San Diego, CA 92111

San Fernando Valley–Santa Barbara &
NW Los Angeles County 818-901-5754
6150 Van Nuys Blvd, Suite 307 • Van Nuys, CA 91401

Santa Fe Springs–Orange &
SE Los Angeles Counties 562-944-9366
10350 Heritage Park Dr, Suite 201
Santa Fe Springs, CA 90670

Education Unit 916-574-2528

Voluntary Protection Program 415-703-5272

OCCUPATIONAL SAFETY & HEALTH STANDARDS BOARD (OSHSB)

2520 Venture Oaks Way, Suite 350 916-274-5721
Sacramento, CA 95833 **Fax: 916-274-5743**

OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD (OSHAB)

Headquarters 916-274-5751
2520 Venture Oaks Way, Suite 300 **Fax: 916-274-5785**
Sacramento, CA 95833

Southern California 626-332-1145
100 N. Barranca St, Suite 410 **Fax: 626-966-4490**
West Covina, CA 91791

DIVISION OF APPRENTICESHIP STANDARDS (DAS)

Headquarters—San Francisco 415-703-4920
455 Golden Gate Ave, 8th Floor • CA 94102

Fresno 559-445-5431
2550 Mariposa St, Room 3080 • CA 93721

Los Angeles 213-576-7750
320 W. 4th St, Suite 830 • CA 90013

Oakland 510-622-3259
1515 Clay St, Suite 602 • CA 94612

Sacramento 916-263-2877
2424 Arden Way, Suite 160 • CA 95825

San Jose 408-277-1273
100 Paseo de San Antonio, Room 125 • CA 95113

Santa Ana 714-558-4126
28 Civic Center Plaza, Room 525 • CA 92701

DIVISION OF WORKERS' COMPENSATION (DWC)

For recorded general information
call toll-free 1-800-736-7401

Headquarters—San Francisco 415-703-4600
455 Golden Gate Ave, 9th Floor • CA 94102

Anaheim:
Information & Assistance Unit 714-738-4038
1661 N. Raymond Ave, Suite 200 • CA 92801

Bakersfield:
Information & Assistance Unit 661-395-2514
1800 - 30th St, Room 100 • CA 93301

Eureka:
Information & Assistance Unit 707-441-5723
100 "H" St, Suite 202 • CA 95501

Fresno:
Information & Assistance Unit 559-445-5355
2550 Mariposa St, Suite 2035 • CA 93721

Goleta:
Information & Assistance Unit 805-968-4158
6755 Hollister Ave, Suite 100 • CA 93117

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Information & Assistance Unit 805-481-3296
1562 Grand Ave • CA 93433

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Information & Assistance Unit 562-590-5240
300 Oceangate St, Suite 200 • CA 90802

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320 W. 4th St, 9th Floor • CA 90013

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Information & Assistance Unit 909-623-8568
435 W. Mission Blvd, Suite 100 • CA 91766

Redding:
Information & Assistance Unit 530-225-2047
2115 Akard, Suite 15 • CA 96001

Riverside:
Information & Assistance Unit 909-782-4347
3737 Main St, Suite 300 • CA 92501

Sacramento:
Information & Assistance Unit 916-263-2741
2424 Arden Way, Suite 230 • CA 95825

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Information & Assistance Unit 831-443-3058
1880 N. Main St, Suites 100 & 200 • CA 93906

San Bernardino:
Information & Assistance Unit 909-383-4522
464 W. 4th St, Suite 239 • CA 92401

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28 Civic Center Plaza, Suite 451 • CA 92701

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Information & Assistance Unit 310-452-1188
2701 Ocean Park Blvd, Suite 220 • CA 90405

Santa Rosa:
Information & Assistance Unit 707-576-2452
50 "D" St, Suite 420 • CA 95404

Stockton:
Information & Assistance Unit 209-948-7980
31 E. Channel St, Room 344 • CA 95202

Van Nuys:
Information & Assistance Unit 818-901-5374
6150 Van Nuys Blvd, Suite 110 • CA 91401

Ventura:
Information & Assistance Unit 805-654-4701
5810 Ralston St • CA 93003

Walnut Creek:
Information & Assistance Unit 925-977-8343
175 Lennon Lane, Suite 200 • CA 94598

WORKERS' COMPENSATION APPEALS BOARD (WCAB)

455 Golden Gate Ave, 9th Floor..... 415-703-4580
San Francisco, CA 94102 Fax: 415-703-4549

INDUSTRIAL MEDICAL COUNCIL (IMC)

395 Oyster Point Blvd, Room 102 1-800-794-6900
South San Francisco, CA 94080 650-737-2767
Fax: 650-737-2711

SELF INSURANCE PLANS (SIP)

2265 Watt Ave, Suite 1 916-483-3392
Sacramento, CA 95825 Fax: 916-483-1535

COMMISSION ON HEALTH & SAFETY & WORKERS' COMPENSATION (CHSWC)

455 Golden Gate Ave, 10th Floor..... 415-703-4220
San Francisco, CA 94102 Fax: 415-703-4234

DIVISION OF LABOR STATISTICS & RESEARCH (DLSR)

455 Golden Gate Ave, 8th Floor 415-703-4780
San Francisco, CA 94102

Prevailing Wage Hotline 415-703-4774

STATE MEDIATION & CONCILIATION SERVICE (SMCS)

Headquarters—San Francisco 415-703-4882
455 Golden Gate Ave, 8th Floor Fax: 415-703-4886
CA 94102

Fresno 559-445-5311
2550 Mariposa St, Room 4014 Fax: 559-445-5314
CA 93721

Los Angeles..... 213-576-7759
320 W. 4th St, Room 420 Fax: 213-576-7765
CA 90013

Program Management

September 1, 2000

GOVERNOR

Gray Davis

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Director: Stephen J. Smith

Assistant Director: Suzanne P. Marria

Chief Deputy Director: Daniel M. Curtin

Deputy Directors:

Janet Coffman, Communications

Patrick Henning Jr, Legislative Affairs

DIVISION OF LABOR STANDARDS ENFORCEMENT

State Labor Commissioner & Chief: Arthur S. Lujan

Assistant Chiefs: Thomas E. Grogan, Roger D. Miller, Gregory L. Rupp, Nance S. Steffen

INDUSTRIAL WELFARE COMMISSION

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Commissioners: Douglas H. Bosco, Barry D. Broad, Leslee Coleman, Harold A. Rose

Executive Officer: Andrew Baron

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

State Designee: Stephen J. Smith

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

Chief: John Howard

Acting Deputy Chiefs: Victoria Heza, Lennox Welsh

Manager, Cal/OSHA Consultation Service: Dave C. Bare

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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Members: Gwendolyn W. Berman, Victoria Bradshaw, William Jackson, Elizabeth Lee, Sopac M. Tompkins

Executive Officer: John D. MacLeod

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Members: William Duplissea, Marcy Saunders

Executive Officer: Janet M. Eagan

DIVISION OF APPRENTICESHIP STANDARDS

Chief: Henry P. Nunn III

Deputy Chief: Rita H. Tsuda

Administrator of Apprenticeship: Stephen J. Smith

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Employer Representatives: Charles W. Burke, William Callahan, Carole C. Colbert, Raymond Leap, Laura Nelson, Eugene Sapper

Public Representatives: Sotero Andrade, Max Turchen

Ex Officio Members: Robert Balgenorth, Victoria Morrow, Stephen J. Smith

DIVISION OF WORKERS' COMPENSATION

Administrative Director: Richard P. Gannon

Acting Chief Deputy Administrative Director: George Mason

Assistant Chief: Richard W. Younkin

WORKERS' COMPENSATION APPEALS BOARD

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Members: Robert E. Burton, Colleen S. Casey, Robert N. Ruggles

Deputy and Secretary to the Board: Dennis J. Hannigan

Deputy Commissioners: Rick Dietrich, Neil P. Sullivan

INDUSTRIAL MEDICAL COUNCIL

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SELF INSURANCE PLANS

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DIVISION OF LABOR STATISTICS AND RESEARCH

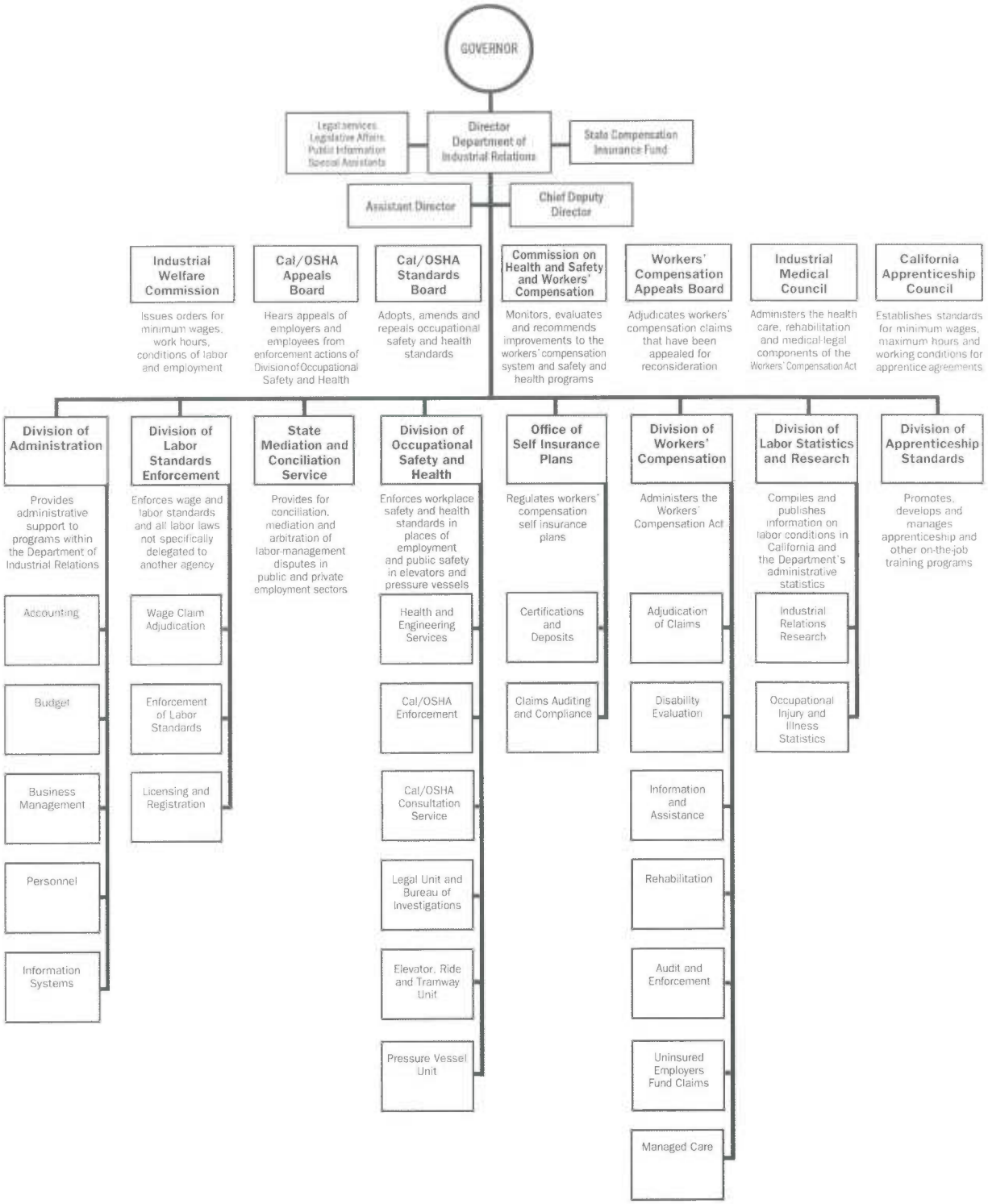
Acting Chief: Daniel M. Curtin

Deputy Chief: Maria Y. Robbins

STATE MEDIATION AND CONCILIATION SERVICE

Chief: Micki Callahan

Program Functions



State of California
Gray Davis, Governor
Stephen J. Smith
Director of Industrial Relations

EXHIBIT B

ENROLLED BILL MEMORANDUM TO GOVERNOR

BILL NO: AB 60 **AUTHOR:** Knox **DATE:** July 15, 1999

SENATE: 18-15 (see vote sheet)

ASSEMBLY: 47-28 (see vote sheet)

This bill would enact the "Eight-Hour-Day Restoration and Workplace Flexibility Act of 1999" and would make numerous changes to the laws regarding the payment of overtime compensation. The bill would also provide for the adoption, implementation, and repeal of alternative workweek schedules, as defined.

SPONSOR: Author

SUPPORT: Department of Industrial Relations
Department of Finance
Honorable Johan Klehs, Chair, State Board of Equalization
California Labor Federation, AFL-CIO
California Retailers Association
California Taxpayers Public Affairs Council
Engineers & Scientists of California, Local 20

OPPOSITION: Adventist Healthcare Coalition
California Chamber of Commerce
California Healthcare Association
California Newspaper Publishers Association
El Monte/South El Monte Chamber of Commerce
Richard L. Sinclair, President & CEO, Executive Office Concepts
Greater San Diego chamber of Commerce
Latin Business Association
Newport Harbor Area Chamber of Commerce
Palomar College
United Hospital Association

STATE FISCAL IMPACT: The Department of Industrial Relations has indicated that no information is available at this time to estimate the potential statewide fiscal impacts of AB 60. Finance notes that while unknown, any fiscal impact of AB 60 could be widespread and significant. The 1999 Budget Act includes the Administration's proposal to add $650,000 and four positions to reestablish funding for the Industrial Welfare Commission (IWC), intended to enable the IWC to address this issue through the public hearing and wage board process currently authorized by the California Labor Code.

ARGUMENTS IN SUPPORT: Proponents state that this bill is necessary for the health and welfare of employees. They would assert that without the eight-hour daily threshold, many

employers would lengthen the workday to twelve hours, or more, resulting in extreme fatigue and stress for workers. They would add that many studies have linked long work hours to increased rates of on the job injuries and accidents. Additionally, family life suffers when one or both parents have to work long hours away from the family. Supporters also state that the end of daily overtime provisions in the IWC orders in 1998 resulted in a pay cut for workers who had formerly received overtime pay after performing eight hour work in a day.

ARGUMENTS IN OPPOSITION: The California Chamber of Commerce states that this bill does not address the changing face of today's work environment. One part of their opposition states that both employers and employees agree that more flexibility in work schedules is vital to coping with today's hectic lifestyles. Responsibilities such as young children, elderly parents and continuing education can make employee full-time schedules difficult to maintain.

BACKGROUND INFORMATION: Existing law authorizes parties to a contract to stipulate to a day's work as consisting of an increment other than the eight-hour day. Existing law also requires that an employee be paid a premium rate for all hours worked beyond forty in a workweek. This bill declares that eight hours constitutes a day's work and deletes the authority of parties to stipulate otherwise. This bill [illegible] daily overtime and requires the compensation of all hours worked by an employee, in excess of eight in a day, be compensated at the rate of one and one half times the employee's regular pay rate. It also provides for the imposition of civil penalties to be assessed by the Labor Commissioner against employers who would violate these provisions.

Reviewed/Analyzed: Legislative Secretary: Chief of Staff:
APPROVE

ENROLLED BILL REPORT

DEPARTMENT OF INDUSTRIAL RELATIONS	AUTHOR Assemblymember Knox	BILL NUMBER AB 60
SPONSOR California Labor Federation	RELATED BILLS SB 651, SB 1000	DATE AMENDED July 1, 1999

SUBJECT: Employment: overtime

SUMMARY

This bill provides that any hours worked by an employee in excess of eight hours in a day must be compensated at the rate of one and one half times the employee's regular pay rate. It also requires compensation at twice the regular pay rate for any hours worked by an employee in excess of twelve in one day, or in excess of eight on the seventh day in a workweek. Exceptions to these requirements are also to be provided for employees working under an alternative workweek schedule. This bill requires the Industrial Welfare Commission to adopt orders that are consistent with its overtime provisions and to adopt regulations covering alternative workweek elections.

ANALYSIS

Existing law authorizes parties to a contract to stipulate to a day's work as consisting of an increment other than the eight-hour day. Existing law also requires that an employee be paid a premium rate for all hours worked beyond forty in a workweek. This bill declares that eight hours constitutes a day's work and deletes the authority of parties to stipulate otherwise. This bill legislatively establishes daily overtime and requires the compensation of all hours worked by an employee, in excess of eight in a day, be compensated at the rate of one and one half times the employee's regular pay rate. It also provides for the imposition of civil penalties to be assessed by the Labor Commissioner against employers who would violate these provisions.

VOTE ASSEMBLY 47-28 SENATE 23-15

RECOMMENDATION SIGN X VETO DEFER TO

Prepared by: Tom Grogan (415) 703-4810

DIVISION CHIEF	DATE	GOVERNOR'S OFFICE USE
Mary Saunders	7/12/99	Position Noted ☐
DEPARTMENT DIRECTOR	DATE	Position Approved ☐
Stephen Smith	7/12/99	Position Disapproved ☐
		By:
		Date:

This bill also:

- Requires compensation at twice the regular pay rate for any hours worked by an employee in excess of twelve in one day, or in excess of eight on the seventh day in a workweek;
- Exempts an employer for combining more than one rate of overtime to calculate the amount due an employee for any hour of overtime work;
- Establishes a sunset date of July 1, 2000 for any alternative workweek schedules in the health care industry that were duly adopted and made effective prior to 1998, in accordance with Industrial Welfare Commission (IWC) Wage Orders 4 or 5;
- Stipulates that an employee submit a written request to his or her employer in order to take time off in advance for personal reasons during the work week;
- Imposes an eleven-hour minimum on the number of hours in a workday that an employee may work while making up time claimed for personal reasons during the workweek; and,
- Raises the salary qualification for an executive, administrative, professional, or outside salesperson from three times the minimum wage, as previously proposed, to two times the minimum wage.

This bill further:

- Establishes additional exemptions to the hours of work to benefit the health or welfare of employees in any occupation, trade, or industry (provision would sunset January 1, 2004);
- Adopts wage orders, without convening wage boards, that are consistent with the bill's provisions;
- Requires the review of wages, hours, and working conditions of employees in industries or occupations that are specifically exempted by the Labor Code from the forty-hour workweek (ski patrolmen, truck drivers, commercial fishermen or employees on commercial passenger fishing boats, homeworkers under contract, and to adopt regulations in accordance with the findings of that review by July 1, 2000;
- Requires the review of wages, hours, and working conditions of employees in the health care industry and in the occupations of licensed pharmacist and outside salesperson, and to adopt regulations in accordance with the findings of that review by July 1, 2000;
- Adopts or amends orders to address break periods and days of rest;

- Requires the IWC to study the extent to which alternative workweek schedules are used in California with a cost benefits analysis and to report the results to the Legislature by July 1, 2001; and

- Exempts persons employed in an agricultural occupation from specific regulations contained in the Labor Code.

This bill requires the IWC to adopt regulations, without convening wage boards and following public hearings, to ensure the fair conduct of employee elections, to establish procedures for repealing an alternative workweek schedule, providing employee disclosures, designating work units, to convene public hearings to determine exemptions under the duty test of the IWC Orders, and any other necessary regulations.

FISCAL IMPACT:

Amendment of this bill on May 27, 1999 required the IWC to hold a public hearing on the adoption of regulations which would conform the Wage Orders to the bill's requirements regarding the payment of overtime, establish procedures for alternative workweek elections, and provide for the amendment or adoption of regulations covering specified industries and occupations. It is not possible to predict the content of future regulations that the IWC may adopt. In addition, the regulatory process requires the IWC to accept and respond to input from the public, a process that could significantly affect the final content of any regulation. DLSE would also be able to submit recommendations and comments to the IWC on any proposed regulations. The adoption and amendment of new regulations, depending upon their content, could result in costs for DLSE. Should that occur, DLSE would address any new and unabsorbable costs by submitting a budget change proposal (BCP) to request additional funding.

The FY 1999 Budget bill restores $429,000 funding for the IWC for 4 positions including one (1) Executive Officer, two (2) Staff Services Analysts, and one (1) Office Assistant. A one-time cost of $227,000 for FY 1999-00 to augment the IWC budget was also approved to review the current overtime policy to fund expenditures for the conduct of public hearings, wage board meetings, and producing wage notices as required by the Labor Code.

The authorized positions and operating expenses could be used to address the initial additional workload generated by AB 60 until it is determined what the actual workload and costs for the proposed legislation are determined to be. This includes increased costs, if any, on the review of wages, hours and working conditions of industries and occupations exempted from the 40-hour workweek: ski industry, commercial fishing, healthcare, pharmaceutical and horseracing industries. The July 1, 1999 amendment requiring the IWC to produce a study on how alternative workweek schedules are used in California may also require additional funding. We would expect the need to conduct a statewide survey, which would have to cover a representative sample of key industries and occupations in California. The costs of producing a report of this nature appears to require a one-time cost that could be substantial, depending on its scope and complexity, and considering that IWC or DLSE has no existing research staff to conduct this study. As in the case of DLSE, any unabsorbable costs to the IWC budget would have to be addressed through the normal budget process.

ECONOMIC IMPACT:

Since the elimination of daily overtime in 1998, some employers have stated that they have lost wages without daily overtime. Other workers have reported benefits since more flexible work hours. Some companies have profited from being able to schedule longer hours, as dictated by business needs, without incurring overtime liability. Others have made no changes in their operations. The overall impact of the changes proposed by this bill cannot predicted, particularly since many outcomes would be dependent upon actions, as yet unspecified, that the IWC would be mandated to complete between January 1 and July 1, 2000.

PRO:

Proponents would claim that this bill is necessary for the health and welfare of employees. They would assert that without the eight-hour daily threshold, many employees would lengthen the workday to nine or twelve, or more, resulting in extreme fatigue and stress for workers. They would add that many studies have linked long work hours to increased rates of on the job injuries and accidents. Additionally, family life suffers when one or both parents have to work long hours away from the family.

Proponents would also argue that the end of daily overtime provisions in the IWC orders in 1998 resulted in a pay cut for workers who had formerly received overtime pay after performing eight hours work in a day.

CON:

Opponents would argue that the IWC was authorized by the Legislature to make the necessary rules governing the payment of overtime. After extensive public hearings, the IWC found that it was necessary to amend the overtime rules to allow for greater flexibility in scheduling overtime hours. Opponents of this bill would maintain that the changes made by the IWC supported that flexibility, to the advantage of both employees and employers. They would consider the enactment of this bill a step backward.

Opponents would also claim that conforming California's overtime rules to the forty-hour standard allowed California to follow the lead of the federal government and the majority of other states across the nation that adhere to this standard.

Finally, opponents would argue that the majority of workers did not receive pay cuts as a result of the end of daily overtime. Rather, they claim, most overtime is worked by full-time employees who would see no difference between overtime after eight hours in one day, or after forty hours in a workweek.

APPOINTMENTS:

While the bill does not mandate appointments, it should be noted that [illegible] appointments to the IWC. The chairperson and members of this commission [illegible] the implementation of the IWC to carry out implementation of this bill.

LEGAL IMPACT:

There could be an increased number of lawsuits filed by employers over the imposition of civil penalties for violations of the proposed law.

LEGISLATIVE HISTORY:

AB 1979 (Knox) died in the Assembly Labor Committee in 1995. That bill would have allowed an employee to makeup as much as four hours work time, without overtime being due, in exchange for personal time off when approved by the employer.

AB 15 (Knox) and SB 680 (Solis), both introduced in 1997, contained many provisions similar to AB 60. After passing through various committees, AB 15 was placed on Inactive status in August 1997. All provisions of that bill related to overtime and alternative scheduling were deleted and replaced with measures related to sick leave usage in 1998. SB 680 was passed by the Assembly and the Senate, but vetoed by former Governor Pete Wilson on September 9, 1997.

SB 1000 (Burton), introduced on February 26, 1999, was assigned to the Senate Committee on Industrial Relations. It did not receive a vote by that Committee.

SB 651 (Burton) would provide that a pharmacist is not exempt from coverage of the IWC orders, unless he or she individually satisfies the criteria for exemption as an executive or administrative employee. SB 651 is currently before the governor for consideration.

RECOMMENDED POSITION:

Sign. This bill returns daily overtime protection to 8 million workers in this state. Daily overtime pay protects workers from extremely long shifts that are exhausting and unsafe. It helps working parents who cannot leave their children unsupervised during long shifts and commutes. It spurs job creation because employers facing increased labor costs after eight hours substitute additional hires at straight time wages for longer hours at premium pay. California's return to the daily overtime law will reduce the amount of overtime worked with no reduction in earnings.

ANALYSIS (continued)

A. Programmatic Analysis (continued)

- Provide that certain provisions of this bill would not apply to registered nurses, as specified, to an employer or employee when the total hours of employment do not exceed 30 hours in any week or six hours in any one day thereof, and to other specified persons. AB 60 would also authorize the IWC to establish additional exemptions from overtime requirements for executive, administrative, professional, and other employees, as specified and in compliance with certain conditions.
- Provide or eliminate, and require the IWC to review, certain exceptions to various labor laws for workers in the seasonal ski industry, licensed pharmacists, employees operating or providing personnel for the operation of a hospital, specified residence-cable employees, specified persons holding a commercial fishing license, outside salespersons, and workers in the health care industry.
- Require an employer to provide an employee with meal breaks, as specified, and would authorize the IWC to adopt or amend working condition orders with respect to break periods, meal periods, and days of rest, as specified.
- Require the IWC, at a public hearing before July 1, 2000, to adopt wage, hours, and working condition orders consistent with this measure, without convening wage boards, and would authorize the IWC to adopt other regulations, as specified.
- Provide specified civil penalties for violations of the bill's provisions, and for violations of any provisions regulating hours and days of work in any order of the IWC.
- Declare Wage Orders 1, 4, 5, 7, and 9, as effective January 1, 1998, to be null and void. These orders cover the manufacturing, professional, technical, clerical, mechanical, public housekeeping, mercantile, and transportation industries.
- Declare the effective dates of other specified wage orders.
- Provide an exemption from the bill's provisions for emergencies, work performed in the protection of life or property, common carriers engaged in or connected with the movement of trains, and agricultural labor pursuant to Wage Order #14-80.
- Make other minor technical or clarifying changes.

B. Fiscal Analysis

As previously noted, the Department of Industrial Relations has indicated that no information is available to estimate the potential statewide fiscal impacts of AB 60. The 1999 Budget Act includes the Administration's proposal to add $656,000 and four positions to reestablish funding for the IWC, intended to address these issues through the public hearing and wage board process currently authorized under the California Labor Code. Any additional resources required at the state level under the provisions of this bill would need to be justified through the State's annual budget process.

NO ENROLLED BILL REPORT REQUIRED

DEPARTMENT OF PERSONNEL ADMINISTRATION	AUTHOR	BILL NUMBER
	Knox	AB 60

☐ Technical bill - No program or fiscal changes to existing program. No analysis required. No recommendation on signature.

☒ Bill as enrolled not within scope of responsibility or program of the Department.

COMMENTS:

This bill amends the Labor Code to require private sector employers to pay time-and-one-half overtime after 8 hours a day and double time after 12 hours a day. The bill repeals the administrative actions of the Industrial Welfare Commission (IWC) taken on April 11, 1997, which mandated overtime after 40 hours a week, consistent with federal law under the Fair Labor Standards Act (FLSA).

This bill establishes a procedure for an employer to propose an alternative workweek schedule, which may be approved by a 2/3 vote of affected employees. Also, within a workweek, an employee may, based on a specific written request, with the consent of an employer, take time off for a personal obligation, and then make up the lost time as other days within the same workweek without payment of daily overtime compensation.

The bill exempts administrative, executive, and professional employees from the State overtime laws and regulations, provided that these employees meet specified wage and duty requirements, and exempts from overtime premium overtime pay requirements employees who are covered by a collective bargaining agreement which meets specific criteria.

This bill requires the Industrial Welfare Commission to study the extent of use, costs and benefits to employees and employers of alternative workweek schedules and report the results to the Legislature.

The bill empowers the Labor Commissioner to enforce the law by issuing citations and imposing civil penalties of up to $100.00 for every employee underpaid under the proposed statute.

AB 60 amends sections of the Labor Code that do not apply to state government. As such, the bill has no direct impact on the programs of the Department of Personnel Administration. Government Code Section 19851, which concerns work for State employees, establishes a general State policy of eight hours per day and forty hours per week. State employees, not under the provisions of the federal FLSA and, generally, are compensated for overtime after working forty hours per week. Additionally, for represented employees, overtime, meal periods and alternative work schedules are fully negotiable and enforceable through the Memorandum of Understanding.

Since this bill does not impact State employees, the Department of Personnel Administration has no recommendation on the disposition of this bill.

Director	Date		Date	Positive Impact
Chief Deputy Director				Positive Approach
				Positive Recommend
Legislative Unit				Oppose Position to
			Date	

EXHIBIT C

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California State Senate

SENATOR
JOSEPH L. DUNN
THIRTY-FOURTH SENATORIAL DISTRICT

COMMITTEES
CHAIR BUDGET AND FISCAL REVIEW SUBCOMMITTEE #4
BANKING, COMMERCE AND INTERNATIONAL TRADE
ENERGY, UTILITIES AND COMMUNICATIONS
GOVERNMENTAL ORGANIZATION
HOUSING AND COMMUNITY DEVELOPMENT
LABOR & INDUSTRIAL RELATIONS
VETERANS AFFAIRS

SELECT COMMITTEES
CHAIR INVESTIGATE PRICE MANIPULATION OF THE WHOLESALE ENERGY MARKET
CHAIR MOBILE AND MANUFACTURED HOMES
CHAIR CITIZEN PARTICIPATION

JOINT COMMITTEE
JOINT RULES

September 16, 2003

Honorable Gray Davis
State Capitol
Sacramento, CA 95814

Dear Governor:

I would appreciate your signature on SB 796, a bill co-sponsored by the California Labor Federation and the California Rural Assistance Foundation. The bill has widespread support by the labor community.

This bill increases enforcement of current Labor Code provisions by establishing civil penalties for existing violations of the Labor Code and allowing aggrieved employees to bring a civil action when the state does not pursue such an action on their behalf.

California has important worker protections in statute – some of the strongest in the nation. However, these laws are meaningless if not enforced. Despite increases made by your administration to staff for state labor law enforcement, there are only 14 more enforcement staff positions now than there were 15 years ago – while there are three million more workers. Unfortunately, further gains are unlikely because enforcement staff are being cut as a result of the budget crisis.

SB 796 creates penalties and a way to collect them, giving harmed employees the ability to enforce labor laws themselves. The establishment of fines is critical because there are many provisions of the Labor Code for which there are criminal penalties, but for which there are no civil penalties. Local district attorneys are likely to prosecute only the most heinous of Labor Code violations, which leaves injured workers without redress for many code provisions.

For example, the Labor Code requires employers to supply drinking water. However there is no civil penalty for violating this provision of law, only a criminal one. It is unlikely that a district attorney would prosecute this case, yet it is a very important safety provision for workers – especially farmworkers.

Unfortunately, imposing a fine is not enough. A civil penalty is meaningless to an injured worker if there is no one to collect it. SB 796 allows employees to go to court to collect the fine when the state has not done so on their behalf.

The opposition to this measure argues that this bill invites the same types of abuses that have arisen under Business & Professions Code Section 17200. That is untrue. SB 796 has been drafted to protect against the types of problems that have surfaced around 17200.

First, the primary criticism of 17200 is that anyone has standing to bring a lawsuit. That is not the case under SB 796. Only aggrieved employees can bring actions. Unlike 17200 cases where an attorney can find any plaintiff to file a suit, under SB 796 a case can't be brought on behalf of the general public. It can't even be brought on behalf of an aggrieved employee if the plaintiff themselves has not also been harmed.

Second, SB 796 only allows employees to keep 25 percent of the fine (with the rest going back to the state general fund and labor agency). It is hardly a get rich quick scheme.

The bill contains two other important protections for employers. An employee can't bring an action in court if the labor commissioner is already pursuing the claim. Also, employers are protected from excessive fines by a provision that gives a judge discretion to adjust a civil penalty if a judge believes that the penalties are disproportionate to the violation.

Fundamentally, we have a choice. We can choose to enforce our labor laws or we can ignore them. If we want our worker protections to be more than just words on a page, then we have to provide a method for enforcement.

We likely agree that government is best suited to enforce these laws. Unfortunately, government has failed to keep pace with the growing workforce – and none of us can say with certainty that there will be more money in the budget for enforcement any time soon. Given that reality, do we tell injured workers that they have to wait 10 years until we have a better budget situation before they can expect their employer to follow the law? I hope not.

I respectfully request you sign SB 796 into law to allow workers to seek redress against employers who break the law. I appreciate your consideration.

Very truly yours,

JOSEPH L. DUNN
Senator, 34th District

JLD/el

EXHIBIT D

Title
Labor Law Enforcement in California, 1970-2000

Authors
Bar-Cohen, Limor
Carrillo, Deana Milam

Publication Date
2002-11-01

Labor Law Enforcement in California, 1970–2000

LIMOR BAR-COHEN and
DEANA MILAM CARRILLO

In 1927 the state of California established the department of Industrial Relations (DIR) to improve working conditions for California's wage earners and to advance opportunities for gainful employment in California.[1] Among its many duties, the DIR has primary responsibility for enforcing the state's labor laws. Within the DIR the Division of Labor Standards Enforcement (DLSE) enforces California's wage and labor standards, and the California Occupational Safety and Health Program (Cal/OSHA) enforces workplace safety. These agencies are responsible for protecting the legal rights of over 17 million California workers and regulating almost 800,000 private establishments, in addition to all the public sector workplaces in the state (U.S. Census Bureau 1999). Their effectiveness—or lack thereof—is of great significance for working people throughout the state.

Today, despite the efforts of the agencies, noncompliance rates remain extremely high in many industries, and thousands of California's workers remain unprotected. In 2001 alone the DLSE fined employers over $20 million in back wages for noncompliance with California's labor standards (Lujan 2002). In the same year approximately 6 out of every 100 California workers sustained an injury due to unsafe conditions on the job (U.S. Department of Labor 2000a). A study by the U.S. Department of Labor found that two-thirds of garment employers in Los Angeles violated minimum wage or overtime laws, or both, in the year 2000 (U.S. Department of Labor 2000b). Although the 33 percent compliance rate is an improvement over the 1996 figure of 22 percent, it is still far from ideal.

An equally important concern is the difficulty in assessing the effectiveness of these agencies, because the available data are generally limited to measures of *activity,* and even these measures are often ambiguous. The agencies have few reliable measures of the *outcomes* of the state's labor law enforcement efforts, and in the case of the DLSE virtually no such measures exist.

Since the 1980s labor law enforcement has faced significant challenges stemming primarily from the budget cuts and low staffing levels that were pervasive during the 16 years under the Deukmejian and Wilson administrations. And while funding

1. Thanks to Joy Yang for research assistance and to Larry Frank for his guidance and feedback.

and staffing levels decreased during this period, the divisions' responsibilities have increased.

Governor Gray Davis's administration has made new funding available to the labor enforcement divisions since 1998. Nevertheless, even today their resources remain below the levels of the mid-1980s. Among the key factors shaping the situation are the following:

Budgetary Constraints. Between 1980 and 2000 California's workforce grew 48 percent, while DLSE's budgetary resources increased only 27 percent and Cal/OSHA's actually *decreased* 14 percent. Enforcement funding, relative to the numbers of workers and employers in California, has been "decimated" over the last two decades, according to current State Labor Commissioner Art Lujan (Cleeland 2001).

Low Staffing Levels. During the same two decades, from 1980 to 2000, DLSE and Cal/OSHA staffing levels have *decreased* 7.6 percent and 10.8 percent, respectively, despite California's growing economy and workforce and the divisions' burgeoning responsibilities.

Managing New Responsibilities. New responsibilities under legislation passed in recent years have placed new demands on the agencies. Although the laws were certainly intended to provide new enforcement tools, not simply additional work, they often went into effect without providing adequate resources for effective implementation.[2] Examples of such legislation include:

- Senate Bill 975, which expanded the prevailing wage law to include many more construction projects, thus requiring the DLSE to expand its oversight and investigation capabilities;
- Assembly Bill 60, which restored California's original eight-hour overtime law that had been amended under former Governor Wilson;
- Assembly Bill 1127, which raised the fines for noncompliance with safety and health laws to levels that strengthen deterrence and include unpaid wages in the civil penalty citation;
- Assembly Bill 633, which held parent or lead companies accountable for their contracting companies' noncompliance, specifically within the garment industry. (See Appendix 5H for additional legislative examples.)

Decline in Union Density. Union density in California has declined sharply over the past 30 years. Since unions often actively monitor firms' implementation of labor laws and push to correct violations, deunionization effectively adds to the

2. For example, in 1999 the state legislature passed AB 921, requiring the DIR to conduct a statewide comprehensive audit of all the programs overseen by the Division of Apprenticeship Standards (DAS). California has approximately 1,400 such programs, but to date DAS has audited only a handful of them. Funding cuts have hampered the DIR's ability to perform these audits.

workload of DLSE and Cal/OSHA. Employees in nonunion settings are often unaware of the labor laws that protect them, and even when they are, they may be fearful of speaking up.

Changing Industrial Composition. In the 1970s manufacturing and construction had the highest shares of workplace violations in California. Over time, however, employment growth has become concentrated in the high-skilled, technology, and value-added industries on one end, and in low-skilled low-wage jobs on the other. Manufacturing jobs remain plentiful, but today most are in small, nonunion establishments that are often unsafe and that tend to have relatively high rates of labor law violations. Serious violations are especially widespread in the garment, agricultural, construction, and service sectors. In 1999, for example, Cal/OSHA Deputy Chief Mark Carleson stated, "I think there's 100 percent noncompliance in garments [the garment industry] and 75 percent have at least one serious violation" (*Cal/OSHA Reporter* 1999).

Growing Immigrant Workforce. Between 1970 and 1999 immigrants' share of the state's labor force rose from 10 percent to 30 percent of the total (Valenzuela and Ong 2001: 58). Effective labor law enforcement in California thus requires agencies capable of communicating with these new immigrant workers, many of whom are not fluent in English. Yet in 2001 Cal/OSHA only had 27 certified bilingual investigators—out of 250—to address the needs of California's industries, many of which have predominantly non-English speaking workforces.

This chapter assesses DIR's field enforcement efforts within the DLSE and Cal/OSHA. We first provide an overview of the two agencies, outlining their structure and the principal tasks they perform. We then go on to review the record of the agencies' field enforcement over the past 30 years—specifically, their allocated budgetary and staffing resources, as well as the resulting inspections, citations, and penalties they carried out. We treat the DLSE and Cal/OSHA in separate sections, as they are distinct agencies with separate mandates, managements, and processes—each with its own strengths and each facing specific challenges.

In addition, we highlight the inadequacy of the measures of these agencies' activities that are currently available. This examination points to the urgent need for measures of *outcomes,* which are currently nonexistent for the DLSE and limited for Cal/OSHA.

Overall, we find that the agencies' budget and staffing allocations have not kept pace with the growth in California's workforce and business establishments and in the agencies' responsibilities. Beginning in 1993, following far-reaching staffing cuts, the number of inspections conducted by both agencies decreased almost steadily until 1998, when it began rising slightly because of augmented funding and staff hiring. In 1988, for example, the DLSE conducted one inspection for every 58 business establishments in California, but by 1999 DLSE was investigating roughly one in every 148 business establishments.

We also find that despite recent increases in funding and staffing —the first in 10

years—the agencies are still operating at 1989 levels. [3] Nevertheless, several key activity indicators, such as the number of investigations, citations, and penalties assessed, have failed to rise in proportion to the new allocations. This could be due to a time lag between receiving new funding and adding staff, the need to train new staff members, or other organizational problems.

CALIFORNIA'S ENFORCEMENT AGENCIES: A BRIEF OVERVIEW

Labor law enforcement is only one part of a multipronged DIR program designed to protect California's workforce.[4] The DIR's efforts include standard setting, informational and educational programs for employees and employers, apprenticeship training, data collection and research, processes for employers to appeal citations, and criminal investigations. While all of these activities are essential, here we focus on the field enforcement efforts specific to the DLSE and Cal/OSHA.

The Division of Labor Standards Enforcement

The DLSE's goals are twofold: "to vigorously enforce labor standards with special emphasis on payment of minimum and overtime wages in low paying industries; and to work with employer groups, expanding their knowledge of labor law requirements, with the aim of creating an environment in which law-abiding employers no longer suffer unfair competition from employers who follow unlawful practices" (California Department of Industrial Relations 1998–1999). DLSE provides a range of public services, such as adjudication of wage claims, licensing and registration, and investigations of discrimination complaints. The DLSE has two primary ways of dealing with violations: through its process for wage claim adjudication, and through its Bureau of Field Enforcement (BOFE). [5]

The BOFE, created in 1983, is responsible for overseeing child labor laws, worksite inspections, audits of payroll records, collection of unpaid minimum and overtime wages, enforcement of prevailing wage provisions, confiscation of illegally manufactured garments, and other labor law abuses in the underground economy. Unlike

3. We interviewed management and staff at the DIR, DLSE, and Cal/OSHA, as well as union representatives, attorneys, and other stakeholders. These interviews are the sources for the information reported here, except as otherwise indicated. See Appendix 5A for more details on our methodology.
4. For an organizational chart of the DIR, see *http://www.dir.ca.gov/org_chart/Org_Chart.pdf.* On July 31, 2002, Governor Gray Davis announced the consolidation of several state departments into a new Labor and Workforce Development Agency. The new agency will contain the existing Department of Industrial Relations (DIR) and the Employment Development Department (EDD), along with their boards and commissions; the Workforce Investment Board; and the Agricultural Labor Relations Board.
5. See Appendix 5B for a chart illustrating DLSE's enforcement process.

the adjudication process for wage claims (described below), which responds to individual complaints, BOFE independently initiates workplace investigations and responds to multiple complaints with industry sweeps. When BOFE issues a citation, an employer can choose to appeal the citation through a hearing before an administrative law judge, where the DLSE is one party and the employer, the other. Employers have the right to appeal these decisions further in California Supreme Court.

The DLSE also investigates individual wage claim complaints for nonpayment of wages and violation of overtime laws. This process includes consultations with employers and employees, followed by quasi-judicial hearings if the parties cannot reach a settlement. The DIR established its quasi-judicial wage claim adjudication process in 1976, under legislation that also gives the state labor commissioner the authority to issue final orders on employee-initiated wage claims. These "Berman" hearings, named after the legislator who sponsored the bill, are binding unless appealed within 15 days. Berman hearings provide the aggrieved worker and the charged employer a neutral forum for dispute resolution by deputy labor commissioners. Reliance on these hearings has resulted in a more efficient process, lower user costs for the agency—in both time and money, and lower law enforcement costs for taxpayers.

Employers and workers can appeal a quasi-judicial decision in the courts. If workers wish to do so and their cases go to the courts, DLSE attorneys may represent employee-claimants who could not otherwise afford counsel. The claimants do not necessarily have an automatic right to counsel; DLSE provides representation within the limits of the resources available and based on DLSE attorneys' judgment about the merits of each case. In court the appeal is *de novo*—that is, the prior decision is wiped out and the case is heard all over again. If an employer appeals and is still found liable, then the employer must pay attorney costs for all parties.

Joint enforcement programs involving multiple agencies, such as the Targeted Industries Partnership Program (TIPP) and Joint Enforcement Strike Force (JESF), assist in DLSE's mission. These programs are cooperative efforts among several distinct government agencies that target industries identified as having a history of noncompliance. TIPP, which targets the garment, agriculture, and restaurant industries, is a joint investigative effort of the DLSE, Cal/OSHA, and the U.S. Department of Labor. JESF targets auto body repair shops, bars, and construction companies and works jointly with the Employment Development Department (EDD), Department of Consumer Affairs, Office of Criminal Justice Planning, Franchise Tax Board, Board of Equalization, and the U.S. Department of Justice.

Cal/OSHA

In 1973, the California Occupational Safety and Health Program, now known as Cal/OSHA, was approved under the terms of the federal OSHA to be administered by the DIR. The program's major units are:

- the Cal/OSHA Enforcement Unit, which enforces workplace safety and health regulations through standards enforcement and the investigation of worksite fatalities, serious injuries, and complaints about workplace hazards;
- the Cal/OSHA Consultation Service (within the Division of Occupational Safety and Health), which offers free training and consultation to assist employers and employees in complying with workplace safety and health regulations;
- the Cal/OSHA Standards Board, which adopts, amends, and repeals the standards and regulations; and
- the Cal/OSHA Appeals Board (under the Director of Industrial Relations, which hears appeals regarding Cal/OSHA enforcement actions.

Both the Enforcement Unit and the Consultation Unit operate within the Division of Occupational Safety and Health (DOSH). As Cal/OSHA's field enforcement arm, DOSH's activities range from amusement park and elevator inspections to voluntary compliance programs for employers. Appendix 5C contains a flowchart of a typical inspection with the Cal/OSHA Enforcement Unit.

Safety engineers and industrial hygienists conduct Cal/OSHA's workplace inspections. The engineers handle cases that deal with safety standard violations, and the hygienists investigate cases of alleged health violations. In addition to its field inspectors, Cal/OSHA also deploys district and regional managers, as well as accounting, legal, and administrative personnel, as integral participants in the field enforcement process.

Cal/OSHA field enforcers conduct two types of inspections: programmed and unprogrammed. The agency initiates the programmed inspections though a variety of subagencies, such as Cal/OSHA's Construction Safety and Health Inspection Project (CSHIP) and Agricultural Safety and Health Inspection Project (ASHIP), along with other targeted programs that are prominent in Cal/OSHA's current Strategic Performance Goals.[6] Unprogrammed inspections are reactive, taking place in response to accidents, complaints, and referrals.[7] Cal/OSHA has established clearly defined case inspection procedures that range from the opening conference with an employer suspected of violating a standard to the closing conference held before the issuance of a citation.

TRENDS IN DLSE ENFORCEMENT, 1970–2000

As noted above, measures of DLSE effectiveness are not currently available. In the following discussion, we therefore rely on interviews and activity data in annual and

6. For more on inspection and strategic planning procedures see Cal/OSHA's policy and procedure manual at *http://www.dir.ca.gov/samples/search/querypnp.htm.*
7. Complaints arise from current employees at workplaces, whereas referrals come from persons other than those currently employed at workplaces suspected of noncompliance.

biennial reports to sketch a more detailed picture of the agency's enforcement efforts and to identify future challenges.

Budget

The state's budgetary allocations for DLSE have varied with the policy priorities of the gubernatorial administration in office. The overall health of the state budget, which in turn depends partly on the business cycle, has also affected DLSE's allocation, although historically it has been far less determinative. As shown in Figure 5.1, for example, the DLSE enjoyed strong budgetary growth in the mid- to late-1970s, as Governor Edmund G. Brown, Jr. was a strong supporter of wage and safety standards enforcement, even during times of recession. An excerpt from the DIR's 1974 annual report reflects this sentiment:

> The days of arbitrary budget cuts and department staff reductions are over. The volume of cases being handled by this department [DIR] in the interests of working people is too large and too important ever to tolerate returning to that era when labor law programs were suffered like second-class citizens, and often ignored by uncaring officials. (California Department of Industrial Relations 1974)

Nevertheless, between 1981 and 1997 the DLSE did in fact suffer repeated cuts. Despite additional responsibilities mandated by the legislature, and a growing workforce, total funding decreased during this 16-year period, with especially steep cuts over the years 1990–98.[8] As the figure shows, since Governor Gray Davis has been in office (January 1999), the DLSE's resource allocation has sharply increased.

Another measure of the budgetary allocation is the dollar amount spent on enforcement per worker and per business establishment in the state.[9] As shown in Figure 5.2, the amount of DLSE funds spent per worker and per establishment

8. See Appendix 5H for a list of recent legislative mandates affecting the DIR and the DLSE. Although Figure 5.1 is indexed to 2001 dollars, the actual budget refers only to the absolute value of dollars and cannot adequately reflect external and internal factors affecting the budget—such as additional funding appropriated with new mandates.

9. For its County Business Patterns series, the U.S. Census Bureau defines an establishment as ". . . a single physical location at which business is conducted or services or industrial operations are performed. It is not necessarily identical with a company or enterprise, which may consist of one or more establishments. When two or more activities are carried on at a single location under a single ownership, all activities generally are grouped together as a single establishment. . . . Establishment counts represent the number of locations with paid employees any time during the year. This series excludes governmental establishments except for wholesale liquor establishments . . . , retail liquor stores . . . , Federally-chartered savings institutions . . . , Federally-chartered credit unions . . . , and hospitals. . . ." See *http://www.census.gov/epcd/cbp/view/genexpl.html.*

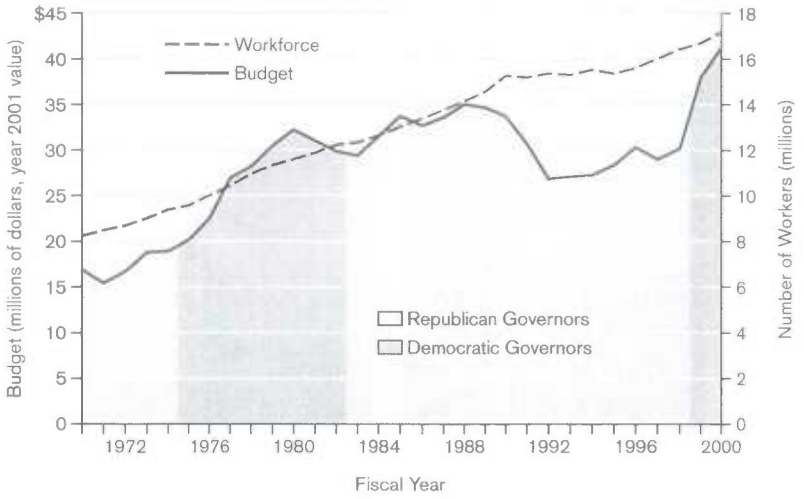

FIGURE 5.1 DLSE Budget and the Number of Workers in California, Fiscal Years 1970 -2000.
SOURCE: Computed from EDD and California State Budget data.

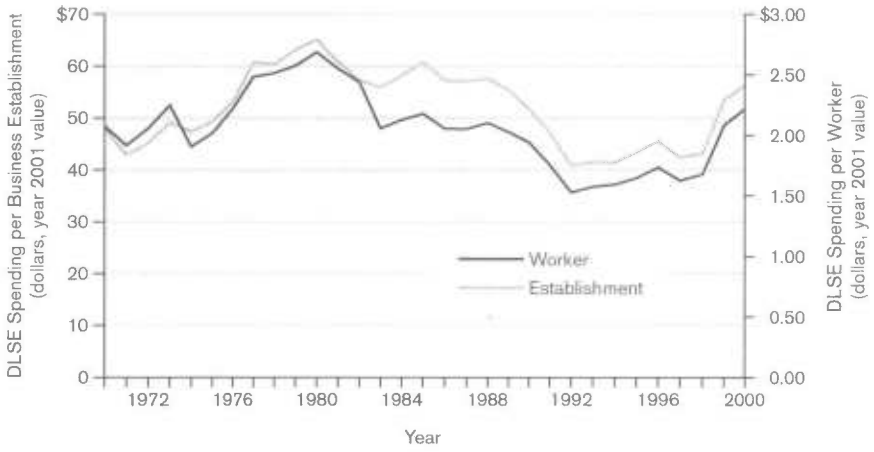

FIGURE 5.2 Ratio of Dollars Spent by DLSE to the Number of Business Establishments and Workers in California, 1970–2000.
SOURCE: Computed from DLSE and County Business Patterns data

steadily decreased starting in the mid-1980s, and although both measures have risen in the past two years, they are still below the levels of 1981. While the situation is improving, it must be noted that these measures take into account only the simple change in numbers of workers and establishments; they do not account for the increasing level of DLSE's responsibilities over the period.

Staffing

Because of these budget cuts, DLSE staffing levels declined throughout most of the 1980s and 1990s, as shown in Figure 5.3. In 1992, amid a severe recession, then-Governor Pete Wilson cut the budgetary allocation for DLSE staffing from 411 to 348 employees—a 15 percent decrease in a single year. Lloyd Aubry, then-Director of the DIR, remarked that the "challenge for 1992 and 1993 was to ensure prompt and fair adjudication despite a major reduction in staff" (California Department of Industrial Relations 1992). Although the subsequent increases begun under the Davis administration have put DLSE's staffing level on the rise, it has yet to reach the levels of the late 1970s. According to division representatives, insufficient staffing has been a chronic problem for the DLSE. The staffing levels shown in the figure include all DLSE staff—such as investigators (deputy labor commissioners), office technicians and assistants, auditors, attorneys, and staff assigned to investigate the prevailing wage for public works projects. Thus, the number of positions allocated directly to field enforcement activities was lower. Because of mergers within the division and a lack of systematic data collection, there are no consistent records of the number of investigators over the past 30 years, beyond the overall division staffing data shown in Figure 5.3.

Figure 5.4 estimates the number of workers and the number of establishments in that state per DLSE employee (including nonenforcement staff members). These workforce numbers represent a conservative count, because the Employment Development Department (EDD), the agency that compiles these data, is unable to account for workers in the "underground economy" (those receiving cash payments and ignoring income or business taxes due)—which are precisely the establishments targeted by the DLSE, where wage and standards violations are pervasive.

Although these ratios began declining again in 1999, each DLSE staff member is still responsible for more workers now than in 1991—before the DLSE experienced the sharpest budget decrease in its history. In some instances, specifically in prevailing wage violations, the staff's inability to meet deadlines in the statute of limitations renders the cases null and void.[10] Although the DLSE does not keep data on the number of cases nullified in this way, one compliance investigator in the not-for-profit sector estimates that in 2001 the DLSE denied roughly a third of his organization's prevailing wage complaints because of time constraints.[11]

Inadequate staffing levels—and the DLSE's inability to investigate all claims—have resulted in numerous nongovernmental entities undertaking investigative work to supplement the staffing gap. In addition to compliance analysts on staff at unions and their health and welfare funds, a growing number of nonprofits have

10. California law provides a 90-day statute of limitations for prevailing wage violations and a three-year limitation for other wage and standards violations.

11. Interview with an employee of the Center for Contract Compliance, March 7, 2002.

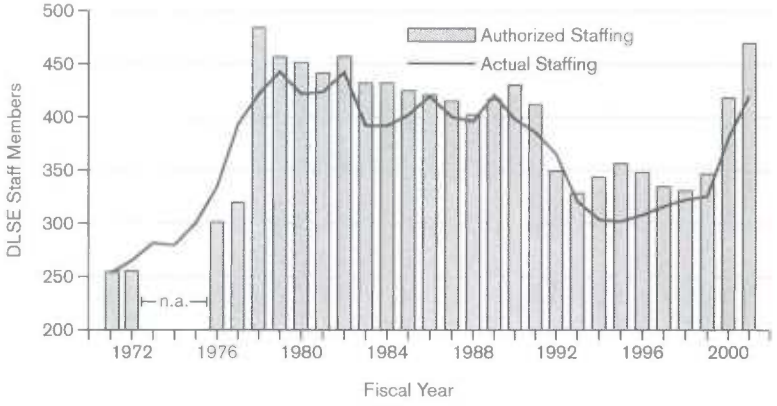

FIGURE 5.3 DLSE Staffing, at Authorized and Actual Levels, Fiscal Years 1970–2000.
SOURCES: Computed from DLSE and California State Budget data.

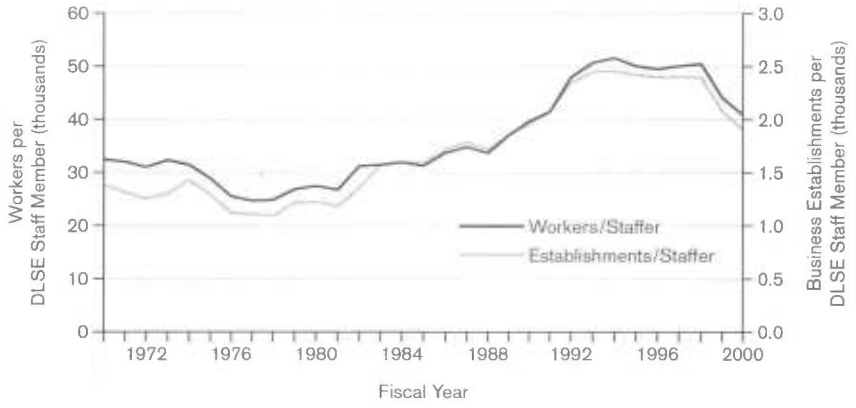

FIGURE 5.4 Actual DLSE Staffing per Business Establishment and per Worker in California, 1970–2000.
SOURCES: Computed from EDD and DLSE data.

entered this arena to address industry noncompliance.[12] Several other stakeholders and interest groups also work to identify and report noncompliance to the DLSE.[13] Yet even with these supplemental efforts, our interviews both inside and outside the agency suggest that DLSE's staffing levels are still not adequate to address the overwhelming caseload.

12. Union-contracted compliance organizations include the Center for Contract Compliance and the Federation for Fair Contracting.
13. Examples include Sweatshop Watch and the California Rural Legal Association (CRLA).

The Impact of the Budget and Staffing Cuts: Investigations, Citations, and Penalties Assessed

The 16-year period of decline in staffing and funding levels has taken its toll on the division's enforcement activities. In this section we analyze data on DLSE investigations, citations, and penalties assessed and collected over the past decade and a half.

After 1993, the year following Governor Wilson's most far-reaching staffing freeze, the number of DLSE inspections steadily decreased; it has begun to rebound only in the past few years.[14] This recent increase in investigations may be due to the increase in funding and staff size and the subsequent ability to conduct more inspections. A serious limitation of looking at the number of inspections as a way of measuring "success," however, is that the DLSE weighs all of its inspections using the same standards. Thus, whether an inspector is investigating a severe violation where the employer has not paid his 5,000 employees in weeks, or a site where the employer has not given a few workers their breaks, the DLSE counts it as one inspection. In any case, in 1988 there was approximately one inspection for every 58 business establishments in California. In the years since then, the ratio has been steadily increasing: by 1999 DLSE was investigating about one in every 148 business establishments.[15]

An examination of the DLSE's staffing levels compared to the number of inspections, shown in Figure 5.5, illustrates that inspections are not solely dependent on budgetary and staffing allocations. The agency may suffer from inefficiencies that complicate the effective use of additional funds and staffing, several of which are described below. Inspection rates may also be the result of internal policy priorities. For example, the two periods of dramatic increase in the number of inspections, 1987–88 and 1991–1993 reflect an increased level of workers' compensation audits; during these periods the Deukmejian and Wilson administrations were targeting California's underground economy in an effort to capture some of the estimated $3 billion in lost tax revenues annually. (This increase in workers' compensation audits can be seen in Figure 5.6).

Despite the recent increase in staffing levels under the Davis administration, the number of inspections has increased more slowly. The DLSE's current management argues that the relatively small increase in investigations is due to time delays between budgetary increases and new staff being hired, trained, and deemed competent to conduct inspections. Managers in our interviews also said that the agency is targeting its resources to maximize the collection of penalties. As Appendix 5D shows, however, the results of this effort have yet to materialize. Penalty assessments actually declined in the 1997–2000 period, and collections were flat.

Wage and labor standards investigations typically result in the DLSE issuing citations to violators. Figure 5.6 illustrates the numbers and types of citations issued by

14. The earliest BOFE published data for field investigations was 1987.

15. See Appendix 5E for a table showing the numbers of investigations and establishments.

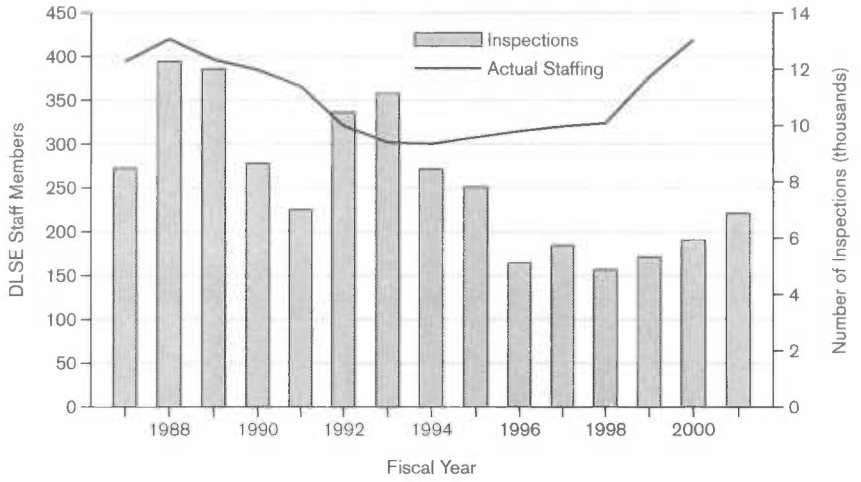

FIGURE 5.5 Actual DLSE Staffing Levels and the Number of Workplace Inspections, Fiscal Years 1974-2000.
SOURCES: Computed from California State Budget and DSLE data.

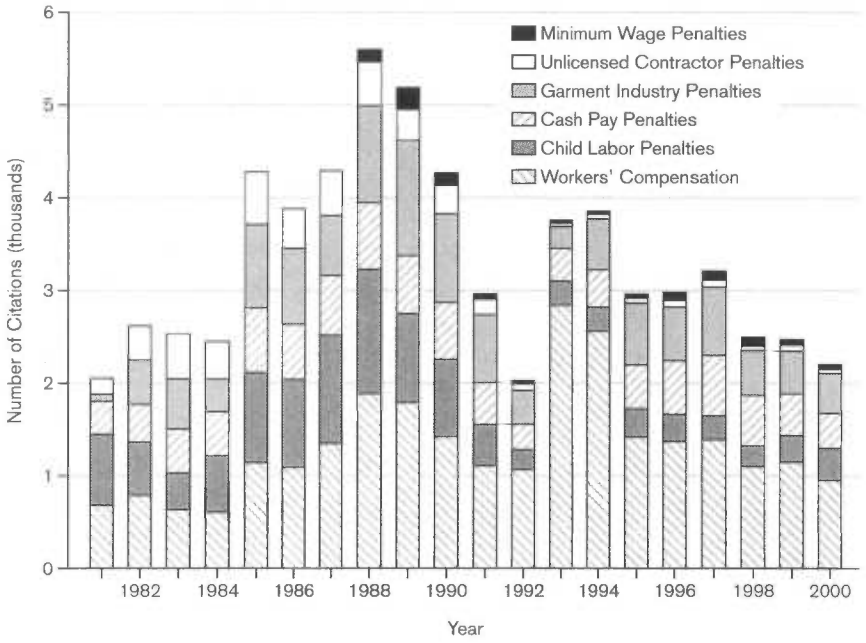

FIGURE 5.6 Number of Citations Issued by DLSE and BOFE, Stacked by Type, 1981–2000.
SOURCE: DLSE.

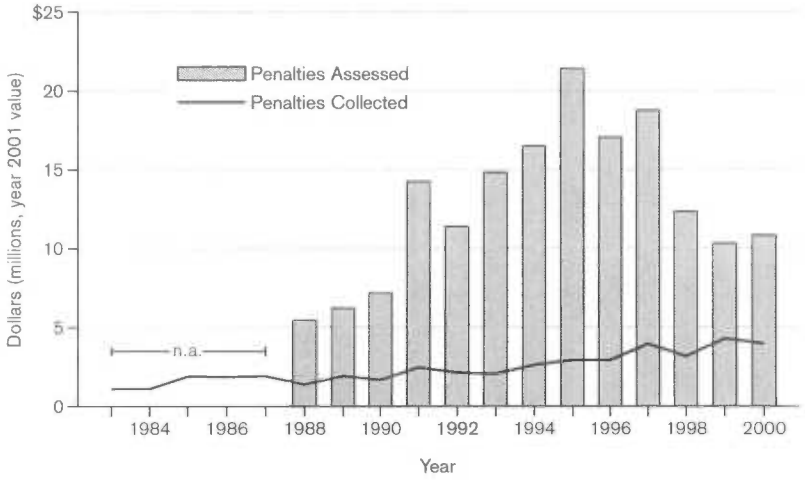

FIGURE 5.7 BOFE Penalties Assessed and Collected, by Dollar Amount, 1983–2000.
SOURCE: BOFE.

the DLSE.[16] Between 1981 and 1988 the levels of citations rose on average, but have since declined. However, the total number of citations in 2000 was 12 percent above the total in 1981—with workers' compensation citations the largest single category.

Penalties Assessed and Collected

Figure 5.7 shows the number of BOFE penalties assessed and collected since 1983. While the dollar amount of penalties assessed has fluctuated since reaching its peak in 1995, lower levels have prevailed since then; in 2000 the BOFE assessed half of what it had in 1995. In its efforts to focus on collection, the DLSE often notes that the percentage of assessments actually collected has grown from 25 percent in 1988 to 41 percent and 37 percent in 1999 and 2000, respectively. Nevertheless, the sharp increase in the collection rate recently is primarily due to the *decrease* in the penalties assessed rather than a dramatic increase in the monetary amount collected.

The bureau's collection difficulties are due primarily to business bankruptcy, name changes, and the elusiveness of cited businesses. But it is also important to keep in mind that the penalties BOFE assesses and collects are at best rough proxies for evaluating enforcement activities. Because the DLSE does not have an accounts receivable system, we cannot make a direct link between the penalties assessed and those collected in a given year; rather, we can obtain only general bureau figures for penalties assessed and penalties paid. In addition, the BOFE did not begin publishing the actual dollar amount of penalties assessed until 1988; before then, no data are available.

16. See Appendix 5F for the data associated with this figure.

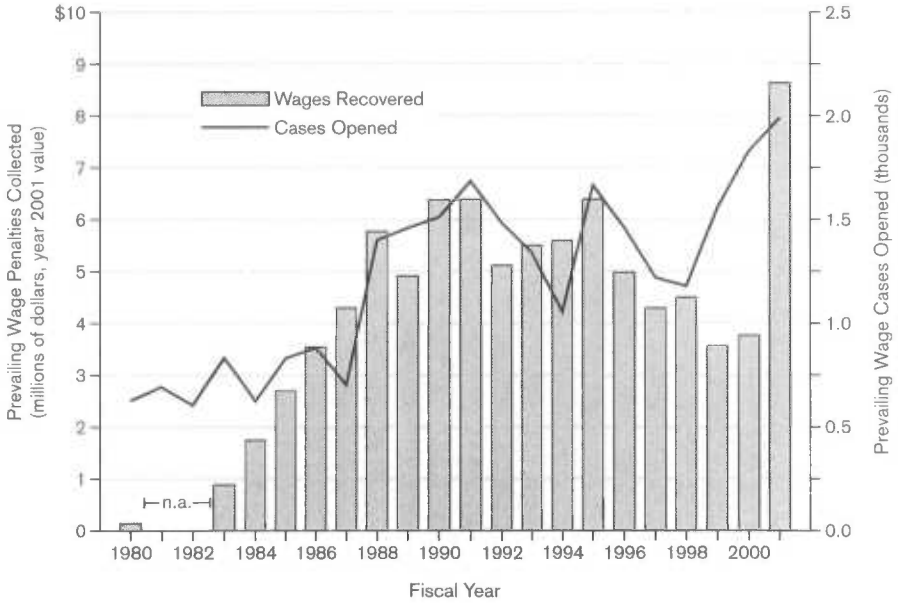

FIGURE 5.8 Prevailing Wage Cases Opened and Wages Recovered, by Dollar Amount, by DLSE and BOFE, 1980–2001.
SOURCE: DIR.

Along with the number of inspections and citations, we also examined DLSE's monitoring of public works projects—specifically, those covered by prevailing wage laws. Prevailing wage laws apply to construction contracts paid for, in part or in whole, with public funds. Figure 5.8 shows the number of cases opened and the dollar amount of penalties collected through prevailing wage enforcement. In 2001 an effort to step up investigations of these cases resulted in $8,625,208 in wages for workers on public works projects, more than double the 2000 figure and a record over the previous 20 years.

The actual extent of prevailing wage violations is much higher than Figure 5.8 would indicate, because of the statute of limitations, which expires three months from the date that a city accepts a projects and signs the necessary paperwork. Many cases are not forwarded to the DLSE; rather, workers pursue private litigation. It must be noted that although the prevailing wage is of primary importance to many labor advocates and unions, it is only a small part of the DLSE's responsibilities.

Structure and Infrastructure

In our attempts to collect the above information, several internal weaknesses—which are a challenge for any effort to evaluate the DLSE's efforts—have surfaced.

Lack of a Centralized Database. The division lacks a centralized computer database, which would be very useful for tracking labor infractions and carrying out investigative and enforcement activities. Currently, each of the 17 DLSE regional offices throughout California relies on its own individual database, but no central system links these together. In 2000 the DIR submitted a Case Management Feasibility Study Report for the Budget Act 2000, to assess the feasibility and cost of developing an automated database system.[17] The lack of a centralized database has led to several inefficiencies and challenges, such as:

- The DLSE cannot fulfill its legislative responsibilities to track offenders and assess higher penalties to repeat offenders. Thus, an employer that has multiple workplaces in different DLSE jurisdictions can be a repeat offender, but the DLSE is unable to link violations in these different jurisdictions.
- Some offices have two separate databases, and DLSE staff members must manually enter the same data into the different software programs.
- The regional offices lack the ability to merge their data or to produce statewide statistical reports. Currently, DLSE offices generate statistics from each individual database and then manually forward them to headquarters, where staff members must count and compile them by hand.
- The current computer system lacks an accounts receivable system. Thus, the DLSE cannot readily track whether a given employer has paid the assessed back wages. Obviously, this sorely limits DLSE's ability to ensure that its citations have the intended effect of penalizing noncompliance and that workers receive the wages due to them (Legislative Analyst's Office 2002).

Lack of Adequate Planning and Evaluation Tools. As noted earlier, the DLSE relies on *activity* measures, such as the number of inspections conducted, but does not collect data on *outcomes,* such as noncompliance rates, or *benchmark* measures. Furthermore, unlike Cal/OSHA—which can roughly gauge its effectiveness by analyzing the rates of occupational injuries, illnesses, and fatalities in the state—the DLSE has no reliable external data source. Efforts to develop an annual assessment model for the DLSE would be invaluable.

Currently activity measures include the number of investigations, the number of citations, the monetary value of the penalties assessed, and the monetary value of the penalties collected. These measures are not especially useful or accurate indicators of the agency's effectiveness or productivity. The inadequacy of such measures, partly a result of the agency's lack of a comprehensive database system, has hindered the agency's targeting and resource allocation process. For example, although DLSE re-

17. The Case Management System Feasibility Study Report detailed the problems that follow here.

porting sometimes identifies investigations by type (such as child labor violations or workers' compensation), the division compiles no data on whether a given inspection was programmed, a "sweep," complaint driven, or a follow-up. Without adequate outcome and benchmark measures, DLSE managers simply cannot know how their programs are working, which industries need to be targeted, and what sorts of resource deployments are necessary. Moreover, they lack the wherewithal to request and receive additional resources from the state—since they cannot demonstrate that the division is accomplishing set goals. In short, effective evaluation is a sine qua non for any agency's accountability.

Need for Better Education and Training. Currently, the DLSE's main staff training and education efforts involve dissemination of information about the agency's new responsibilities, by sending statewide memos to all DLSE regional offices and by contracting experts to train DLSE staff in their additional responsibilities.

Our research suggests that the DLSE needs a stronger focus on the education of its labor commissioners and the quality of their investigations—in two primary areas. First, when the state legislature adds new responsibilities to DLSE's plate, resources must be devoted to educating DLSE staff about the new responsibilities and any new procedures that result. And second, investigators need training in industry-specific problems and solutions. Investigators are not always adequately aware, for instance, of the violations prevalent at construction sites or how to identify them, or of how to successfully carry out an investigation in the garment industry. The DLSE is currently working with advocacy groups to identify "best practices," but for investigations to become more effective, these efforts should be expanded.

Finally, as noted above, several grassroots organizations have become more involved in informing the DLSE of violations, conducting word-of-mouth campaigns, and educating workers about their rights. For instance, Sweatshop Watch, a statewide coalition of garment worker unions and advocacy groups, conducts educational efforts and helps workers reclaim lost or unpaid wages— for a workforce that is largely undocumented and fearful of retaliatory firing. The organization is currently attempting to establish better communications with the DLSE and to consult with the division on how to enforce the laws more effectively.

TRENDS IN CAL/OSHA ENFORCEMENT, 1970–2000

Budget

Cal/OSHA's field enforcement budget, which has both federal and state components, has fluctuated in response to state and national political will. For instance, 1980 was the year of Cal/OSHA's greatest budget allocation, under Governor Jerry Brown. During that same year, however, Ronald Reagan was elected president, and

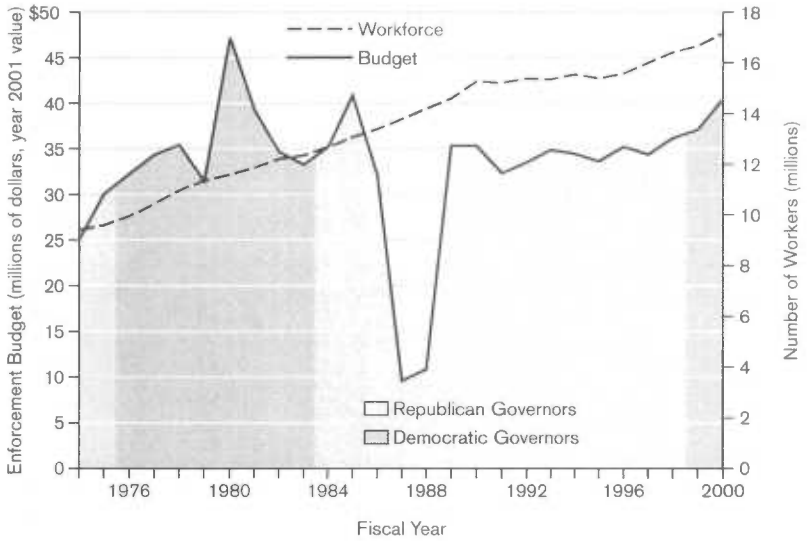

FIGURE 5.9 Cal/OSHA Field Enforcement Budget and the Number of Workers in California, Fiscal Years 1974-2000.
SOURCE: California State Budget.

the subsequent shift in national labor policy priorities affected California's internal policies. The following year the DIR director warned that:

> [. . .1981 ushered] in a new kind of reality. Massive and radical shifts in national economic policies have accompanied an assault on both the social programs and the regulatory functions of government—particularly in programs administered by DIR. Never in modern times has a state administration's commitment to the welfare of working people been so at odds with national policy. . . . The federal-state partnership that has evolved out of the nation's commitment in 1970 to the safety and health of American workers especially has come under a dark cloud of shifting federal policies. (California Department of Industrial Relations 1981)

These shifting policy priorities, however, had minimal impact on Cal/OSHA's immediate budget allocation. Cal/OSHA experienced its most drastic cut in 1987 when Governor George Deukmejian ordered the disengagement of the Cal/OSHA State Plan's provision to inspect private sector workplaces and relinquished the task to the federal Occupational Safety & Health Administration. Although federal funding for the agency's consultation activities continued in both the public and the private sector, Cal/OSHA's field enforcement budget plummeted from $32 million in FY 1986/87 to $9.6 million in 1987/88. In 1988 California voters voiced their disapproval by passing Proposition 97—an initiative that various California unions had succeeded in placing on the ballot. Proposition 97 restored the State Plan's private sector enforcement functions and boosted Cal/OSHA's field enforcement funding to $35.1

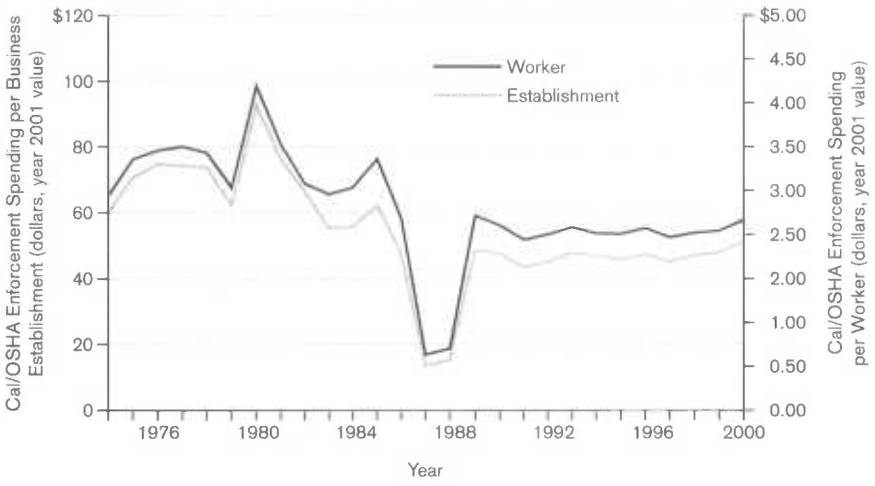

FIGURE 5.10 Ratio of Dollars Spent on Cal/OSHA Enforcement to the Number of Business Establishments and Workers in California, Fiscal Years 1974-2000.
SOURCES: Computed from DIR, EDD, and California Budget Project (CBP) data.

million in 1989–90. Since then, funding levels have remained relatively steady and increased to $40.3 million in FY 2000/01.

Figure 5.9 tracks changes in the budgetary allocation for Cal/OSHA's field enforcement, along with the growing workforce in California, over the preceding 27 years. Although Cal/OSHA's budget has slowly increased since 1998, it is still below the levels of the 1970s in terms of the numbers of workers and establishments in the state, as Figure 5.10 shows.

Staffing

In its 2001 series on Cal/OSHA, the *Orange County Register* reported that the federal government estimated—in 1980—that Cal/OSHA needed 805 inspectors to monitor health and safety violations and investigate serious injuries and deaths (Shulyakovskaya 2001). But staffing levels for inspectors have never come close to that level. In 2000, for instance, Cal/OSHA had 250 inspectors.

Staffing levels typically reflect the budgetary allocation; and indeed, there was a drastic decline in Cal/OSHA staffing in 1987 and 1988. Figure 5.11 tracks Cal/OSHA's overall enforcement staffing (including managers and support staff as well as inspectors) since 1974. During the past 20 years, there has actually been a decrease in staffing: from an authorized 410.8 positions in FY 1980–81 to 398 authorized positions in 2000–01—again, despite the agency's growing responsibilities and California's much larger workforce today.

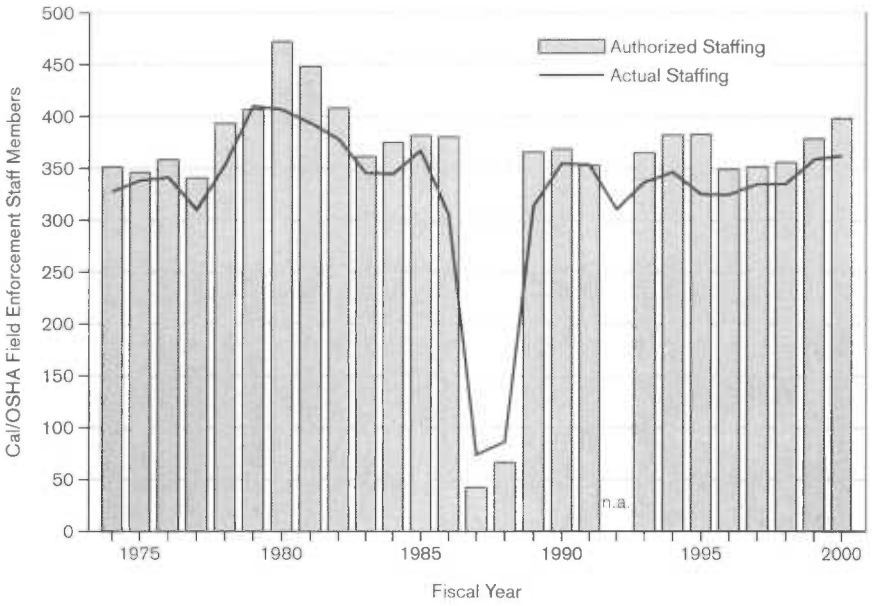

FIGURE 5.11 Cal/OSHA Enforcement Staffing, at Authorized and Actual Levels, Fiscal Years 1974-2000.
SOURCE: California State Budget.

It is not surprising, then, that Cal/OSHA staff members frequently complain of overwhelming caseloads. In November 2001 the California Senate Labor and Industrial Relations Committee held a hearing on Cal/OSHA's response to workplace fatalities. In that hearing, Cal/OSHA was presented with a list of problems, ranging from a lack of bilingual staffing to delayed response times after worker injuries and deaths.[18] Cal/OSHA representatives attributed many of the problems to staffing shortages; and they also cited noncompetitive salaries for state-employed engineers, namely, 20 percent lower than the salaries of state-contracted engineers from private consulting firms (Professional Engineers in California Government 2001).

Although Cal/OSHA's staffing levels, like the DLSE's, have not kept pace with the growing number of workers and workplaces in California, the agency's staffing levels have proven far less volatile than those of the DLSE (except during the period of Cal/OSHA's disengagement in the late 1980s). Figure 5.12 estimates the number of

18. The committee had scheduled the hearing in response to the *Orange County Register* article mentioned above, which reported that in 29 percent of Cal/OSHA's death investigations in that county, inspectors arrived anytime from 4 to 82 days after the agency learned about a fatal accident (Shulyakovskaya 2001).

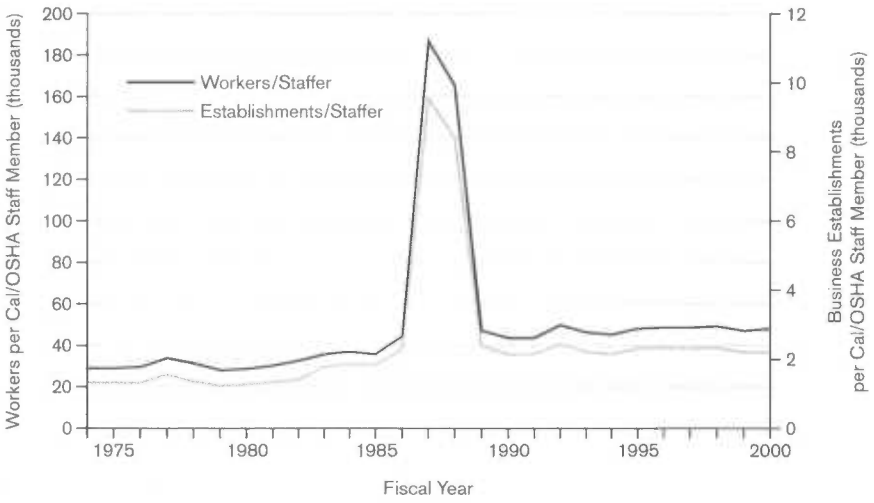

FIGURE 5.12 Actual Cal/OSHA Enforcement Staffing per Business Establishment and per Worker in California, Fiscal Years 1974–2000.
SOURCE: Computed from DIR, EDD, and California Budget Project (CBP) data.

California workers and establishments per Cal/OSHA enforcement staff member since 1974.

Inspections and Citations

Despite its relatively steady levels of budget and staffing, Cal/OSHA citations and investigations have significantly decreased since the 1970s. Figure 5.13 shows the numbers of workplace inspections and citations over time. By 2000 the number of inspections had decreased by 41 percent, and the number of citations, by 65 percent, since 1974.

The numbers of inspections and citations alone are measures of activity, not of effectiveness. Nevertheless, if employers perceive that there is a reasonable probability that they may be faced with an inspection, they may be more observant of the law. Art Carter, then Chief of Cal/OSHA under Governor Jerry Brown, emphasized this point in 1978, stating, "With only about 200 compliance personnel to cover the entire state, it is clearly impossible for Cal/OSHA to rely on enforcement alone to improve conditions in the workplace. Nor would this be desirable, for when employers take the initiative to provide safe and healthful workplaces, without the need for enforcement, everybody benefits" (*Cal/OSHA News* 1978).

The decreasing rates of inspections cast doubt on their usefulness as a deterrent, however. Further insight into the decline and its likely consequences lies in an analysis of the *types* of inspections Cal/OSHA has conducted. The agency conducts both

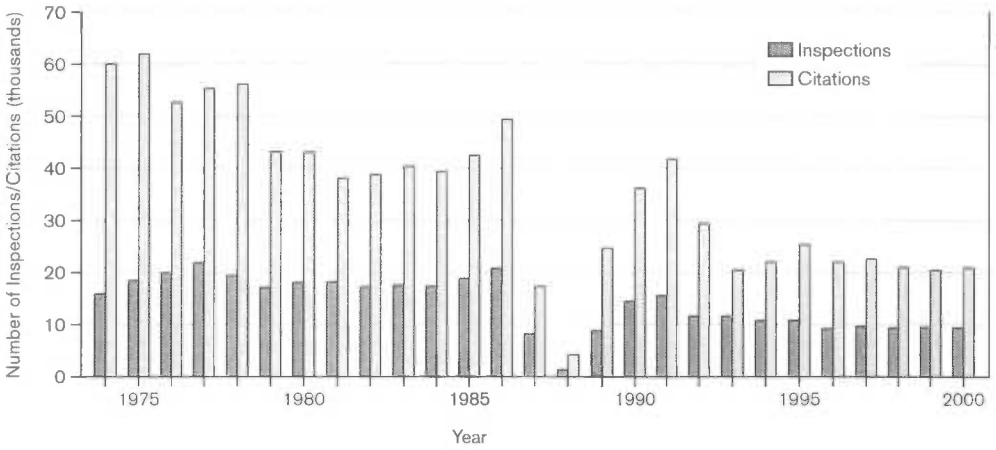

FIGURE 5.13 Cal/OSHA Inspections and Citations, 1974–2000.
SOURCE: California Division of Labor Statistics and Research.

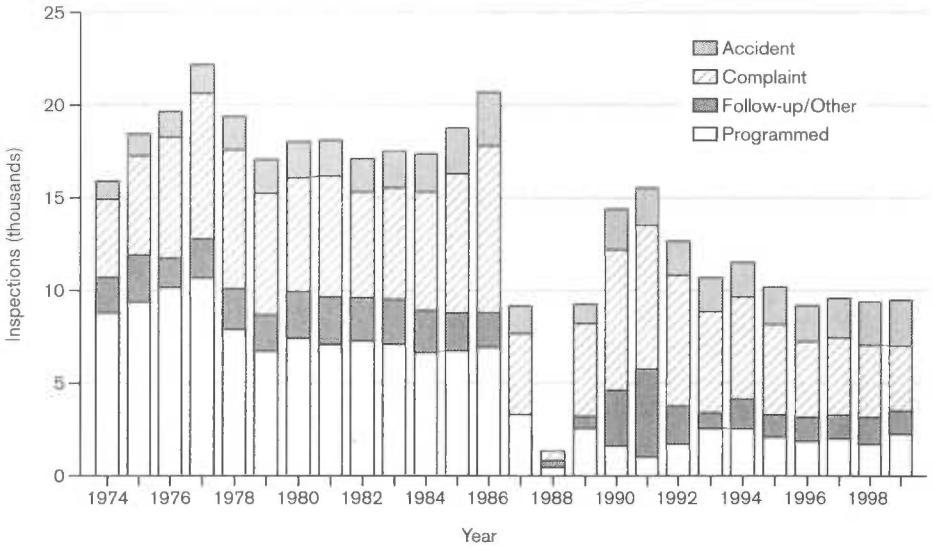

FIGURE 5.14 Cal/OSHA Inspections, Stacked by Reason for the Inspection, 1974–1999.
SOURCE: Cal/OSHA.

reactive inspections—in response to a report of a serious work-related illness or injury or a death—and programmed inspections—preventive efforts that target industries known to be "high hazard." An increase or decrease in reactive inspections could indicate that, in California overall, greater or fewer incidents of occupational safety and health violations are taking place.

Figure 5.14 suggests that, instead, a sharp decline in programmed inspections since

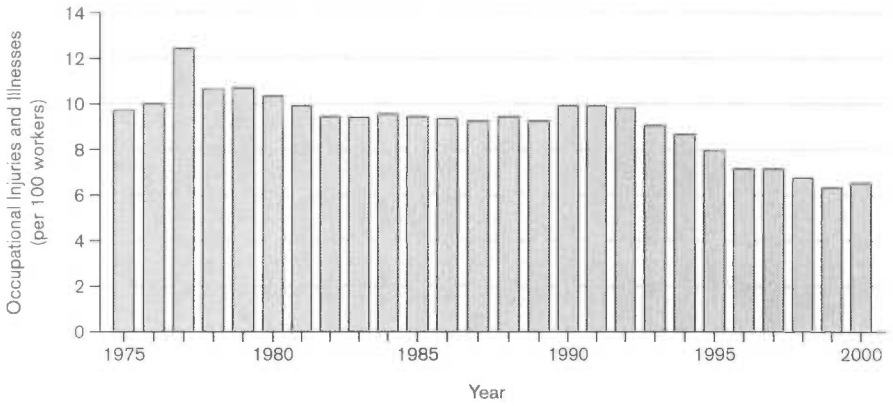

FIGURE 5.15 Occupational Illness and Injury Rates in California, 1975–2000.
SOURCES: Computed from DIR data and California Statistical Abstract.

1987 accounts for the bulk of the drop in Cal/OSHA inspections overall. The number of investigations conducted in response to complaints or accidents, or for follow-up or other reasons, has remained relatively stable over time. To the extent that employers in hazardous industries are aware of the decline, the drop in programmed inspections suggests that they may be having a smaller deterrent effect.

External Data for Cal/OSHA

Is Cal/OSHA effective in protecting California's workers? Unlike the DLSE, Cal/OSHA is able to gauge its effectiveness to some degree by using data that reflect the state of workers' health and safety. Both the U.S. Bureau of Labor Statistics and the California Employment Development Department maintain databases on two such measures: the rate of occupational illnesses and injuries, and rate of occupational fatalities. The data on illnesses and injuries should be considered critically, however, because both databases rely on information in employer logs; and there are many reasons to suspect that the logs under-report the actual rates of illnesses and injuries (Brown 2001). The fatality data are more comprehensive; they are based on the *Census of Fatal Occupational Injuries,* a cooperative effort between the DIR, the U.S. Department of Labor, and the U.S. Bureau of Labor Statistics that compiles fatality data from various sources (including death certificates, workers' compensation claims and reports, and reports by regulatory agencies, medical examiners, police, news agencies, and other nongovernmental organizations).

The available data suggest that both illness and injury rates and fatality rates have fallen since Cal/OSHA's inception, as shown in Figures 5.15 and 5.16 and in the supporting data in Appendix 5G. Cal/OSHA may thus have had some effectiveness in regulating and protecting workers. California's injuries and illnesses rate in 2000

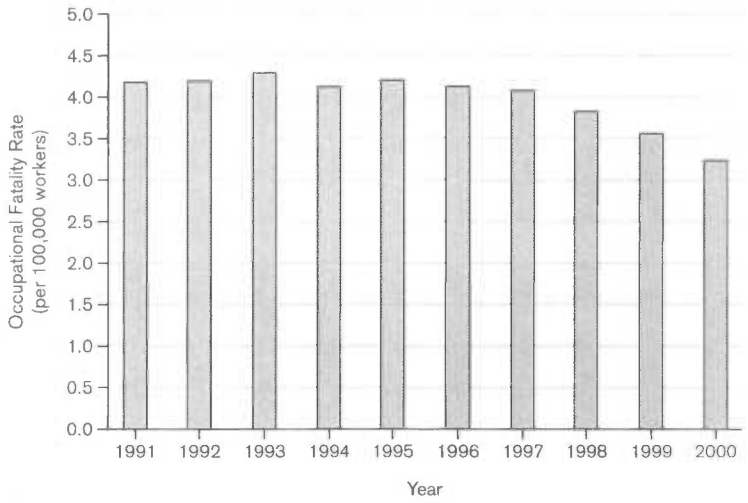

FIGURE 5.16 Occupational Fatality Rates in California, 1991–2000.
SOURCES: Computed from EDD and U.S. Bureau of Labor Statistics data.

was 37 percent lower than in 1980. Similarly, in 1974 there were 727 occupational fatalities in California, but by 2000 that number had declined to 553, or a 24 percent decrease.[19]

Thus, despite the relative reduction in Cal/OSHA enforcement staff, the agency may nonetheless have been effective to some degree in regulating the workplace and protecting workers. Cal/OSHA attributes the declines in occupational health and safety problems to its enforcement work and to its having shifted "some of its resources from investigating accidents and fatalities after they happen, to preventing them" (California State Legislature 2001). The latter effort, however, is not evident from the long-term decline in programmed inspections. Although the decreases in illnesses or injuries and fatalities in the state may be indicative of Cal/OSHA's overall effectiveness in enforcing labor laws and protecting workers, there are other possible explanations as well. One such alternative involves the changing composition of the California labor market. Since 1992, while employment in manufacturing has remained stable in absolute terms, the generally less hazardous service sector gained almost 2.5 million jobs, and the retail trade sector grew by nearly 500,000 jobs (see California State Legislature 2001). More research is needed on the degree to which this compositional change can account for the declining number of illnesses, injuries, and fatalities in the state.

19. Data on California's occupational fatalities are unavailable for the years 1986–90; data from 1974 to 1985 are based a different methodology and are thus not included in Figure 5.16. We calculated fatality rates by dividing the number of fatal accidents by the size of California's workforce in each year.

CONCLUSION

The Davis administration has sought to strengthen the DIR and to improve labor law enforcement in California. Funding and staffing have indeed grown. The new Labor and Workforce Development Agency, which is bringing the state's various employment-related agencies together under one organizational roof, is also a promising development, at least for the long term. The consolidation, under a single Labor Secretary, may help streamline labor law enforcement and facilitate the sharing of resources and data among agencies.

Nevertheless, as we have seen, neither the Division of Labor Standards Enforcement nor Cal/OSHA has yet returned to its previous staffing levels on a number of measures, especially in relation to the state's growing workforce and number of business establishments. The recent increase in investigations within the DLSE and the continually decreasing injury and fatality rates give one hope that the agencies are turning around, but there is still a long way to go. Certainly restoring funding to more adequate levels would be an important first step, along with the centralization of resources under the new labor agency. A further critical step would be to institute and institutionalize a systematic process for gathering and analyzing data on meaningful measures of agency effectiveness, as opposed to measures of mere activity. Proper assessments of effectiveness will be essential to improvements in California's labor law enforcement in the years to come.

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APPENDIX 5A. Scope, Methodology, and Limitations of the Research

We began our work by reviewing the annual and biennial reports of the Department of Industrial Relations (DIR) over the past thirty years. We also reviewed California budget allocations for the DIR from 1970 to 2002.

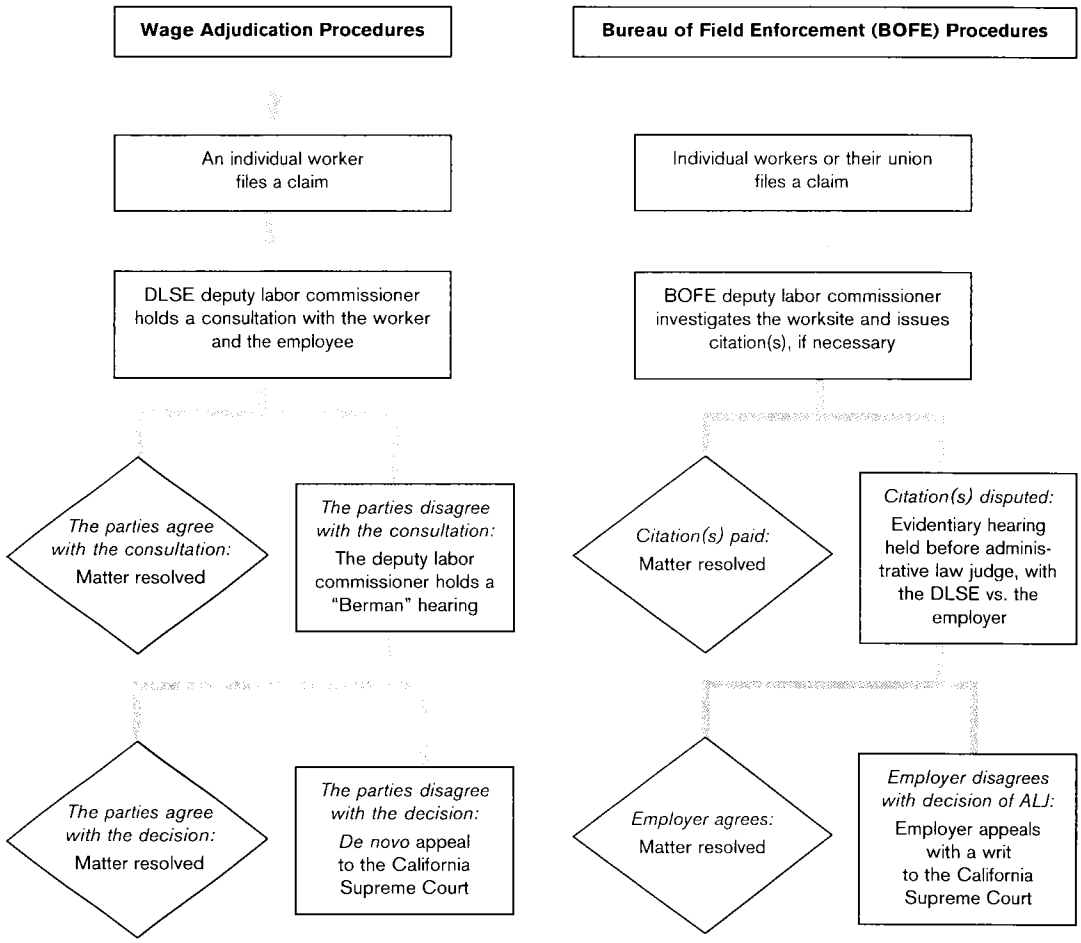
The DLSE provided us with outcome measures from their enforcement activities. These included BOFE Statistical Reports (1987-2000), Summary of Labor Standard Enforcement Statistics for Hearings, Targeted Industries Reports, and DLSE staffing levels. With these data we analyzed the composition of the enforcement staff, such as the number of employees, the ratio of DLSE employees to the numbers of establishments and workers in California, and the number of bilingual staff members. We also looked at the possible causes of variations in labor law enforcement from year to year, such as staffing and budgetary inputs, enforcement outputs (such as inspections and citations), administrative criteria for investigations, and the agency's external relationships.

We identified and interviewed more than 30 key administrators at the DIR the DLSE, as well as enforcement staff members, active stakeholder groups, and scholars, to lend perspective and institutional memory to our efforts. We strategically chose respondents, depending on their position within a given organization, to represent multiple perspectives. Our interviews with DIR and DLSE employees and management focused on their activities related to labor law enforcement, including the division's performance, strengths, challenges, and legislative mandates. We also asked about DLSE's vision and how the interviewees thought the agency could be more effective—in terms of maximizing both labor law enforcement and the efficiency with which the agency spends taxpayer dollars.

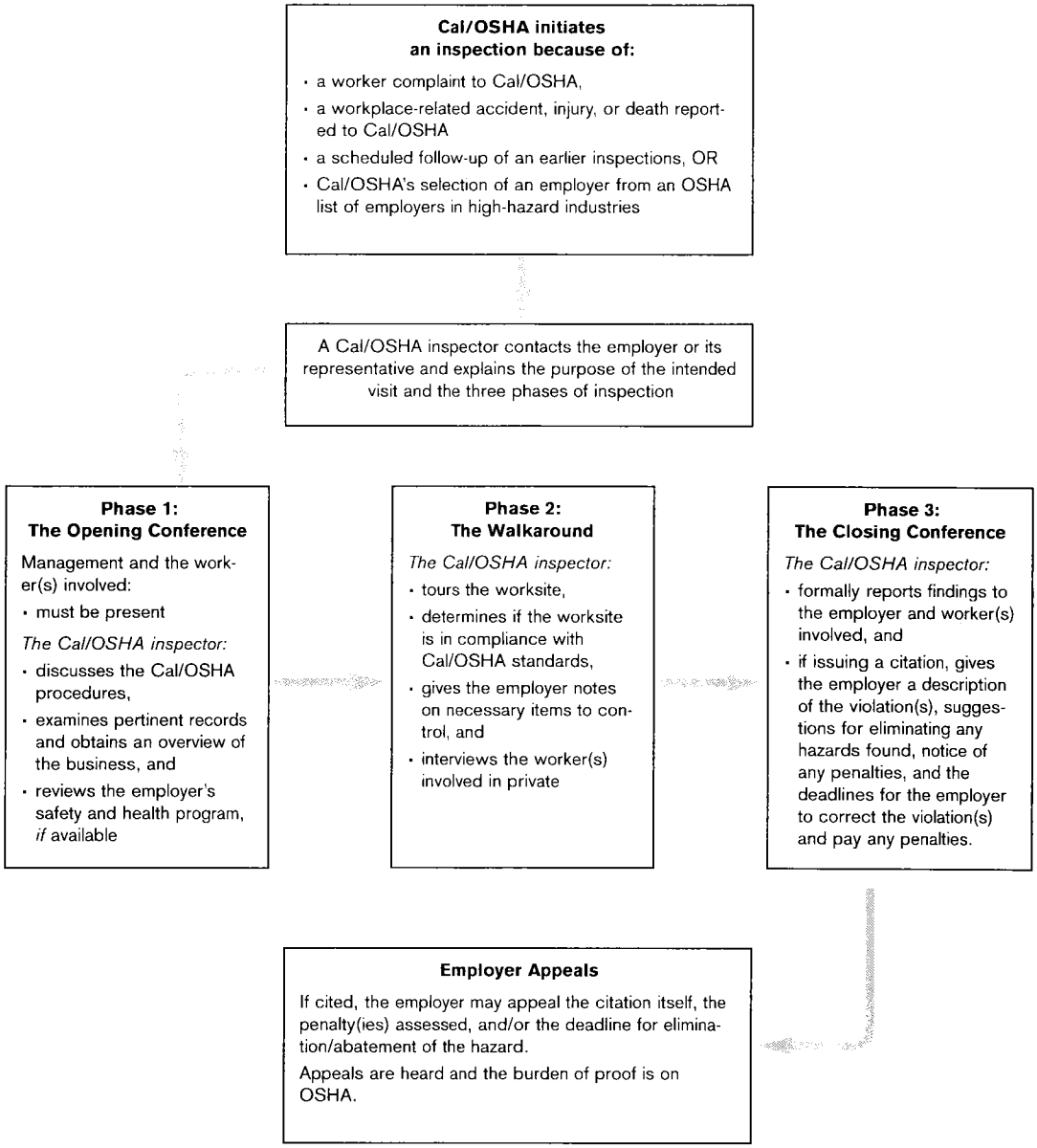
While conducting our research, we encountered several hurdles to a comprehensive analysis. Barriers to data collection included:

- *Changes in Methodology.* Longitudinal data was often difficult to collect or analyze because over the years DLSE changed the kinds of data collected or the methodology used to collect or quantify the data.
- *Changes in Organizational Structure.* As the enforcement bodies changed and evolved, policies and procedures for data collection also changed. This was a specific issue for the DLSE when the Bureau of Field Enforcement (BOFE) was established in 1983 as a new branch within the DLSE, which subsequently hindered longitudinal analysis.
- *Time Lags.* The specific effects of policies, budgetary changes, and legislation are confounded by the time lag it takes the agencies to implement and become effective at a policy. Therefore, the data might not reflect these changes accurately within a given year.
- *Interview Sampling.* We identified many of our interview subjects outside the DLSE and DIR through newspaper articles, publications, hearing agendas, and word of mouth. We strategically chose respondents, depending on their position within their organization, to represent multiple perspectives. This sampling method is often referred to as snowball sampling, and some statisticians considered it an inaccurate or biased reflection of the population.

APPENDIX 5B. DLSE Enforcement Procedures



APPENDIX 5C. CAL/OSHA ENFORCEMENT PROCEDURES



APPENDIX 5D. DLSE Data on Budgets, Staffing, Enforcement Actions, and Numbers of Establishments and Workers, 1970–2000

Year	*Budget (in ooos)*	*DLSE Staffing Authorized*	*DLSE Actual Staffing*	*BOFE No. of inspections*	*BOFE Citations Issued*	*BOFE Penalties Assessed*	*BOFE Penalties Collected*	*Number of Establishments in California*	*Workforce in California*
1970	$16,756	254.1	252.4					345,263	8,167,000
1971	$15,342	254.4	262.8					344,206	8,407,000
1972	$16,618	n.a.[d]	279.7					349,096	8,653,000
1973	$18,720	[d]	277.9					358,313	8,910,000
1974	$18,758	[d]	297.3					421,068	9,317,000
1975	$19,990	300.0	332.4					426,537	9,539,000
1976	$22,416	318.5	389.9					433,806	9,896,000
1977	$26,880	483.5	421.8					465,944	10,367,000
1978	$28,080	455.8	440.7					480,846	10,911,000
1979	$30,379	450.8	420.4					507,350	11,268,000
1980	$32,150	440.7	422.2					512,902	11,536,000
1981	$30,997	456.5	440.8		2,043[c]		$952,374[c]	519,413	11,811,000
1982	$29,888	431.0	390.5		2,613		$1,133,173	526,168	12,177,000
1983	$29,329	431.0	390.5		2,520		$1,065,397	610,121	12,281,000
1984	$31,384	423.5	399.4		2,448		$991,385	632,841	12,611,000
1985	$33,698	419.2	417.4		4,254		$1,876,461	662,744	12,981,000
1986	$32,699	414.3	399.1		3,856		$1,796,352	683,221	13,332,000
1987	$33,555	401.4	395.5	8,448[b]	4,273		$1,874,898	703,258	13,738,000
1988	$34,985	415.2	419.4	12,282	5,463	$5,423,146[a]	$1,379,474	716,949	14,132,000
1989	$34,594	429.1	396.6	12,008	4,935	$6,159,757	$1,882,207	733,755	14,517,000

APPENDIX 5D *(continued)*

Year	*Budget (in 000s)*	*DLSE Staffing Authorized*	*DLSE Actual Staffing*	*BOFE No. of inspections*	*BOFE Citations Issued*	*BOFE Penalties Assessed*	*BOFE Penalties Collected*	*Number of Establishments in California*	*Workforce in California*
1990	$33,693	411.2	385.4	8,652	4,122	$7,137,629	$1,665,686	745,686	15,193,000
1991	$30,698	347.9	365.3	6,967	2,900	$14,203,167	$2,450,149	747,688	15,131,000
1992	$26,721	327.0	320.6	10,417	2,003	$11,316,060	$2,055,102	746,789	15,307,000
1993	$27,088	343.0	301.5	11,138	3,746	$14,760,554	$1,999,869	736,691	15,259,000
1994	$27,266	355.3	300.2	8,426	3,834	$16,457,921	$2,524,387	735,570	15,462,000
1995	$28,286	346.8	306.7	7,784	2,949	$21,404,381	$2,873,163	740,583	15,312,000
1996	$30,183	333.5	314.0	5,098	2,966	$17,014,236	$2,861,599	750,478	15,512,000
1997	$28,945	329.7	320.2	5,689	3,207	$18,710,519	$3,875,338	766,009	15,947,000
1998	$30,080	345.5	324.1	4,876	2,494	$12,247,843	$3,160,707	773,925	16,337,000
1999	$37,850	417.1	377.4	5,299	2,461	$10,278,237	$4,245,512	784,935	16,597,000
2000	$41,088	469.1	419.0	5,892	2,279	$10,748,593	$3,946,677	n.a.[a]	17,091,000

SOURCES: DLSE, California Budget, and *County Business Patterns.*

[a] Reporting category began in 1988.

[b] Reporting category began in 1987.

[c] Reporting category began in 1980.

APPENDIX 5E. Citations issued by DLSE-BOFE, 1981–2000

Year	*Workers' Compensation*	*Child Labor Penalties*	*Cash Pay Penalties*	*Garment Industry Penalties*	*Unlicensed Contractor Penalties*	*Minimum Wage Penalties*	*Overtime Citations*	*Total Citations*
1981	681	760	356	69[a]	177			2,043
1982	775	578	411	480	369			2,613
1983	625	394	482	532	487			2,520
1984	599	609	463	353	424			2,448
1985	1,124	989	691	893	557			4,254
1986	1,063	965	592	817	419			3,856
1987	1,330	1,178	642	645	478			4,273
1988	1,873	1,340	722	1,040	488	134[b]		5,463
1989	1,776	963	629	1,234	333	237		4,935
1990	1,415	833	623	954	297	132		4,122
1991	1,096	440	456	748	160	54		2,900
1992	1,054	220	281	361	56	31		2,003
1993	2,844	251	355	247	16	33		3,746
1994	2,550	256	410	553	29	36		3,834
1995	1,406	310	478	676[c]	38	41		2,949
1996	1,357	293	595	580[c]	64	77		2,966
1997	1,381	256	661	740[c]	73	96		3,207
1998	1,099	213	553	493[c]	34	102		2,494
1999	1,136	299	453	449[c]	72	52		2,461
2000	937	355	384	432[c]	38	55	78[d]	2,279

SOURCE: California Department of Labor Standards Enforcement.

[a] These data are for six months; the law went into effect on July 1, 1981.

[b] The reporting category began in 1988.

[c] The DLSE terms the garment industry penalties "garment registration and record keeping."

[d] The reporting category began in 2000.

APPENDIX 5F. CAL/OSHA Data on Budgets, Staffing, and Enforcement Actions, 1974–2000

Year	*Cal/OSHA Budget (in 000s)*	*Staff Authorized*	*Staff Filled*	*Inspections*	*Violations/ Citations issued*	*Penalties Collected*	*Penalties Assessed*
1974	$ 24,778	349.6	326.8	15,789	60,051		$4,319,743
1975	$ 29,992	345.3	336.4	18,321	62,000		$3,886,039
1976	$ 32,184	357.0	339.2	19,598	52,572		$4,095,000
1977	$ 34,214	339.2	309.3	21,760	55,234	$2,185,906	$5,224,268
1978	$ 35,263	392.7	352.4	19,306	55,961	$2,378,748	$5,297,882
1979	$ 31,276	405.3	410.8	16,938	43,017	$2,020,088	$4,141,818
1980	$ 47,064	410.8	405.3	17,938	42,907	$1,960,335	$3,682,624
1981	$ 39,148	447.1	392.5	17,995	37,979	$1,781,470	$3,059,373
1982	$ 34,525	407.3	376.5	17,024	38,600	$1,616,347	$2,619,996
1983	$ 33,156	360.0	344.3	17,348	40,242	$1,622,880	$2,466,373
1984	$ 35,013	374.3	343.1	17,226	39,253	$1,563,848	$2,291,147
1985	$ 40,776	380.6	366.2	18,694	42,337	$2,348,120	$3,334,656
1986	$ 32,038	379.3	304.5	20,691	49,229	$2,781,687	$3,940,723
1987	$ 9,558	42.1	73.7	8,194	17,231	$9,15,870[b]	$1,261,279[b]
1988	$ 10,842	66.3	85.3	1,339	4,099	[a]	[a]
1989	$ 35,100	364.6	312.8	8,766	24,520	[c]	[c]
1990	$ 35,073	367.6	352.4	14,287	36,109		$48,386
1991	$ 32,205	351.5	[a]	15,433	41,596		$53,659
1992	$ 33,374		310.4	11,566[d]	29,259		$12,222,000
1993	$ 34,730	364.4	335	11,566[d]	20,328		$11,931,000

1994	$ 34,214	381.0	346.1	10,708[d]	21,803	$16,680,000
1995	$ 33,511	382.9	323.8	10,708[d]	25,236	$16,402,000
1996	$ 35,005	348.7	323.8	9,103	21,821	$12,760,000
1997	$ 34,207	350.5	333.5	9,531	22,505	$12,430,000
1998	$ 35,961	355.2	333.6	9,322	20,889	$10,586,541
1999	$ 36,969	377.3	358.5	9,437	20,280	$10,397,495
2000	$ 40,295	398.0	361.5	9,298	20,878	

SOURCE: California Department of Industrial Relations, Division of Labor Statistics and Research.

[a] Data are unavailable.

[b] Data are for the first six months of 1987.

[c] Data are unavailable because of loss of computer.

[d] Estimated based on DIR biennial reports.

APPENDIX 5G. CAL/OSHA External Data on Occupational Fatalities, Injuries, and Illnesses, 1974–2000

Year	*Occupational Fatalities*	*Fatality Rate*	*Injuries & Illnesses (per 100 workers)*
1974			10.9
1975			9.7
1976			10.0
1977			12.4
1978			10.6
1979			10.7
1980			10.3
1981			9.9
1982			9.4
1983			9.4
1984			9.5
1985			9.4
1986			9.3
1987			9.2
1988			9.4
1989			9.2
1990			9.9
1991	634	4.19	9.9
1992	644	4.21	9.8
1993	657	4.31	9.0
1994	639	4.13	8.6
1995	646	4.22	7.9
1996	641	4.13	7.1
1997	651	4.08	7.1
1998	626	3.83	6.7
1999	591	3.56	6.3
2000	553	3.24	6.5

SOURCE: California Department of Industrial Relations, Division of Labor Statistics and Research.

APPENDIX 5H. Labor Law Enforcement Mandates in Recently Enacted California Legislation, 1997–2001

The following summaries of California legislation are based on listings in California State Legislature (2001). The names in parentheses below are the Senate or Assembly sponsors of the bills.

2001

SB 1125 (BURTON), CHAPTER 147, STATUTES OF 2001, SIGNED. Makes farm labor contractor's wage surety bonds and a portion of their license fees payable for damages arising from labor law violations. AB 423 (Hertzberg), Chapter 157, Statutes of 2001, created specialized farm labor enforcement units, called for additional verification of farm labor contractor licenses, and enhanced criminal penalties for failure to pay wages.

SB 588 (BURTON), CHAPTER 804, STATUTES OF 2001, SIGNED. Permits federally recognized joint labor-management committees' access to certified payrolls on public works projects, and permits such committees to seek civil court action to remedy prevailing-wage violations.

AB 1025 (FROMMER), CHAPTER 821, STATUTES OF 2001, SIGNED. Requires employers to provide reasonable unpaid break time and to make reasonable efforts to provide the use of an appropriate room for an employee to express breast milk for an infant.

AB 1675 (KORETZ), CHAPTER 948, STATUTES OF 2001, SIGNED. Establishes requirements related to wages, hours, and working conditions for sheepherders.

AB 1069 (KORETZ), CHAPTER 134, STATUTES OF 2001, SIGNED. Permits the state labor commissioner to reconsider a formerly dismissed discrimination complaint if the U.S. Department of Labor determines the complaint had merit.

2000

AB 1646 (STEINBERG), CHAPTER 954, STATUTES OF 2000, SIGNED. Streamlines the procedures for reviewing a decision to withhold funds from a contractor because of the contractor's failure to pay a prevailing wage on a public works project; revises the procedures for challenging a decision to withhold funds from a contractor because of the contractor's failure to pay a prevailing wage on a public works contract; and makes a contractor and subcontractor expressly jointly and severally liable for all amounts due (including underpaid wages and penalties), pursuant to a final order of the state labor commissioner for a violation of the prevailing-wage law.

AB 2509 (STEINBERG), CHAPTER 876, STATUTES OF 2000, SIGNED. Makes various changes to the Labor Code relative to rights, remedies, and procedures; streamlines and alters many enforcement and administrative procedures of wage-and-hour laws before the state labor commissioner and the courts; and increases civil penalties and damages for violations.

SB 1785 (FIGUEROA), CHAPTER 318, STATUTES OF 2000, SIGNED. Allows the administrative director of the Division of Workers' Compensation to use nationally recognized standards in the development the workers' compensation information systems.

1999

SB 26 (ESCUTIA), CHAPTER 222 / STATUTES OF 1999, SIGNED. Declares that a finding of age discrimination may be made when salary differences are used to differentiate among employees to determine who will be terminated, if using salary differences adversely affects older workers as a group.[1]

AB 1395 (CORREA), CHAPTER 302, STATUTES OF 1999, SIGNED. Requires the Division of Labor Standards Enforcement to protect the confidentiality of any employee who reports a violation regarding a public works project.

AB 555 (REYES), CHAPTER 556, STATUTES OF 1999, SIGNED. Requires the state labor commissioner to provide the California Highway Patrol with a list of all registered farm labor vehicles on a quarterly basis; extends the inspection liability for farm labor vehicles to vehicle owners and farm labor contractors; and increases fines for violations of inspection requirements.

SB 951 (HAYDEN AND JOHNSTON), CHAPTER 673, STATUTES OF 1999, SIGNED. Expands the protections provided to employees who disclose improper governmental activities to the state auditor to apply to state employees who disclose improper governmental activities to anyone or who refuse to obey an illegal order.

AB 613 (WILDMAN), CHAPTER 299 / STATUTES OF 1999, SIGNED. Requires the inclusion of the janitorial and building maintenance industry in state efforts to enforce tax and labor laws.

1998

SB 1514 (SOLIS), CHAPTER 276, STATUTES OF 1998, SIGNED. Imposes civil penalties on garment manufacturers for specific violations relating to workers, registration, and records.

1997

SB 1071 (POLANCO AND LOCKYER), CHAPTER 92, STATUTES OF 1997, SIGNED. Clarifies that agricultural workers who voluntarily quit and are not paid on time are entitled to be receive penalty payments from their employers. Wages owed agricultural employees are due and payable twice monthly at designated times. When an employee voluntarily quits, he or she must be paid within 72 hours.

AB 1448 (ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT), CHAPTER 35, STATUTES OF 1997, SIGNED. Increases from $100 to $250 the civil penalty imposed on an employer for violation of the minimum wage requirement.

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1. Older workers, defined by federal law as those over the age of 40, are increasing as a percentage of the workforce. As baby boomers age, they are healthier and are working longer. The U.S. Department of Labor predicts that by the year 2005, over half of all workers will be over the age of 40.

EXHIBIT E

Department of Industrial
Division of Labor Standards Enforcement

MEMORANDUM

Date December 23, 1999

From: Miles E. Locker
Chief Counsel for the Labor Commissioner

Marcy V. Saunders
State Labor Commissioner

To: All DLSE Professional Staff
Andrew Baron, IWC Executive Secretary

Subject: Understanding AB 60: An In Depth Look at the Provisions of the "Eight Hour Day Restoration and Workplace Flexibility Act of 1999"

This Memo was drafted prior to the IWC's adoption of the Interim Wage Order,and as such, this Memo does not purport to interpret the Interim Wage Order. To the extent that any provisions of the Interim Wage Order may be inconsistent with this Memo, the Wage Order provisions would prevail.

AB 60, which was enacted by the Legislature and signed by Governor Davis earlier this year, will take effect on January 1, 2000. It is therefore critically important that all DLSE professional staff take some time to learn about the provisions of this law, and to understand some of the questions that will arise in its interpretation and enforcement. This memo will summarize each section of the bill, with a focus on whether and how it changes existing law. We will also discuss commonly asked questions about AB 60, and by summarizing from recently issued or pending opinion letters, provide the answers to these questions.

AB 60 ---- An Introduction to the Substantive Provisions

The Legislature named AB 60 the "Eight Hour Day Restoration and Workplace Flexibility Act of 1999. That name tells us the two primary purposes behind the legislation --- first, to restore daily overtime in California; that is, to bring back the general requirement for overtime pay after eight hours of work in a day, a requirement that the Industrial Welfare Commission ("IWC") had eliminated from Wage Orders 1 (manufacturing industry), 4 (professional, technical, clerical, and mechanical occupations), 5 (public housekeeping industry), 7 (mercantile industry), and 9 (transportation industry), with the adoption of the 1998 wage orders. Section 21 of AB 60 provides that these 1998 wage orders (1-98, 4-98, 5-98, 7-98, and 9-98) shall be null and void; and that in their place, the pre-1998 wage orders (1-89, 4-89 as amended in 1993, 5-89 as amended in 1993, 7-80, and 9-90, are reinstated from January 1, 2000 until no later than July 1, 2000, at which point the IWC is required, pursuant to section 11 of the bill (which adds section 517 to the Labor Code) to adopt new wage orders.

It is very important to understand, however, that although only 5 of the 15 IWC wage orders that are currently in effect will become null and void on January 1, 2000, AB 60 as a whole applies to all California workers except for those who are expressly exempted by the bill itself, or those who were expressly exempted from a pre-1998 wage order.- Section 9 of AB 60 adds section 515 to the Labor Code, which provides, at subsection (b)(2), that except for AB 60's new test for the administrative, executive and professional exemption found at section 515(a), "nothing in this section requires [the IWC] to alter any exemption from provisions regulating hours of work *that was contained* in any valid wage order in effect in 1997," and that "except as otherwise provided in [AB 60], the [IWC] may review, retain or eliminate any exemption from provisions regulating hours of work that was contained in any valid wage order in effect in 1997."

With these general principles in mind, we can answer the most commonly asked questions about AB 60 coverage. 13 of the pre-1998 wage orders expressly exempt public employees from their coverage. These public employees, who would otherwise be covered by a wage order but for the exemption "contained in" the wage order, are therefore exempt from AB 60. Likewise, truck drivers whose hours of service are regulated by the United States Department of Transportation (under 49 C.F.R. §395.1, et seq.) or by the California Highway Patrol or the State Public Utilities Commission (under 13 C.C.R. §1200, et seq.) are expressly exempt from the overtime provisions of the pre-1998 IWC orders. These workers are therefore exempted from the overtime provisions of AB 60. On the other hand, workers who were not expressly exempted from any pre-1998 wage order, such as on-site construction, drilling, mining and logging employees, are covered by AB 60. We should note, however, that Labor Code §515(b)(1) provides that until January 1,

2005, the IWC may establish additional exemptions from the overtime provisions of AB 60. Thus, employees engaged in on-site construction, drilling, mining and logging will be covered by AB 60 unless and until the IWC chooses to expressly exempt any of them from its provisions.

The statutory provisions of AB 60, or any other state law, will prevail over any inconsistent provision in the pre-1998 wage orders. For example, the current $5.75 an hour state minimum wage, which was established by the electorate with the passage of the Living Wage Act of 1996, now codified at Labor Code section 1182.11, prevails over the lower minimum wage rates contained in the pre-1998 wage orders. Likewise, AB 60's salary basis test, which requires a monthly salary equivalent of at least twice the minimum wage, currently $1,993.33 per month, as a prerequisite for the administrative, executive and professional exemptions from overtime, prevails over the remuneration test (and lower monthly amounts) for the administrative and executive exemptions in the pre-1998 wage orders. Therefore, starting on January 1, 2000, employers must comply with the pre-1998 wage orders, *to the extent they are not inconsistent with AB 60 or any other controlling statutes,* in which case the requirements of the statute will apply.

The second important purpose behind AB 60 is the intent to provide more options for work schedule flexibility than had been available in the pre-1998 wage orders. AB 60 maintains, with some changes, two of the mechanisms under the pre-1998 wage orders which permitted work schedules of more than eight hours per day without payment of daily overtime - - namely, the provisions for secret ballot elections to implement an "alternative workweek schedule," and the collective bargaining agreement opt-out provision. In addition to these mechanisms, there are two new provisions in AB 60 that permit individual employees to work more than eight hours in a day (but not more than the alternative number of hours -- either ten or eleven -- permitted by the statute), at the employee's request and under clearly specified conditions, without payment of overtime. The first of these new provisions allows for individual "make-up time" under which an employee can take time off for personal reasons and during the same workweek, make up that time by working up to eleven hours in a day without the payment of overtime. The second of these new provisions allows individual employees who were working on July 1, 1999 under a schedule that provided for up to 10 hours in a day to continue working this schedule without payment of daily overtime, even if this schedule was not established by an alternative workweek election. We will return to these flexible work schedule arrangements later in this memo. For now, we will simply note that although AB 60 allows for increased flexibility in work schedules, the statute imposes limits on the total hours that can be worked in a day under most flexible arrangements, and sets out strict procedures that must be followed in order to work more than eight hours in a day without the payment of daily overtime.

Finally, before embarking on a detailed review of AB 60, we should note that for DLSE, in its function as an enforcement agency, perhaps the most important change brought about by this new law is creation of a new method for enforcing overtime obligations. Under section 14 of the bill, section 558 is added to the Labor Code, under which the DLSE may issue a civil penalty citation to an employer that violates the provisions of AB 60 or any provision regulating hours and days of work in any IWC order. These penalties are set at the amount of $50 for an initial violation (or $100 for any subsequent violation) per underpaid employee for each pay period in which the employee was underpaid. In addition, the civil penalty citation may include the amount owed to employees for underpaid overtime wages.

A Section by Section Look at AB 60

Definitions: Section 3 of AB 60 adds section 500 to the Labor Code, defining certain words that are used in the statute. The word "workday" is defined as "any consecutive 24 hour period commencing at the same time each calendar day." The word "workweek" is defined as "any seven consecutive days, starting with the same calendar day each week," and as "a fixed and regularly recurring period of 168 hours" made up of "seven consecutive 24-hour periods." Finally, the term "alternative workweek schedule" is defined as "any regularly scheduled workweek requiring an employee to work more than eight hours in a 24-hour period." These definitions are unchanged from the pre-1998 wage orders. An employer may designate the period of the workday and the workweek. Absent pre-designation by the employer, DLSE will treat each workday as starting at midnight, and each workweek as starting at midnight on Sunday, so that Sunday is the first day of the workweek and Saturday the last.

The Basic Overtime Law: Section 4 of AB 60 amends Labor Code §510, to set out California's new basic overtime law. First, it requires overtime compensation at the rate of no less than one and one-half the employee's regular rate of pay for all hours worked in excess of eight in one workday, and for all hours worked in excess of 40 in one workweek, and for "the first eight hours worked on the seventh day of work in any one workweek". Second, it requires overtime compensation at the rate of double the employee's regular rate of pay for all hours worked in excess of 12 hours in one day, and "for any work in excess of eight hours on any seventh day of a workweek."

This basic overtime law is the heart of AB 60. It restores daily overtime, and takes the basic overtime provisions found in almost all of the pre-1998 wage orders - - time and a half for all hours worked in a workday in excess of 8 and up to 12; double time for all hours worked in a workday in excess of 12; time and a half for all hours worked in excess of 40 in a workweek; and seventh day premium pay - - and enshrines these provisions as statutory requirements.

We have received many inquiries concerning the provision for seventh day premium pay. The time and a half provision reads slightly differently than the double time provision: time and a half for "the first eight hours worked on the *seventh day of work in any one workweek,*" and double time for "any work in excess of eight hours on any *seventh day of a workweek.*" This raises the question whether AB 60 requires double time for any work performed in excess of eight hours on the seventh day of the workweek, even if the employee has not worked all seven days of that workweek. We do not believe this would be a logical reading of the statute; rather, both the time and a half and double time provisions for seventh day premium pay must be harmonized to require that the employee work all seven days of the workweek in order to qualify for this type of premium pay. The purpose of seventh day premium pay is to provide extra compensation to workers who are denied the opportunity to have a day off during the workweek; not to reward someone who may only be scheduled to work one day a week for having fortuitously been scheduled to work on what is the seventh day of the employer's workweek. This reading of AB 60 is consistent with the provisions for seventh day premium pay contained in the pre-1998 wage orders, and we are unable to discern any intent on the part of the Legislature to modify those provisions.

Example: An employer has no pre-designated workweek. An employee of that employer works the following schedule: Sunday-off; Monday-off; Tuesday-8 hours; Wednesday-8 hours; Thursday-8 hours; Friday-8 hours; Saturday-8 hours; Sunday-8 hours; Monday-8 hours; Tuesday-8 hours; Wednesday-8 hours; Thursday-8 hours; Friday-off; Saturday-off. Is the employee entitled to any overtime pay or seventh day premium pay? Answer-NO. There is no daily overtime, because the employee never worked more than eight hours in a day. There is no weekly overtime, because the employee did not work more than 40 hours during each of the two workweeks (running from Sunday to Saturday). And even though the employee worked ten days in a row, there is no seventh day premium pay, because the employee did not work seven consecutive days in any one workweek.

The statute also provides that "nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work." This is consistent with DLSE's enforcement of the pre-1998 wage orders. It simply means that there is no "pyramiding" of separate forms of overtime pay for the same hours worked. Once an hour is counted as an overtime hour under some form of overtime, it cannot be counted as an hour worked for the purpose of another form of overtime. When an employee works ten hours in one day, the two daily overtime hours cannot also be counted as hours worked for the purpose of weekly overtime.

Example: An employee works 12 hours on Monday, Tuesday, Wednesday, and Thursday. How many non-overtime and overtime hours did the employee work that week? Answer-- The employee is credited with 4 hours of daily overtime each day worked, for a total of 16 daily overtime hours, and these daily overtime hours cannot be counted for the purpose of determining when to start paying time and a half for hours worked in excess of 40 in a week. Because pyramiding is not allowed, there are no weekly overtime hours, even though the employee worked 48 total hours during the workweek. Only 32 of these hours were regular, non-daily overtime hours, and they are the only hours that count towards weekly overtime computations.

Labor Code §510 provides for certain exceptions from the basic overtime law. The overtime requirements of section 510 do not apply to an employee working pursuant to:

1. an alternative workweek schedule adopted pursuant to Labor Code §511, discussed below, or

2. an alternative workweek schedule adopted by a collective bargaining agreement pursuant to Labor Code §514, discussed below, or

3. an alternative workweek schedule for any person employed in an agricultural occupation, as defined in IWC Order 14. (Section 9 of AB 60 amends section 554 of the Labor Code to exclude persons employed in agricultural occupations from all of AB 60, except for section 558, the section that sets out civil penalties for violations of the overtime provisions contained in AB 60 or in any IWC order. Thus, the basic overtime law, now found at Labor Code §510, does not apply to workers covered by IWC Order 14. However, an agricultural employer that violates the special overtime provisions of Order 14 will be subject to a penalty citation just like any other employer.)

Finally, section 510 retains the existing provision regarding "ridesharing," which states that time spent commuting to and from *the first place at which an employee's presence is required by the employer* shall not be considered to be part of a day's work, when the employee commutes in a vehicle that is owned, leased or subsidized by the employer, and is used for the purpose of ridesharing. Of course, once the employee reaches the first place at which his or her presence is required by the employer, all time spent subject to the control of the employer (whether or not the employee is then engaged in physical or mental labor), and all time during which the employee is suffered or permitted to work, must count as hours worked under the various IWC orders.

Non-Collectively Bargained Alternative Workweek Schedules: Section 5 of AB 60 adds section 511 to the Labor Code, which permits certain non-collectively bargained alternative workweek schedules. Under subsection (a), an employer may propose a "regularly scheduled alternative workweek" authorizing work by the affected employees "for no longer than 10 hours per day within a 40-hour workweek" without payment of overtime compensation. The proposed "regularly scheduled alternative workweek" may be "a single work schedule that would become the standard schedule" for all of the workers in the work unit, or "a menu of work schedule options, from which each employee in the unit would be entitled to choose."

Whether it is the only work schedule for an entire work unit or one of several options on a menu available to the workers in the unit, the "regularly scheduled alternative workweek" must provide for specified workdays and specified work hours, and these workdays and work hours must be fixed and regularly recurring.

Adoption of an alternative workweek schedule under section 511(a) requires a secret ballot election with approval by at least two-thirds of the affected employees. We have received many inquiries concerning the procedures to be followed in holding such an election. Section 11 of AB 60 adds section 517 to the Labor Code, which requires the IWC, no later than July 1, 2000, to adopt wage orders which must include procedures for conducting elections to establish or repeal alternative workweek schedules, procedures for implementing such alternative schedules, the procedures for petitioning to repeal an alternative workweek schedule, the conditions under which an employer can unilaterally repeal such a schedule, the contents of any required notices or disclosures to employees, and the factors in designating a work unit for purposes of an election. Until such new wage orders are adopted by the IWC, employers must comply with the procedures dealing with alternative workweek elections that are found in the applicable pre-1998 IWC wage order, to the extent that those procedures are not inconsistent with AB 60.

Each worker eligible to vote in an election must be informed, prior to the election, of the precise work schedule -- that is, the precise workdays and work hours -- that he or she will be assigned to work (or, in the case of an election to establish a "menu of work schedule options", allowed to choose from) if the alternative work schedule is adopted. We have been asked whether an employer can establish a menu of work schedule options through an election, and then, if too many or too few workers choose to work one of the alternative schedules, assign workers to work schedules on some basis other than the workers' choice. The answer to this is no, as the statute clearly provides that "each employee in the unit would be entitled to choose" among the various work schedule options on the "menu." If the employer's business needs preclude allowing its employees to freely choose among work schedule options, the employer should not propose a "menu of work schedule options". Instead, the employer may be able to propose more

than one alternative work schedule by dividing the workforce into separate work units, and proposing a different alternative work schedule for each unit, so that each worker knows exactly what schedule he or she is voting for.

A "regularly scheduled alternative workweek" permitted by section 511(a) cannot provide for *regularly scheduled* workdays in excess of 10 hours or *regularly scheduled* workweeks in excess of 40 hours. Thus, *regularly scheduled* workdays for longer than 10 hours (except within the health care industry, which is discussed below) are not permitted under a non-collectively bargained alternative workweek schedule, and if an employer whose employees are working pursuant to an alternative workweek schedule *regularly scheduled* workdays in excess of 10 hours, DLSE will conclude that these employees are not working an alternative workweek schedule permitted under section 511(a), and thus, the employer will be required to pay overtime compensation for all hours worked in excess of eight in a day or 40 in a week, as required by section 510.

> Example: An employer covered by Wage Order 7, whose employees have voted to adopt a 4/10 alternative workweek schedule (4 workdays a week, 10 hours per workday, for a total of 40 hours worked each workweek) pursuant to section 511(a), seeks to have its employees regularly work 12 hours each workday, and asks whether it can do this by paying two hours overtime, at time and a half, for the extra two hours each workday. The answer is NO. A regularly scheduled 12 hour workday is not permitted under section 511(a), so this is not a valid regularly scheduled alternative workweek. As such, section 510 will apply to require time and a half for all hours worked in excess of eight in a workday. The employer must pay time and a half for 4 overtime hours each workday.

However, it is expected that there will be occasions, *not regularly recurring,* when an employee working under an alternative workweek schedule adopted pursuant to section 511 will be required to work extra hours beyond those that are regularly scheduled. These occasions are addressed by subsection (b) of section 511, which provides that an employee working under an alternative workweek schedule adopted pursuant to subsection (a) shall be paid overtime compensation at the rate of no less than one and one-half times the employee's regular rate of pay for any work in excess of the regularly scheduled hours established by the alternative workweek agreement and for all hours worked in excess of 40 per week, and at the rate of no less than double the employee's regular rate of pay for all hours worked in excess of 12 hours per day and for any work in excess of 8 hours on days worked other than workdays that are regularly scheduled under the alternative workweek. The same prohibition of "pyramiding" different types of overtime pay, found at section 510, is contained in section 511.

> Example: A secret ballot election results in the adoption of an alternative workweek schedule under which the affected workers are to work four ten hour days (Monday-Thursday), for a total of 40 hours work each workweek. No overtime compensation is required when the employees work the hours that are authorized by this alternative workweek schedule. On occasion, the employer assigns extra work to these employees. This extra work is not assigned on a regular or recurring basis. One workweek, an employee working under this alternative workweek schedule works the following hours: Monday-10 hours, Tuesday-12 hours, Wednesday-14 hours, Thursday-10 hours, Friday-10 hours, Saturday-off, Sunday-off. There is no overtime for Monday or Thursday (since the employee did not work any extra hours, outside his or her regularly scheduled hours, on those days); the extra two hours worked on Tuesday must be paid at time and a half; the extra four hours worked on Wednesday are paid at time and a half for the first two hours and at double time for the next two hours (since those final two hours were beyond 12 hours in a day); the extra 10 hours worked on Friday must be paid at time and a half for the first eight hours (since those hours were not regularly scheduled, as Friday is not a regularly scheduled workday) and at double time for the final two hours (since these two hours exceeded eight hours on a non-regularly scheduled workday).

We have been asked whether AB 60 permits alternative workweek schedules of less than 40 hours per week. Section 511(a) permits the adoption of a regularly scheduled alternative workweek "that authorizes work by the affected employees for no longer than 10 hours per day *within a 40 hour workweek.*" The word "within" means any workweek of no more than 40 hours, and would include workweeks of less than 40 hours. However, paragraph 3(B) of Order 1-89 (manufacturing) contains a unique provision, not found in any other wage order, that requires an alternative work schedule to provide for "not more than ten hours per day within a workweek of *not less than* 40 hours." Thus, employers covered by Order 1-89 are prohibited from establishing an alternative schedule of less than 40 hours per workweek. All other employers, under AB 60, can establish alternative schedules that provide for up to 40 hours in a workweek. The IWC, of course, may consider amending the language in Order 1 to conform to the more liberal provisions of the statute.

We have received many inquiries as to whether AB 60 prohibits the adoption or retention of a so-called "9/80" alternative work schedule that does not provide for the payment of overtime. Under a 9/80 schedule, employees will work 9 hours a day from Monday through Thursday, 8 hours on Friday, followed by a week of 9 hours worked each day on Monday through Thursday, and no hours worked on Friday. If the employer has not pre-designated a workday and workweek, the standard midnight to midnight workday (based on the calendar day) used by DLSE for enforcement purposes will result in 44 hours worked the first workweek of this schedule, followed by 36 hours worked the second workweek. And since a regularly scheduled alternative workweek adopted by a secret ballot election cannot provide for more than 40 hours regularly scheduled within a workweek, the fact that every other workweek is regularly scheduled to exceed 40 hours would defeat the alternative workweek, and mandate payment of overtime for all hours worked in excess of 8 in a day or 40 in a week. But by predesignating the workday to run from noon to noon, and by predesignating the workweek to run from Friday noon to next Friday at noon, the employer can establish a 9/80 schedule that does not exceed 40 hours in a workweek, in that the eight hours worked every other Friday are split in half, with the 4 hours worked before noon falling into the first workweek, and the 4 Friday hours worked after noon falling into the second workweek.

Of course, as with any other alternative workweek schedule under section 511, the 9/80 schedule cannot be unilaterally imposed by the employer but must be (or have been) adopted by the requisite two-thirds vote in a secret ballot election to allow for this schedule without the payment of daily overtime.

Prohibited Reduction of Regular Rate of Pay: Subsection (c) of section 511 provides that "an employer shall not reduce an employee's regular rate of hourly pay as a result of the adoption, repeal or nullification of an alternative workweek schedule." This is a new protection, that never before existed in the Labor Code or any IWC order. This prohibition only applies to reductions in the regular rate of pay that are implemented on or after

January 1, 2000; it does not apply to any reduction implemented prior to January 1, 2000. The prohibition applies to repeals resulting either from an election or from an employer's unilateral decision, and to the nullification of any alternative workweek schedule by operation of AB 60. The prohibition would be enforceable by filing an individual wage claim or a civil action to recover unpaid wages owed to a worker or group of workers based on the wage rates that were in effect prior to the unlawful reduction, and through injunctive relief.

Reasonable Accommodation: Under subsection (d), an employer must make a reasonable effort to find a work schedule of no more than eight hours in a workday to accommodate any employee who was eligible to vote in the election that established the alternative workweek schedule, if such employee is unable to work the hours established by the election. Employers do not have a duty to make such an effort on behalf of any employee who is hired after the election was held, except for a duty to explore any available alternative means of accommodating the religious beliefs of those employees whose religious observances conflict with an adopted alternative workweek schedule. However, the statute permits the employer to provide a work schedule of no more than eight hours in a workday to any employee who is hired after the adoption of an alternative workweek schedule if that employee is unable to work the alternative schedule.

Reporting the Results of the Election: Subsection (e) requires the employer to report the results of any such election (regardless of the outcome of the election) to the Division of Labor Statistics and Research (DLSR) within 30 days after the results are final. AB 60 does not indicate whether the failure to comply with this reporting requirement could invalidate the result of the election. We would expect the IWC to address this issue in its post-AB 60 regulations. Any employer covered by reinstated Order 1-89 (manufacturing industry) is subject to an additional requirement, unique to that Order, that no agreement for an alternative workweek shall be valid until it is filed with DLSE. Thus, employers under Order 1 must report election results to both DLSR and DLSE, and such employers cannot implement an alternative workweek schedule without first reporting the election results to DLSE.

Presently Existing Non-Collectively Bargained Alternative Work Schedules: Subsection (f) of section 511 provides that any presently existing alternative workweek schedule that was adopted pursuant to IWC Wage Orders 1, 4, 5, 7, or 9 shall be null and void, *except for an alternative workweek that meets all of the following conditions:*

1. it provides for no more than 10 hours of work in a workday (except for 12 hour workdays that are allowed in the health care industry, as specified in subsection (g), discussed below).

2. it was adopted by a two-thirds vote of the affected employees in a secret ballot election.

3. the election was held "pursuant to wage orders of the Industrial Welfare Commission in effect prior to 1998.

AB 60 thus puts an end to any alternative workweek schedules that were unilaterally established by employers pursuant to the 1998 wage orders, except for certain voluntary arrangements as specified in subsection (h) of section 511, discussed below. Alternative workweek schedules that were adopted under wage orders that were not amended in 1998 (those that left daily overtime undisturbed) should meet the prerequisites for a regularly scheduled alternative workweek under AB 60, so they are not nullified by operation of statute. These prerequisites are a maximum of ten hours work in a workday, a maximum of 40 hours in a workweek, adoption by a secret ballot election with a 2/3 vote of approval by the affected employees, with the election conducted pursuant to the procedures specified in the applicable wage order.

We have received many inquiries from employers that unilaterally adopted an alternative workweek under the 1998 wage orders, and that now wish to establish alternative workweek schedules that will not be nullified upon the effective date of AB 60. Of course, those employers could wait until January 1, 2000, to propose alternative workweek schedules that may then be adopted by a two-thirds vote in secret ballot elections conducted pursuant to the procedures specified in the applicable reinstated pre-1998 wage order. But many employers would like to establish a "nullification-proof" alternative workweek schedule in advance of January 1, 2000, so as to allow for a seamless transition. These employers have focused on the requirement that the election have been held "pursuant to wage orders . . . that were in effect prior to 1998," and have asked whether this means that to be valid and not subject to nullification, the election must: (1) have been held or be held on a date when the applicable pre-1998 wage order was or will be in effect (that is, prior to January 1, 1998, or after January 1, 2000), or (2) have been held or be held at any time until the IWC adopts the post-AB 60 wage orders, including the period until December 31, 1999 while the 1998 wage orders remain in effect, as long as the employer complied with the election procedures (including requirements for employee notification, etc.) contained in the applicable pre-1998 wage order. We believe that the intent of AB 60 is best effectuated by construing this ambiguous provision in accordance with the latter interpretation, so as to allow employers who are presently subject to a 1998 wage order to conduct an election by following all of the procedures provided in the applicable pre-1998 wage order.

Finally, turning to those alternative workweek schedules that will not be nullified by operation of AB 60 on January 1, 2000, subsection (f) provides that "any type of alternative workweek schedule that is authorized by this code and that was in effect on January 1, 2000, may be repealed by the affected employees." Procedures for repeal will be contained in the IWC's post-AB 60 wage orders. Until those orders are adopted, procedures for repeal are governed by the applicable pre-1998 wage order. Under long-standing DLSE enforcement policy, an employer that wants to terminate an alternative workweek schedule can do so unilaterally, without holding a repeal election, after providing reasonable advance notice to its employees. If the IWC wishes to prohibit such unilateral repeals, it may do so through its post-AB 60 regulations.

Two Important Exceptions to Subsection (f) of Labor Code §511:

- - The first exception to subsection (f) is found at subsection(g), which deals with the health care industry. It provides that an alternative workweek schedule in the health care industry adopted by a two-thirds vote of affected employees in a secret ballot election pursuant to Wage Order 4-89 as amended in 1993, or Wage Order 5-89 as amended in 1993, that provided for workdays exceeding 10 hours but not exceeding 12 hours in a day without the payment of overtime compensation, shall be valid until July 1, 2000. Of course, if the alternative workweek schedule adopted

pursuant to such an election provided for a workday that does not exceed 10 hours, it would meet the criteria set out in subsection (f), and it would therefore remain valid indefinitely.

Several health industry employers have asked whether there is any possibility, under AB 60, for extending alternative workweek schedules that provide for 12 hour workdays past July 1, 2000. At present, it would appear that any regularly scheduled non-collectively bargained alternative workweek in the health care industry that provides for workdays that exceed 10 hours will be nullified by operation of the statute following July 1, 2000; and unless the affected employees adopt an alternative workweek schedule that comports with AB 60's limits and any provisions that may be adopted by the IWC, the basic overtime requirements of section 510 will apply.

- - The second exception to subsection (f) of Labor Code §511 is found at subsection (h), which permits an individual employee to continue to work an alternative workweek schedule without the payment of daily overtime compensation, even if the schedule was established by the employer unilaterally, without an election, under the 1998 wage orders, if all of the following conditions exist:

1. the employee was employed on July 1, 1999, and
2. the employee was then *voluntarily* working an alternative workweek schedule, and
3. this schedule did not provide for work in excess of 10 hours of work in a workday, and
4. this employee makes a *written request* to the employer to continue working this schedule, and
5. the employer approves the written request.

Employees hired after July 1, 1999 will not be eligible for this non-collectively bargained, non-secret ballot approved, individual alternative workweek schedule. If the employee, as of July 1, 1999, was working an alternative workweek with regularly scheduled workdays of more than 10 hours, this option is unavailable, even if the employee and employer are now willing to limit the workday to 10 hours. A written request to continue working this individual alternative workweek without payment of daily overtime will only be effective as to work performed after the date of the request; the employer must pay the applicable daily overtime compensation for any work performed prior to the date that the written request is executed and approved. Finally, because this exception allows for individual voluntary agreements, DLSE has determined that the employee can, at anytime, revoke his or her written request to continue working this sort of alternative workweek schedule, in which case the employer must henceforth pay daily overtime in accordance with the provisions of AB 60.

Individual "Make-Up Time" and the Flexible Workweek: The most significant new aspect of work time flexibility is found at section 7 of AB 60, which adds section 513 to the Labor Code, to provide a mechanism for individual employees to take time off to attend to their personal needs, and to then make up that time *within the same workweek*, without the payment of overtime compensation except for hours worked in excess of 11 in one workday or 40 in one workweek. The employee benefits by not losing any pay, or incurring any loss of sick or vacation time, for the time off; and the employer benefits by not having to pay daily overtime to the employee who is working more than eight hours (but not more than 11 hours) in a day in order to make up the missed time.

Make-up time will not count in computing the total number of hours worked in a day for the purposes of the overtime requirements specified in section 510 (the basic overtime law) and section 511 (the provisions for regularly scheduled alternative workweeks) only if the make-up hours are worked in the same workweek in which the work time was lost. Also, the employer will not have to pay overtime compensation for the make-up work only to the extent that the employee performing the make-up work does not exceed 11 hours of work in a workday or 40 hours of work in a workweek. In other words, when an employee works more than eight hours in a workday because the employee is performing make-up work that day, any work performed in excess of 11 hours that day must be paid at the appropriate overtime rate. Likewise, any work performed in excess of 40 hours during the workweek must be paid as overtime.

Under section 513, make up time is permitted if the employer approves the employee's *signed written request* to make up time that has been or that will be lost as a result of *the employee's personal needs.* The employer may choose to grant or deny any request to work make up time. A separate written request is needed each time the employee asks to make up work time pursuant to this section. The request need not be made prior to the employee taking off the time, but must be made prior to the performance of the make up work in order to ensure that the employer is not liable for daily overtime for the make up hours. Any daily overtime hours worked prior to a request to perform make up work cannot be credited as make up time, but rather, will constitute time for which overtime compensation must be paid. And most importantly, time that is taken off in one workweek can only be made up during that same workweek; if it is worked in a different workweek than the when it was taken, the daily overtime hours worked must be paid as overtime.

The statute expressly prohibits employers from "encouraging or otherwise soliciting an employee to request an employer's approval to take personal time off and make up the work hours within the same week pursuant to this section." This does not prohibit employers from merely informing workers of the provisions of this statute; however, it clearly does prohibit employers from suggesting, recommending (or certainly, ordering) that workers "request" make up time.

We have been asked whether make-up time can be worked in advance of the date that the time being made up is lost. There is nothing in the statute that would prohibit this, so long as the make-up work is performed during the same workweek in which the time is lost. Thus, if an employee knows that he or she will need to take time off to attend to personal needs on the last day of the workweek, the employee can make-up this time in advance, during the preceding days of that workweek. The question that then follows is: does the employer have any overtime exposure if that worker, after working the make-up time, decides not to take the time off, and works the time that he or she had planned on taking off? The answer to this would depend on whether the employee ended up working more than 40 hours in that workweek. If so, section 513 requires payment of overtime for all hours worked in excess of 40 in a workweek. If the employee did not end up working more than 40 hours that workweek, the employer would not be liable for any daily overtime (provided that the employee did not work more than 11 hours in any workday, and that any hours worked in excess of eight in any one workday were worked as make-up time). The reason the employer would not be

liable for any daily overtime under this scenario is because the employer agreed to allow the employee to work these extra daily hours *without payment of daily overtime* in order to make-up time that the employee asserted would be lost later in the workweek due to the employee's personal obligations, and the employer relied on the employee's assertion in granting this request. On the other hand, if an employer revokes its previously granted permission to allow an employee to perform make-up work after the make-up work is performed, but before the time off is taken, the employer will be liable for all daily overtime, and the extra daily hours worked will not be treated as make-up time.

Finally, we have been asked whether these make-up time provisions apply to employees working under regularly scheduled alternative workweeks. The answer is yes, section 513's make-up time provisions expressly apply to workers covered by section 510, the basic overtime law, and to workers covered by section 511, which authorizes alternative workweek schedules. Of course, a worker employed under a valid alternative workweek schedule which provides for 10 hours of work in a workday without payment of overtime will only be able to work one extra hour of make-up time during such a workday before exceeding the 11 hour per day cap that triggers overtime for all subsequent make-up time worked that day. Because make-up time applies to workers employed under an alternative workweek schedule, such workers may perform up to 11 hours of make-up work on a day that they are not regularly scheduled to work without the payment of overtime compensation that would otherwise be required, pursuant to section 511(b), for working on a day other than a regularly scheduled workday.

> Examples: An employee scheduled to work an eight hour workday can work an additional three hours that day as make-up time without the payment of daily overtime. An employee scheduled to work a six hour workday can work an additional five hours that day as make-up time without the payment of daily overtime. An employee scheduled to not work at all on a specific day can work up to 11 hours of make-up time that day without the payment of overtime, whether the worker is covered by the basic overtime law or is working under an alternative workweek schedule pursuant to section 511. On the other hand, an employee not covered by a regularly scheduled alternative workweek pursuant to section 511, who is nonetheless scheduled to work nine hours in a workday, can work two hours of make-up time that day without payment of overtime for the make-up time, but must be paid overtime for the one overtime hour of scheduled, non- make-up work. If this same employee works three hours of make-up time, resulting in 12 hours of work that workday, the employee must be paid two hours of overtime at the rate of one and one-half times the regular rate (one hour for the ninth hour of scheduled work, and another hour for the make-up time that exceeded the eleventh hour of work that day). Finally, if this same employee works four hours of make-up time, resulting in 13 hours of work that workday, the employee must be paid 2 hours of overtime at time and a half, and one hour of overtime at twice the regular rate of pay.

The Collective Bargaining Agreement Opt-Out Provision: Section 8 of AB 60 adds section 514 to the Labor Code, which makes AB 60's overtime and meal period provisions inapplicable to employees who are covered by a collective bargaining agreement ("CBA"), if the CBA expressly provides for the wages, hours and working conditions of the employees, and provides a regular hourly wage rate for those employees of not less than 30 percent more than the state minimum wage, and "provides premium wage rates for all overtime hours worked." If a CBA meets these provisions for the opt-out, the workers covered by the CBA are not entitled to statutory overtime; rather, they will receive premium pay for all overtime hours worked, as provided by the CBA. This is somewhat different from prior law, in that the opt-out under the IWC orders had required payment of a regular rate of at least $1 an hour more than the state minimum wage; and under the new "30 percent above" formula, the required regular rate would now be seven dollars and 47 and a half cents ($7.475) per hour. And of course, future increases in the state minimum wage will automatically result in increases in the regular rate required for the opt-out. If the opt-out requirements are met, workers are paid for all hours worked in accordance with the provisions of the CBA. It should be remembered, however, that there is no CBA opt out under the Fair Labor Standards Act, which requires payment of overtime at the rate of one and one half the regular rate of pay for all hours worked in excess of 40 in a workweek.

The term "premium wage rates" are not defined in AB 60 or in the IWC orders. The term has always been interpreted to mean any wage rate in excess of the applicable straight time regular hourly rate of pay. There is no indication that the Legislature intended this term to be interpreted in any other manner. Indeed, it would make no sense to interpret the term as synonymous with a statutory overtime rate such as one and a half times the regular rate, since the very purpose of an opt-out provision is to allow for an alternative to the minimum standard that would otherwise be required by statute. The amount by which the premium exceeds the regular rate is left to the parties to negotiate; we will recognize any rate higher than the regular rate as a premium.

We have received several inquiries regarding the meaning, within section 514, of the term "all overtime hours." The one thing it cannot mean is all hours worked in excess of eight in a day without regard to any definition of overtime that might be contained in the CBA, since such a meaning would prohibit unions from collectively bargaining for the very same alternative workweek schedules that non-unionized workers could adopt under AB 60 -- that is, work schedules of up to 10 hours a day (and 12 hours a day in the health care industry) without the payment of daily overtime or premium pay. There is nothing to indicate that the Legislature intended such a peculiar result. The IWC's post-AB 60 regulations may provide further guidance on the parameters of the CBA opt-out.

As with any other wage claims that are filed with DLSE by employees covered by a CBA, any claims for overtime where a CBA is involved must be reviewed by DLSE Legal in accordance with the consent decree in *Livadas v. Bradshaw.*

Administrative, Executive and Professional Exemption: Section 9 of AB 60 adds section 515 to the Labor Code. This is the section that codifies, with some very significant changes from prior law, the administrative, executive, and professional exemptions from overtime. First, there are two ways in which AB 60 merely codifies pre-existing California law. As was the case under the IWC orders, there is no exemption, no matter how highly the employee may be paid, unless the employee is "primarily engaged" in exempt work, and the term "primarily" is defined as more than one-half the employee's work time. Thus, state law continues to differ from federal law, which is less protective of workers; in that under federal law, the focus is on the employee's "primary duty," and an employee may be found to have a "primary duty" as a manager even if the worker spends most of his or her work time performing non-exempt tasks. In contrast, state law looks to what the worker is "engaged in," that is, what is the worker physically doing.

AB 60 also codifies California's pre-existing fixed workweek method for calculating overtime compensation owed to a non-exempt salaried employee, a method that was approved by the courts 15 years ago in the *Skyline Homes* case. Under

this method, the salary paid to a non-exempt salaried employee only covers the 40 non-overtime hours of the workweek; it does not serve to compensate the worker for any overtime hours worked. This weekly salary must be divided by 40 to establish a regular hourly rate of pay, which is then the basis for all overtime calculations. Overtime hours worked are then paid at either one and one half times the regular rate, or double the regular rate, as required. This contrasts with the less protective federal fluctuating workweek method, under which a salary paid to a non-exempt employee is deemed to cover all hours worked (including overtime hours); so the more overtime hours worked, the lower the regular rate of pay, and so that overtime hours worked are only paid at one-half the employee's regular rate of pay. AB 60 does not change the method of computing overtime compensation for employees who are paid on a commission or piece rate basis; which under both state and federal law is based on a fluctuating workweek whereby total weekly commission or piece rate earnings are divided by the total number of hours (including overtime hours) worked in the week to compute the regular rate of pay; and overtime hours are then compensated at one-half this regular rate of pay.

To be sure, AB 60 brings about some very significant changes in the administrative, executive and professional exemptions. Under prior law, there was no minimum remuneration or salary requirement for the professional exemption. Under Labor Code section 515, the professional exemption is subject to the same minimum salary requirement as the administrative and executive exemption. The so-called "remuneration" requirement under prior law is now changed to a requirement of a monthly salary, equivalent to no less than twice the minimum wage for full time work (defined as employment for 40 hours per week), which would now require a salary of at least $1,993.33 per month. Since the required salary is set as a multiple of the minimum wage, future increases in the state minimum wage will result in corresponding increases in the threshold salary for the exemption. The value of any payments in kind, or other forms of remuneration (such as employer provided meals or lodging) cannot be used as a credit against this required minimum salary. The legislative intent in switching from remuneration to salary was to explicitly adopt the federal salary basis test, to the extent that it is consistent with California wage and hour law. Thus, employees who are paid on the basis of an hourly wage, or commissions, or piece rates, cannot be exempt from payment of overtime under the administrative, executive or professional exemptions.

We have been asked whether a part-time employee working in a bona fide executive, administrative, or professional capacity (that is, one who is "primarily engaged" in such exempt work) can be exempt if he or she is paid a monthly salary that is less than the full-time salary equivalent of twice the minimum wage, but not less than the applicable percentage of the minimum monthly required salary, based on the proportion of time that the part-time employee works in relation to a full time, forty hour week. For example, can an attorney employed by a law firm on a part-time 20 hour per week basis, be exempt if paid a monthly salary of $1,000? The answer to that question is no; we do not believe that this monthly minimum required salary can be reduced, even if the ostensibly exempt employee is scheduled to work less than 40 hours per week. An exempt employee is expected to exercise discretion and independent judgment in order to decide the number of hours to devote to a particular task, and cannot be expected to confine his or her work hours to a set schedule, as any such employer-imposed limitation on hours worked would be inconsistent with the discretion and independent judgment that is the hallmark of exempt work. Section 515(a)'s requirement of "a monthly salary equivalent to no less than two times the state minimum wage for full-time employment," simply serves to set the amount of the required monthly salary as a multiple of the minimum wage; and not to permit reductions of this monthly threshold salary for employees who work less than 40 hours per workweek.

As was the case under the IWC orders, section 515(f) provides that the professional exemption shall not apply to registered nurses. Another bill that was passed and signed by the Governor this year, AB 651, provides that the professional exemption shall not apply to pharmacists, a category of workers who formerly were expressly exempted, under the IWC orders, as licensed professionals.

AB 60 does not define the duties that characterize exempt work. Section 515(a) gives the IWC the task of "reviewing the duties which meet the test of the exemption," and then, if the IWC chooses, it may convene public hearings to adopt or modify regulations pertaining to these duties. Under the existing IWC orders, the duties are spelled out only in the broadest terms --- "work which is primarily intellectual, managerial or creative, and which requires the exercise of discretion and independent judgment." In enforcing the IWC orders, DLSE has out of necessity come to rely upon the federal regulations, and federal case law, which define the terms "executive", "administrative" and "professional" for purposes of the exemptions, to the extent that these federal definitions are not inconsistent with state law. We do not know yet whether the IWC will decide whether to adopt specific definitions for these terms. Absent the adoption of such definitions, we will continue to follow existing DLSE interpretations, as set out in our opinion letters, of these terms. (See, for example, opinion letters dated 1/7/93 and 10/5/98.)

Meal Period Requirements: Section 6 of AB 60 adds section 512 to the Labor Code, which codifies the requirements for meal periods during the workday. These provisions are somewhat confusing, and there have been many questions as to whether AB 60 puts an end to "on-duty meal periods." That term is used in the IWC orders to describe a meal period during which the employee is not relieved of all duty regardless of the length of time of the meal period, or that is less than 30 minutes long regardless of whether the employee is relieved of all duty. Under the IWC orders, an "on-duty meal period" is permitted only (1) when the nature of the work prevents the employee from being relieved of all duty, and (2) when the employee and employer have entered into a written agreement permitting an on-duty meal period. An employee must be paid for the entire on-duty meal period; that is, it constitutes time worked.

We believe that AB 60 does not prohibit "on-duty meal periods". Had the Legislature intended to accomplish that, the bill would have expressly done so. Instead, the term "on-duty meal period" is not found anywhere in the text of AB 60. Section 512 provides that a meal period of no less than 30 minutes must be provided to any employee who is employed for a work period of more than five hours per day. However, this meal period can be waived by mutual consent of the employee and the employer if the total daily work period does not exceed six hours. A second meal period of no less than 30 minutes must be provided to any employee who is employed for a work period of more than 10 hours in a day, however, this second meal period can be waived by mutual consent if the worker does not work more than 12 hours that day, and if the first meal period was not waived. Of course, since the first meal period cannot be waived if there were more than 6 work hours in a day, it would seem that no employee working more than 10 hours in a day could have waived the first meal period. In any event, whenever a worker is employed for more than 12 hours in a day, the second meal period cannot be waived.

The confusion over whether AB 60 ends "on-duty meal periods" stems from a misunderstanding of the term "meal period" and the meaning of the provisions that limit the ability to mutually agree to a waiver of the meal period. The term "meal period" includes both the on-duty paid and off-duty unpaid variety. If the prerequisites (as defined in the

IWC orders) for an on-duty meal period are met, then an on-duty meal period may be established. Even though the employee is required to work during the on-duty meal period, the employee must be given the opportunity, while working if necessary, to eat his or her meal. That is what cannot be waived, if the work period exceeds six hours, and if an on-duty meal period has been properly established. On the other hand, if the prerequisites for an on-duty meal period have not been met, the limits on waiver of the meal period apply to the employee's right to take an off-duty meal period.

The IWC will continue to have an important role in defining meal period requirements, as section 10 of AB 60 adds section 516 to the Labor Code, which provides that notwithstanding any other provision of law, the IWC may adopt or amend regulations regarding meal periods, break periods, and days of rest.

Day of Rest Requirement: AB 60 does not amend existing Labor Code sections 551 and 552, which provide that every employee is entitled to one day's rest in seven, and that no employer shall cause its employees to work more than six days in seven.

Section 12 of AB 60 makes some minor changes to Labor Code §554, which, among other things, permits an accumulation of days of rest when the nature of the employment reasonably requires that the employee work seven or more consecutive days, providing that in each calendar month the employee receives days of rest equivalent to one day's rest in seven. The most significant change to section 554 is that it now specifies that employees covered by IWC Order 14 (agricultural occupations) are not covered by this chapter of the Labor Code (starting with Labor Code §500), except for Labor Code section 558, so that employers of such employees will be subject to civil citations for violations of the overtime provisions of Order 14.

Section 13 of AB 60 makes some minor changes to Labor Code §556, which provides that sections 551 and 552, the sections which mandate one day's rest in seven, shall not apply to any employer or employee when the total hours of employment do not exceed 30 hours in a week or six hours in any one day of that week. We have been asked whether an employee who works such a part-time schedule would be entitled to seventh day premium pay, pursuant to section 510. The answer is yes, seventh day premium pay is required under section 510 if the worker works seven consecutive days in a workweek, regardless of the total number of hours worked during that workweek or during any of the days during that workweek. Section 556 does not exempt part-time workers from the requirements of seventh day premium pay.

Enforcement: As discussed earlier in this memo, section 14 of AB 60 adds section 558 to the Labor Code, which establishes a civil penalty citation system as a mechanism for enforcing the overtime provisions of both AB 60 *and* the IWC orders. The citation may include: 1) a civil penalty that is payable to the State (set for an initial violation, which we interpret as a first citation, at $50 per employee per pay period for which the employee was underpaid; and for a subsequent violation, at $100 per employee per pay period in which the employee was underpaid), *and* 2) an additional amount representing the unpaid overtime wages owed to the employees, with any such wages that are recovered to be paid by DLSE to the affected employees. By allowing for inclusion of unpaid wages as a component of the amount assessed, overtime citations differ from minimum wage civil penalty citations under Labor Code §1197.1, which do not include an unpaid wage component. This unpaid overtime wage component of the assessment provides DLSE with a significant enforcement mechanism, and a means of expeditiously pursuing the collection of unpaid overtime wages.

Employer Appeal Rights: Section 558(b) provides that the procedures for issuing, contesting and enforcing judgments for civil penalty citations for overtime violations shall be the same as the procedures governing minimum wage citations under Labor Code §1197.1. Thus, an employer will have 15 business days from the date the citation is issued to request an appeal hearing. The hearing must then be held within 30 days of a timely request. The decision of the Labor Commissioner's hearing officer, either affirming, dismissing or modifying the proposed assessment, must be served on the parties within 15 days of the conclusion of the hearing. The employer then has 45 days from the date the decision is served to file a petition for a writ of administrative mandate. If no writ petition is timely filed, then the Labor Commissioner's decision becomes due and payable, and is entered as a clerk's judgement. If a writ petition is filed, the court will review the administrative record to determine whether the evidence presented at the hearing before the Labor Commissioner supports the findings and whether the Labor Commissioner's decision correctly applies the law. Since court review is by way of writ, rather than de novo trial, it is critical to present the necessary evidence at the administrative hearing to establish an adequate administrative record.

Of course, the civil penalty provision of section 558 is not the only means available to DLSE for enforcing a worker's right to overtime compensation. DLSE can still prosecute overtime violations as it has in the past, by filing a civil action pursuant to Labor Code §1193.6. DLSE also can, of course, continue to adjudicate individual employee wage claims through the section 98 Berman hearing process.

We have received several inquiries as to whether "willfulness" is a required element for the issuance of a civil penalty for overtime violations. The answer is no, there is no requirement of "willful" underpayments. The word "willful" or "intentional" does not appear in section 558. Had the Legislature intended to make "willfulness" a requirement, they would have do so expressly, as in Labor Code section 203. It is therefore our conclusion that purported absence of willfulness is not a defense to the imposition of penalties under section 558.

We have also been asked whether meal period violations will be subject to civil penalty citations under section 558. At first blush, the statute authorizes the issuance of a citation for a violation of "a section of this chapter or any provision regulating hours and days of work in any [IWC] order," so that violations of the meal period requirements of section 512 would appear to be subject to civil penalty citations. But the manner in which civil penalties are calculated -- $50 or $100 per *underpaid employee* per pay period in which the employee was underpaid, plus the amount of the *underpaid wages* -- makes it clear that a violation of meal period requirements will not result in the imposition of a civil penalty under section 558, unless the meal period violation is coupled with a failure to pay the employee for the time worked during the unlawfully deprived meal period. In other words, as long as the employee was paid at the appropriate regular or overtime rate for the time worked during what should have been his or her meal period, the employer is not subject to a penalty. However, if an employee is not given a meal period as required by section 512, *and* is not paid for such time worked (either at the regular rate or at the overtime rate, whatever may be required), a penalty citation may be issued in accordance with section 558.

We have also received inquiries as to whether penalties will be assessed against an employer's payroll clerk, payroll supervisor, or a payroll processing service for failure to issue checks that contain required overtime compensation.

This question is prompted by the expansive language of section 558, which makes "any employer or other person acting on behalf of an employer" subject to a penalty citation. Regardless of the expansive sweep of this language, DLSE does not intend to issue penalty citations to any individual persons who do not formulate policies that lead to non-payment of required overtime compensation. In general, penalties will be issued against the legal entity that is the employer. To the extent that DLSE may, on appropriate occasions, decide to go beyond this legal entity in imposing liability, we would not anticipate going beyond the definition of employer found in each of the IWC orders. That definition includes any person "who directly or indirectly, or through an agent or any other person, *employs or exercises control over the wages, hours, or working conditions of any person.*" Thus, in appropriate instances, corporate officers or managers may be included as defendants in a penalty citation pursuant to section 558.

Labor Code section 553, which was not amended by AB 60, offers another method of enforcing AB 60's provisions. Section 553 provides that "any person who violates this chapter," which now includes the overtime provisions of AB 60, "is guilty of a misdemeanor."

Special Industries: Existing provisions of the Labor Code contain special workday or workweek requirements or exemptions relating to employees of ski establishments (section 1182.2), commercial fishing boats (section 1182.3), licensed hospitals (section 1182.9), and stable employees engaged in the raising, feeding or training of racehorses (section 1182.10). Sections 16 to 19 of AB 60 amends these statutes to provide for their repeal effective July 1, 2000, unless the Legislature enacts a statute prior to that date extending these special provisions. Of course, the IWC may choose to maintain, or modify, the exemptions for these industries pursuant to Labor Code section 515(b).

EXHIBIT F

STATE OF CALIFORNIA Edmund G. Brown Jr., *Governor*

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Division of Labor Standards Enforcement

2015–2016 FISCAL YEAR 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 (the Bureau or BOFE). This report should 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 Bureau's efforts.

The Labor Commissioner's Office (also known as the Division of Labor Standards Enforcement or DLSE) consists of several units working together to provide a wide array of essential services for California workers and employers, including adjudication of wage claims, inspections of workplaces, enforcement of prevailing wage rates and apprenticeship standards in public works projects, licensing and registration of businesses, investigations of retaliation complaints, criminal prosecution for wage theft and education of the public on labor laws. The mission of the California Labor Commissioner is to ensure a just day's pay in every workplace in the state and to promote economic justice through robust enforcement of labor laws. By combating wage theft, protecting workers from retaliation, and educating the public, the Division puts earned wages into workers' pockets and helps level the playing field for law-abiding employers.

One of the Division's key enforcement arms is the Bureau of Field Enforcement. The Bureau investigates complaints and takes enforcement actions to ensure that employees are neither required nor permitted to work under unlawful conditions. Actions taken by Bureau investigators include the enforcement of minimum wage and overtime requirements and child labor laws and of employers' requirement to carry workers' compensation insurance; audits of payroll records, collection of unpaid wages, such as prevailing wages on public works jobs; issuing citations for violations of any applicable Labor Code sections; confiscating illegally manufactured garments; and seeking injunctive relief to prevent further violations of the law.

California has over 711,000 businesses, which report employing 13.4 million California workers. This does not include nearly 3 million small businesses in California that report no payroll employees.

Numerous studies put the incidence of wage theft at staggering levels. The US Department of Labor reported in 2014 that the minimum wage law is violated in California 372,000 times per week and that over 1 in 10 workers in California is paid less than the minimum wage. An often-cited 2010 study by the UCLA Labor Center found that frontline workers in Los Angeles County lose $26.2 million per week in stolen wages.

BOFE focuses on major underground economy industries in California where labor law violations are the most rampant, including agriculture, garment work, construction, car washing, and restaurants. In the past few years, the Division has increased its focus in industries where wage theft has been particularly challenging to combat, such as janitorial work and warehousing.

Strategic Enforcement Plan

In the past five years, the Bureau has reinforced the Labor Commissioner's core mission of collecting wages for California's wage earners and penalizing employers that participate in the underground economy. It is unacceptable for businesses that violate labor laws to gain a competitive advantage over law-abiding employers.

One of the key components of this administration's enforcement plan is strategic targeting of law-breaking employers. In lieu of broad "sweeps" and random inspections, the Labor Commissioner has adopted an approach that utilizes active collaboration with key partners on the ground and improved data to target businesses that are intentionally cheating. We have also devoted considerable resources to ensuring that we are using every tool at our disposal to prosecute these violators to the full extent of the law. This includes working in collaboration with sister State agencies, local law enforcement, and other government agencies as well as other stakeholders, from community-based organizations to industry associations. Those partnerships have resulted in better leads to uncover wage theft and strengthened the Division's ability to interview workers in a safe environment so that we can understand the nature of violations in the workplace. Deputy Labor Commissioners in BOFE interview workers off-site and outside regular business hours to maximize our ability to gain worker trust and participation. The Bureau does not solely rely on complaint-based investigations but also engages in proactive, strategic enforcement based on leads obtained by organizations, associations, and industry representatives.

In addition, legislative changes have given the Bureau more power to issue civil citations for certain violations that were once enforceable only through the Berman wage claim process or through private lawsuits. For example, the Bureau is now able to issue citations for liquidated damages when minimum wage violations occur and for waiting-time penalties under Labor Code section 203. These changes do not expand liability for employers breaking the law but streamline the Division's ability to crack down on perpetrators of underground economy violations, protecting honest employers and resulting in a smarter use of government resources. Other changes expand liability, including the creation of a "client employer" definition that addresses violations created by entities that subcontract for labor by making those entities responsible for wage theft under certain circumstances.

As a key component of our renewed effort to fight wage theft, BOFE investigators not only focus on civil penalties but conduct detailed audits for unpaid wages, in particular, minimum and overtime wages owed to workers. BOFE's efforts help ensure that workers are paid their lawful wages and legitimate employers are not forced out of business by those operating illegally in the underground economy. We have hired more auditors for this purpose and have also held statewide training for deputies on wage

auditing. The Labor Commissioner's office partners with other units within the Department of Industrial Relations, community groups, and other departments in order to better enforce the laws. Our enforcement efforts generate substantial revenue for the State in the form of penalties paid by employers that are caught breaking the law. As a direct result of an enforcement plan that prizes quality over quantity and in-depth investigations over quick in-and-out inspections, the Division has performed fewer inspections overall compared to the years before this administration but has found more wages owed to workers in California than at any time in BOFE's history. However, notably, the ratio of citations to inspections has increased dramatically. In other words, better targeting leads fewer law-abiding employers to be inspected, more unpaid wages to be found due, and more citations to be issued per employer, so that scofflaw employers who purposefully exploit workers and break the law are held accountable.

The Division has continued to offer training, particularly on conducting wage audits to determine the extent of wage theft and to put wages back into workers' pockets, as well as additional field enforcement training to give staff a better understanding of various schemes used by unscrupulous employers to avoid compliance with the law. This commitment to staff training has enabled the Bureau to conduct deeper, more substantive investigations.

This report focuses primarily on the activities of field enforcement pursuant to Labor Code section 90.5(d).

Enforcement Results

In fiscal year 2015–2016, the Bureau conducted 2,424 inspections, which led to the issuance of citations for 2,072 violations.[1] This administration's ongoing commitment to identifying and combating wage theft has resulted in more in-depth investigation to uncover underground labor violations. The largest single source of violations and citations continues to be the failure to carry workers' compensation insurance: citations for this violation numbered 859, and a total of $19,278,262.45 was assessed in penalties. The second-highest number of citations was for the failure to issue an itemized wage statement (449 violations), which also had the second-highest penalty assessment in its citation category, $4,229,225. The following tables illustrate the Bureau's performance, including its special programs, such as prevailing wage enforcement through the Public Works Unit and the collaborative efforts of the Labor Enforcement Task Force (LETF).

[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 those of the Public Works Unit and the Labor Enforcement Task Force.

BUREAU (including Public Works)				
FY 2015–2016, Results by Industry				
		Total Inspections	**2,424**	
		Total Citations Issued	**2,072**	
Industry	*Inspections*	*# of Citations*	*Penalties Assessed*	*Penalties Collected*
Agriculture	112	63	$729,906.20	$266,640.09
Auto repair	146	158	$2,249,886.42	$504,293.34
Car wash	141	246	$2,178,321.93	$562,264.28
Construction	436	279	$2,229,096.15	$619,205.75
Garment	99	137	$765,300.00	$133,644.55
Restaurant	470	469	$5,200,947.90	$1,344,852.50
Retail	118	92	$1,191,811.36	$329,402.68
Other [a]	902	628	$12,071,527.61	$2,650,314.47
Subtotals	*2,424*	***2,072***	*$26,616,797.57*	*$6,410,617.66*
***LESS** citations dismissed/modified* [b]			*<$8,354,480.28>*	
Subtotals	*2,424*	*2,072*	*$18,262,317.29*	*$6,410,617.66*
PLUS Public Works [c]	1,565	636	$25,078,769.39 [d]	$5,344,425.93
TOTALS	***3,989***	***2,708***	***$43,341,086.68***	***$11,755,043.59***

[a] The "other" category includes janitorial, racetracks, pallet, and various other industries that do not fall into any of the other industries specified.
[b] Citations may be dismissed or modified if the employer provides documentary evidence subsequent to the issuance of the citation or at an appeal hearing that it was in compliance at the time the citation was issued.
[c] 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 2,006 audits conducted, with 479 civil wage and penalty assessments (CWPAs) issued (rather than number of citations). These measurements are included here to provide a full picture of the Division's performance.
[d] Includes Labor Code section 1777.7 penalty assessments.

BUREAU (including Public Works)			
FY 2015-2016, Results by Citation Category			
Citation Category	*# of Citations*	*Penalties Assessed*	*Penalties Collected*
Workers' Compensation	859	$19,278,262.45	$3,563,390.49
Child Labor	59	$84,000.00	$68,150.00
Itemized Statement	449	$4,229,225.00	$2,013,974.91
Minimum Wage	180	$520,178.11	$71,437.68
Overtime	192	$678,107.01	$127,479.79
Garment	37	$87,500.00	$13,982.89
Unlicensed Construction Contractor	39	$283,200.00	$46,566.26
Nonregistration [a]	141	$1,058,400.00	$402,738.56
Rest and Meal Period	103	$297,375.00	$80,252.50
Misclassification	2	$17,000.00	$0.00
Unlicensed Farm Labor Contractor	5	$42,600.00	$12,600.00
Other	6	$40,950.00	$10,044.58
Subtotals	*2,072*	*$26,616,797.57*	*$6,410,617.66*
Public Works	636	$25,078,769.39 [b]	$5,344,425.93
***LESS** citations dismissed/modified*		*<$8,354,480.28>*	
TOTALS	***2,708***	***$43,341,086.68***	***$11,755,043.59***

[a] "Nonregistration" includes penalties for nonregistration of car washes and garment manufacturers.
[b] Includes Labor Code section 1777.7 penalty assessments.

BUREAU (including Public Works)		
Total Wages Found Due	***$37,837,869.35***	
Total Wages Collected [a]	**$11,907,258.49**	
Industry	*Wages Found Due*	*Wages Collected*
Agriculture	$499,990.15	$378,627.52
Auto Repair	$449,010.12	$24,466.31
Car Wash	$941,662.97	$132,758.76
Construction	$281,094.35	$48,666.16
Garment	$229,661.67	$3,746.49
Restaurant	$1,372,303.86	$275,409.44
Retail	$225,726.05	$179,851.14
Other	$6,379,156.37	$1,628,645.16
Subtotals	*$10,378,605.54*	$2,672,170.98
Public Works	$27,459,263.81	$9,235,087.51
TOTALS	***$37,837,869.35***	**$11,907,258.49**

[a] Wages collected in fiscal year 2015–2016 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 such as litigation, settlements, and Legal Unit–assisted employer self-audits, all of which were initiated by the Bureau.

Audits

DLSE has provided additional training to staff to uncover issues involving nonpayment of wages, which has resulted in more audits of employers' payroll records. The Division also initiated a program for employers to conduct self-initiated audits to augment the investigations conducted in response to specific complaints. If employers are unable or unwilling to complete the self-audit, the Division has stressed conducting a thorough investigation and conducting the audits to discover unpaid wages. A sampling of notable outcomes of payroll audits performed under the supervision and direction of Bureau staff, which resulted in the assessment of wages due to employees (shown in the statistics above), includes:

- $220,457 for multiple wage theft violations for illegally misclassifying drivers as independent contractors in San Francisco
- $443,460 for multiple wage theft violations by the operator of five adult-care facilities in San Jose
- $60,000 in unpaid wages for 21 construction workers in Berkeley
- $459,573 assessed for a janitorial employer after an investigation uncovered wage theft violations affecting 12 workers in North Highlands

- $2.2 million in citations issued for owners of three residential care facilities in San Diego County
- $180,668 in wages and penalties for multiple wage theft violations by a grocery chain in Los Angeles

Strategic Enforcement Outcomes

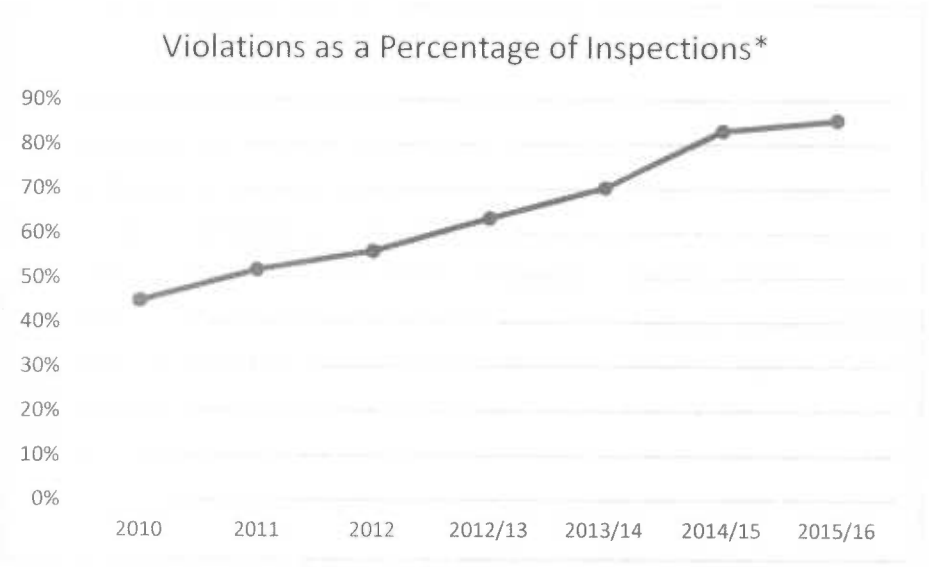
The Division's Strategic Enforcement Plan has proven effective in proactively targeting the worst violators and deterring bad actors throughout California.

The Division has entered into strategic partnerships with key stakeholders, including community organizations, associations, and industry representatives. Through these partnerships, the Bureau has been able to take on cases of far greater magnitude and impact in low-wage industries in California.

Examples of active investigations include:

- The Bureau is conducting an investigation of a chain of restaurants with a District Attorney's Office and other State agencies having determined that over $2 million in unpaid wages is owed to at least 55 workers.
- The Bureau is conducting an investigation of a farm labor contractor with over 700 workers who may be owed unpaid minimum wages and penalties.
- With the assistance of a community organization, the Bureau is conducting an investigation of a janitorial contractor, involving over 100 workers who may be owed significant unpaid minimum wages, overtime, and penalties.
- The Bureau is conducting complex investigations involving client-employer liability, holding every member of the chain responsible for labor violations committed by a contractor, discouraging bad actors, and leveling the playing field for law-abiding, compliant employers.

This new approach has been successful in producing high-quality, in-depth investigations that have uncovered both more violations per investigation and assessed more wages owed to workers than at any other time in the history of the Division. Although the ratio of citations to inspections was just 45% in 2010, the shift to strategic enforcement has resulted in steady improvement in that metric over the past six years. In fiscal year 2013-2014, it was 70%, in 2014-2015, 83%, and in 2015-2016, 85% (see the following graph).



* Prior to fiscal year 2012-2013, the Division of Labor Standards Enforcement collected and reported report data in calendar year.

In addition, the assessed wages per inspection have similarly increased steadily and dramatically. In 2010, it was $2,484.10. For 2014-2015, it was $16,712.26, and in 2015-2016, $15,609.68 (see the following graph).

* Prior to fiscal year 2012-2013, the Division of Labor Standards Enforcement collected and reported report data in calendar year.

The Bureau's overall efficiency has improved significantly due to the focus on targeted, strategic investigations of likely bad actors, rather than "sweeps" or random inspections. This is illustrated by the Division's dramatic improvement in the ratio of citations to inspections and in the tremendous strides made to combat wage theft in California.

Enforcement Program Targets Unlawfully Uninsured Employers

As previously mentioned, the lack of workers' compensation insurance remains the violation most often identified in the Bureau's investigations. In 2008, as a result of the passage of Senate Bill 869 (Chapter 662), the Bureau began a new data-sharing partnership with the Employment Development Department (EDD), the Division of Workers' Compensation, and the Workers' Compensation Insurance Rating Bureau to proactively identify employers that are potentially uninsured unlawfully, beyond its normal complaint-driven investigations. In fiscal year 2015-2016, the Bureau issued citations for 81 violations and assessed $1,957,662 in penalties arising from these efforts. The process and the results of the Senate Bill 869 enforcement activities will be detailed in a separate report.

Car Washing and Polishing Businesses

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 California Code of Regulations, Title 8, division 1, chapter 6, subchapter 11, sections 13680–13693). Staff are being trained so that they can better identify wage-audit issues and acquire effective tools for uncovering wage theft, building on their previous training in the car washing industry, to enable them to go beyond looking only at registration when suspicion arises that other labor laws are being violated; 141 inspections were conducted, and 246 citations were issued, which led to assessments of $2,178,322 for violations of various labor laws, including nonregistration and penalties. In addition, the Division assessed $941,663 in wages and collected $132,758 on behalf of workers as wages due. The results of inspections of car washing and polishing establishments, including re-inspections in the statistics above, are shown in the table below.

FY 2015–2016, Results by Citation Category for Car Washing and Polishing Businesses [a]

Citation Category	*# of Citations*	*Penalties Assessed*	*Penalties Collected*
Workers' Compensation	42	$812,271.93	$72,990.18
Child Labor	6	$8,500.00	$9,500.00
Itemized Statement	23	$162,000.00	$77,368.50
Minimum Wage	25	$85,650.00	$1,880.54
Overtime	19	$47,950.00	$8,411.50
Nonregistration	105	$958,600.00	$379,938.56
Rest and Meal Period	22	$87,200.00	$12,175.00
Other	4	$16,150.00	$0.00
TOTALS	***246***	***$2,178,321.93***	***$562,264.28***

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

Units within the Labor Commissioner's Bureau of Field Enforcement

Public Works

The Bureau's Public Works Unit investigates complaints arising from violations of the state's prevailing wage and apprenticeship laws and conducts audits on behalf of workers for back wages owed. As a result of SB 1038, on July 1, 2012, the Bureau began enforcing Labor Code section 1777.5, which was previously enforced by the Division of Apprenticeship Standards. Labor Code section 1777.7 assessments are now being issued by Bureau investigators for up to $300 per calendar day when contractors violate apprenticeship law, pursuant to Labor Code section 1777.5.

Public Works	**FY 2015-2016**
Cases Opened	1,565
Cases Closed	1,398
Civil Wage and Penalty Assessments (CWPA) Issued	636
Settlements	205
Wages Found Due	$27,459,263.81
Wages Recovered (wages recovered and penalties collected may include monies found due in earlier reporting periods)	$9,235,087.51
Penalties Assessed	$25,078,769 [a]
Penalties Collected	$5,344,425.93 [b]

[a] Includes Labor Code 1777.7 penalties assessed.
[b] Includes Labor Code 1777.7 penalties collected.

In fiscal year 2015–2016, the Labor Commissioner signed orders of debarment for 12 construction companies and individuals. The maximum statutory debarment period is three years, rendering individuals and legal entities ineligible to bid on or be awarded public works contracts or to perform work on a public works project as a subcontractor or an employee. The debarment orders can be accessed at http://www.dir.ca.gov/dlse/debar.html.

Criminal Investigation Unit

The Criminal Investigation Unit (CIU), made up of sworn peace officers, handles cases involving wage theft (which can be a felony or misdemeanor), extortion, felony arrest, misdemeanor arrest, misdemeanor citations, payment of wages with checks for which funds are insufficient, and kickbacks on public works projects. The CIU had 36 assigned cases and 28 closed cases in fiscal year 2015–2016. During the same fiscal year, the CIU filed 8 cases in court through county District Attorney's Offices, including 7 felony charges of wage theft and 6 misdemeanor charges for lacking workers' compensation. The CIU also submitted 10 cases to the county District Attorney's Offices and the Los Angeles City Attorney's Office,

including 9 felony charges of wage theft; 6 misdemeanor charges for lacking workers' compensation; and 1 felony charge for forgery. Two cases were rejected by the county District Attorney's Office, and 1 case was rejected by the Los Angeles City Attorney's Office. The CIU issued 3 arrest warrants for 2 felony charges of wage theft and 2 misdemeanor charges for lacking workers' compensation. The CIU also executed two search warrants for felony charges of wage theft, license fraud, and identity theft.

The following are highlights of some successful criminal prosecution cases, in which the CIU participated in fiscal year 2015–2016:

- Couleurs LLC, dba Antique Thai Cuisine: The CIU investigated the case and submitted it to the San Diego County District Attorney's Office for criminal prosecution. The San Diego County District Attorney's Office filed charges against the owner for violations of Penal Code 487 Felony Grand Theft. On December 2, 2016, Zihan Zhang was sentenced to two years in local custody after being convicted by a jury of 9 counts, including 2 counts of Grand Theft of Labor and 1 count of Grand Theft of Gratuities under a False Pretenses theory. The court further ordered Zhang to pay six of her former employees approximately $20,000 in restitution for unpaid wages and tips that Zhang unlawfully withheld from them.
- Joseph Briseno, dba Taqueria Johny: The CIU investigated the case and submitted it to the Fresno County District Attorney's Office for criminal prosecution. The Fresno County District Attorney's Office filed charges against the owner for violations of Labor Code sections 3700.5 and 3710.2 and Penal Codes 487(a) and 667.5(b). On May 23, 2016, the employer was convicted on PC 487(a) felony charges and sentenced to pay $1,000 in restitution and a $350 fine and spend 10 days in jail and 24 months on probation.
- Steven Gary Zabarsky, dba 5th Wheel Truck Stop: The CIU investigated the case and submitted it to the Fresno County District Attorney's Office for criminal prosecution. The Fresno County District Attorney's Office filed charges against the owner for violations of Labor Code section 3700.5. On January 26, 2016, the employer was convicted on Labor Code section 3700.5 misdemeanor charges and was sentenced to pay $500 in restitution and spend 12 months on probation.
- Marie Lazara Zapata, dba Security Pros: The CIU investigated the case and submitted it to the Fresno County District Attorney's Office for criminal prosecution. The Fresno County District Attorney's Office filed charges against the owner for violations of Labor Code 3700.5. On May 16, 2016, the employer was convicted on Labor Code section 3700.5 misdemeanor charges and was sentenced to pay $500 in restitution and spend six months on probation.

Judgment Enforcement Unit

The Division's Judgment Enforcement Unit (previously called the Collections Unit) has continued to increase monies recovered for Bureau citations and unpaid wages unlawfully withheld from workers. The Judgment Enforcement Unit files judgments for our wage claim offices and BOFE and processed 1,213 judgments for fiscal year 2015–2016, with total recovery by the unit of $3,732,722.

Legal Unit

The Labor Commissioner's Legal Unit continued and enhanced its support for the Bureau's enforcement efforts in FY 2015–2016. The unit continued its traditional work of representing the Division in Superior Court in defense of penalty citation awards in writ of administrative mandamus challenges, prosecution of public works CWPA in administrative hearings, enforcement of investigative subpoenas and conducting investigative depositions, obtaining tolling agreements, negotiating settlement agreements, and advising the Bureau in application of the law to its field investigation planning. The unit also assumed responsibility for prosecution of some select citation appeals before hearing officers in cases with complex legal or factual components and cases with large wage restitution amounts associated with the expanded authority provided by the Legislature for the Bureau to assess minimum wages and liquidated damages through citations.[2]

- The Legal Unit, working in conjunction with a San Francisco–based community partner, the Asian Law Caucus (ALC), successfully defended a group of citations issued against a Fresno residential care facility and one individual for failure to pay overtime wages and properly issue itemized wage statements to eleven workers; the citations were ultimately affirmed for $571,169.67 in wages and $102,500 in penalties.
- The Legal Unit successfully prosecuted citations for minimum wage, overtime, and meal and rest period violations before an administrative hearing officer in a Los Angeles County case investigated and prepared jointly by the unit and the Bureau against a subcontractor at Los Angeles International Airport who employed workers as cabin cleaners. An award of wages and damages was assessed at $941,506.53 and civil penalties of $21,700.
- The Legal Unit obtained a settlement of a lawsuit filed in Humboldt County Superior Court in the amount of $236,686 with a general contractor for wages owed to construction workers that went unpaid by an unlicensed subcontractor in Eureka, California. This sum is in addition to $138,204 (total recovery of $374,891 for 40 workers) previously recovered from the property owner on a mechanic's lien claim.
- The Legal Unit obtained a judgment against a restaurant to recover unpaid wages, liquidated damages, interest, civil penalties, statutory penalties, and attorneys' fees and costs in the amount of $240,632. The unit obtained a judgment in the amount of $40,000 against an individual restaurant owner who caused the minimum wage violations.
- The Legal Unit successfully defended a citation award for $24,000 in penalties issued against a massage parlor for failing to provide itemized wage statements in a writ of mandamus proceeding in San Diego Superior Court.
- The Legal Unit successfully defended a writ of administrative mandamus for $62,592 in Tulare County Superior Court filed by the employer, a local dairy. The employer's writ challenged a citation appeal award that affirmed that the dairy had failed to pay meal period premiums for its failure to provide meal periods to 25 of its workers. Following an entry of judgment, the dairy paid the amounts found due by the Labor Commissioner in full.
- The Legal Unit successfully defended a citation award for $65,750 in penalties issued against a nail salon for failing to provide workers' compensation insurance coverage and failing to provide itemized wage statements in a writ of mandamus proceeding in San Diego Superior Court.

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[2] The resulting penalties and/or wages collected are included in the Bureau statistics above, depending on the process used to achieve the end results.

- The Legal Unit successfully defended a citation award for $17,000 in penalties and $23,000 in wages for security guards in a writ of mandamus proceeding in San Diego Superior Court.
- The Legal Unit successfully defended a citation award against a residential care home and individual owner of the business for $263,347 in wages and penalties in a writ of mandamus proceeding in San Diego Superior Court.
- The Legal Unit successfully defended a citation award against a motel for $152,747 in penalties and $360,554 in wages and liquidated damages in a writ of mandamus proceeding in Orange County Superior Court.
- The Legal Unit settled writ of administrative mandamus for $139,000 in San Diego Superior Court. The writ challenged a $330,500 citation award against a "house flipper" for failing to issue itemized wage statements and contracting with unlicensed contractors.
- The Legal Unit successfully defended against a complaint for injunctive relief against the Labor Commissioner and an application for attorneys' fees against the state in excess of $500,000 in San Diego Superior Court and the Fourth District Court of Appeals.
- The Legal Unit successfully defended against an appeal filed in the Second District Court of Appeals asserting that the Division's subpoena for time and payroll records violated the Fourth Amendment protections against unreasonable searches and seizures and violated the Fifth Amendment protection against self-incrimination.
- The Legal Unit filed motions to amend judgments in two cases to add the successor car wash to judgments obtained against the predecessor car wash for wages due to employees, resulting in full payment of wages due to employees from the successor car wash entities.
- The Legal Unit settled a lawsuit against a fire suppression company for $225,000 for unpaid travel time for 22 workers in Riverside, California.

Other Partnerships

Labor Enforcement Task Force (LETF)

The LETF is a coalition of California State government enforcement agencies that work together and in partnership with local agencies to combat the underground economy. LETF partners include: the Employment Development Department (EDD), the Division of Occupational Safety and Health (DOSH), the Contractors State License Board (CSLB), the Board of Equalization (BOE), and the Bureau of Automotive Repair (BAR). With the creation of the LETF by this administration, the DIR's approach to combating the underground economy shifted from randomly conducting inspections to conducting targeted inspections based on empirical data. The task force also reflects DLSE's new focus on improved targeting through better data and intelligence gathering and on assessing wages owed. LETF accomplishes its mission through targeted inspections for minimum wage and overtime violations, workers' compensation insurance coverage, child labor, illegal operation without the required licenses, and a focus on the garment, agriculture, construction, car wash, automotive repair, restaurant, and any other industry in which labor law violations are prevalent. Although this report contains statistics only for DLSE, a separate legislative report is produced biennially by LETF that includes DLSE statistics.

Transfers to the General Fund

In fiscal year 2015–2016, the Division deposited $7,715,765.39 in fines and penalties collected into the General Fund.

Penalties collected, FY 2015–2016	**Amount deposited into the General Fund**
Public Works Prevailing Wage penalties[1]	$5,344,425.93
Public Works Itemized Statement penalties	$35,423.68
Itemized Statement penalties	$1,978,551.23
Minimum Wage penalties	$71,437.68
Overtime penalties	$127,479.79
Child Labor penalties	$68,150.00
Willful Misclassification penalties	$0.00
Various penalties	$90,297.08
TOTAL	***$7,715,765.39***

[1] Includes Public Works Prevailing Wage Penalties ($3,072,309.58) and Apprenticeship Penalties-LC 1777.7 ($2,272,116.35)

Respectfully submitted,

Julie A. Su
Labor Commissioner

EXHIBIT G

SB 796 (DUNN)
EMPLOYMENT.

Version: 9/2/03 Last Amended
Vote: Majority
OPPOSE***

Lead Republican:
Tax or Fee Increase: No

Creates penalties for specified Labor Code violations so that every Labor Code section will include a civil penalty for violations. Authorizes any employee to act as a "private attorney general" and sue employers for violations of the Labor Code. Authorizes a prevailing employee, (but not an employer), to receive costs and attorneys fees.

[illegible]

Should the legislature increase the cost of doing business in California and send yet another message to the business community that California is a bad place to do business?

[illegible]

1. Increases penalties for any Labor Code violation for which specific civil penalties have not previously been established as follows: a) for a person with no employees, a civil penalty of $500, b) for an employer, sets the penalty at $100 for each aggrieved employee per pay period for an initial violation, and $200 for each aggrieved employee per pay period for continuing violations.
2. Allows any "aggrieved employee" to act as a "private attorney general" and file a civil action on behalf of himself or any other current or former employees to recover civil penalties for any violation of the Labor Code.
3. Distributes the penalties collected in these actions as follows: 50% to the General Fund, 25% to the Labor and Workforce Development Agency for education, to be available for expenditure upon appropriation by the Legislature, and 25% to the aggrieved employee. If the person being sued has no employees, (i.e., in an action brought by the Labor and Workforce Development Agency), allocates 50% to the general fund and 50% to the agency.
4. Authorizes the aggrieved employee to recover attorney's fees and costs. Precludes an employee from maintaining an action under this bill if the Labor and Workforce Development Agency or any of its subdivisions cites a person for a violation of the same code sections.
5. Specifies that nothing in the bill will affect the exclusive remedy that is established under workers compensation law.
6. Specifies that when an individual acts as a "private attorney general" and sues a company for a violation of the Labor Code, the court hearing the suit will have the same degree of discretion that the Labor and Workforce Development Agency would have if it were prosecuting the alleged violation.
7. Clarifies that if the alleged violation of the Labor Code is a failure by the Labor and Workforce Development Agency then there will be no civil penalty.

Senate Republican Floor Votes (21-14) 5/29/03
Ayes: None
Noes: All Republicans Except
Abs. / NV: Morrow

Assembly Republican Judiciary Votes (9-4) 6/26/03
Ayes: None
Noes: Harman, La Malfa, Pacheco, Spitzer
Abs. / NV: None

Assembly Republican Labor Votes (5-2) 7/9/03
Ayes: None
Noes: S. Horton, Houston
Abs. / NV: None

Assembly Republican Appropriations Votes (16-7) 8/20/03
Ayes: None
Noes: Bates, Daucher, Haynes, Maldonado, Pacheco, Runner, Samuelian
Abs. / NV: None

[illegible]

California Labor Federation, AFL-CIO (Co-Sponsor); California Rural Legal Assistance Foundation, Inc. (Co-Sponsor); American Federation of State, County and Municipal Employees (AFSCME); California Conference Board of the Amalgamated Transit Union; California Council of Machinists; California Independent Public Employees Legislative Council (CIPELC); California State Pipe Trades Council; California State Association of Electrical Workers; California Teamsters; Engineers and Scientists of California, Local 20; Hotel Employees, Restaurant Employees International Union; Peace Officers Research Association of California; Professional and Technical Engineers, Local 21; Protection and

Advocacy, Inc.; Region 8 States Council of the United Food and Commercial Workers; Sierra Club; Western States Council of Sheet Metal Workers.

Opposition

Agricultural Council of California; American Electronics Association; Automotive Aftermarket Services; Associated Builders and Contractors of California; Associated General Contractors of California; Associated General Contractors of San Diego; Association of California Water Agencies; California Apartment Association; California Association of Sheet Metal and Air Conditioning Contractors, National Association; California Chamber of Commerce; California Employment Law Council (CELC); California Farm Bureau Federation; California Hotel and Lodging Association; California Independent Grocers Association; California Landscape Contractors Association; California Manufacturers and Technology Association (CMTA); California Motor Car Dealers Association; California Rental Association; California Retailers Association; California Restaurant Association; Civil Justice Association of California (CJAC); Construction Employers' Association; Folsom Chamber of Commerce; Lumber Association of California and Nevada; Motion Picture Association of America; Nancy S. Caron, SPHR, The Hon Company; National Federation of Independent Business; Orange County Business Council; TOC Management Services; Western Growers Association; Wine Institute.

Arguments in Support of the Bill

1. Supporters contend that in the last decade state government labor law enforcement functions have failed to keep pace with the growth of the economy and the workforce. Additionally they note that, resources available to county district attorneys, for prosecution of Labor Code violations as crimes, are similarly lacking. They believe that the continued growth of the underground economy, coupled with the state's severe budgetary shortfall requires a creative solution that will help the state crack down on labor law violators.
2. CIPELC and others state that the bill will "enhance needed revenue to our State by prescribing civil penalties for violations of the labor code."

Arguments in Opposition to the Bill

1. CJAC notes that "If enacted, SB 796 will expose businesses to frivolous lawsuits and create a new litigation cottage industry for unelected private attorneys performing the duties of a public agency whose staffs are responsible to the general public. It will drive up costs to businesses and taxpayers, and further California's reputation for having an unfair liability law system. It will also increase the burden on California's already clogged courts during a time when judicial funding is being cut."
2. CJAC also states "Similar private attorney general actions have resulted in an excessive amount of meritless, fee-motivated lawsuits. Allowing such a bounty hunter provision will increase costs to businesses of all sizes, and add thousands of new cases to California's already over-burdened civil court system." "This is especially problematic as the bill provides that the employee need not be the subject of the alleged violation to file a lawsuit to recover penalties."
3. CMTA notes that this proposal abandons the benefits of administrative solutions: "California has a formal administrative procedure to handle these types of claims under the Labor Code that is both economical and efficient. However, SB 796 would by-pass this system and permits these cases to be filed directly in a civil court to the detriment of employers. In many instances, the amount in dispute is so small that it would not warrant an employer going to court and hiring an attorney to represent them because the cost of legal representation. This is further complicated by the fact that . . . an employee who prevails in any action would be entitled to a percentage of the civil penalty and an award of reasonable attorney fees and cost. . . . And since there is no requirement for the employee to exhaust the administrative procedure or even file the claim with the Labor Commissioner before filing with the civil court, the bill is an invitation for bounty hunting attorneys to aggressively pursue these cases."
4. The CELC expands on the problem of encouraging litigation: "The Labor Code contains innumerable penalty provisions, many of which would be applicable to minor and inadvertent actions. However, now the undesirable effect of excessive penalties are mitigated by prosecutorial discretion - the Labor Commissioner can decide that, although there may be a technical violation, it was inadvertent, and the employer was acting in good faith." The Labor Commissioner is expected to take the public interest into consideration and balance factors such as the harm suffered, the mental state of the violator and the likelihood of recurrence. One result of this change is that private parties, not public officials, will shape the case law governing the Labor Code.
5. Opponents generally also noted the inequity of allowing recovery of attorney's fees only to a prevailing plaintiff. They note that this makes it largely risk free for an employee to file a

complaint and makes defending a suit unattractive because the amount of compensation in question is likely to be small and possible attorneys fees are likely to be substantial.

6. The Wine Institute echoes many of the previous arguments and adds, "SB 796 would create a hostile work environment when employers and employees need to collaborate, not sue each other, to compete in a tough global economy."

As Adopted in Assembly Appropriations Committee August 20, 2003.

MAJOR STATE COSTS/REVENUES – this bill likely would result in major costs to state and local employers to defend lawsuits and pay increased penalties and attorneys' fees. Such costs would be offset to some extent by increased revenues.

1. **Comparison to the Unfair Competition Law (B&P section 17200).** Opponents of the bill are concerned about the parallels between this proposal and section 17200. Both allow an individual to file a complaint against a business and recover attorney's fees if successful. Experience with section 17200 shows that frequently, innocent businesses will be pressured to settle frivolous claims because of the high cost of defense and the relatively small amounts of involved. Small and immigrant owned businesses have proven especially vulnerable to these extortionate settlements due to their lack of financial resources. The California Motor Car Dealers Association notes that this bill goes even further than Section 17200 because it allows private litigants to keep a portion of the civil penalties levied against an employer that would otherwise go to the state. The Chamber of Commerce also finds SB 796 worse than section 17200 insofar as this proposal doesn't require a finding of a violation by a state agency in order to file a claim. **Perhaps the greatest problem in this vein is the probability that a successful claim under this proposal would support a subsequent claim under section 17200.** This would allow unscrupulous attorneys to recover attorneys fees twice for the same event. The sponsors respond to opponents concerns by claiming that this proposal is tighter than section 17200 because a) filing is restricted to an aggrieved employee; b) there are no res judicata issues with this, as there are with section 17200; c) because the penalties are divided between the employees, the General Fund and the agency, this is not a "get-rich-quick scheme." (Note: the "get rich quick" concern actually refers to the lawyers who will get rich under both programs); d) an employee can't maintain an action if the Labor Commissioner files a citation invoking the same Labor Code section.

2. **California is a bad place to do business.** The high cost of wages, benefits, land and housing, utilities and workers compensation all combine with a judicial system that encourages vexatious litigation to discourage businesses from locating or relocating in California or expanding existing facilities. While there are significant difficulties in addressing the source of some of these obstacles, the California legislature can easily remove the burdens that it is directly responsible for creating and refuse to create new ones. According to the 12th annual Business Climate survey by the California Chamber of Commerce and the California Business Roundtable, two-thirds of California business leaders believe that the state's business conditions have gotten worse since 2000. Nationally, business leaders share this negative view of the California business climate. A survey of executives who choose locations for new and expanded factories and offices revealed that 57% of them named California as one of the three states with the least favorable "business climates." This is more than the combined similar negative ratings given to the next two states – New York (36%) and Massachusetts (18%). The legislature has passed numerous bills that add to the cost of doing business in California. Some of these bills require a direct expenditure of funds, others add to the cost of doing business by requiring a diversion of resources towards compliance, while still others reduce productivity by impeding efficiency or flexibility. California has lost many jobs due to the business climate created by the legislature. According to a study prepared for the California Manufacturers and Technology Association, the state has lost nearly 10% of its manufacturing workforce since January 2001. According to UCLA's Anderson Forecast, the film and television industry lost a devastating 12% of jobs in 2001, accounting for 18,000 employees. As noted in the CMTA study, "California's cost factors inadvertently confer a distinct competitive advantage to nearby western states with advanced manufacturing capabilities. . . in attracting and retaining companies. These locations offer similar capabilities in terms of human resources and increasingly boast the sort of lifestyle advantages that previously seemed unique to California. Moreover, manufacturers specifically interested in accessing California's large business and retail markets can easily do so from these geographically proximate states." Beyond the general hostility towards business that the legislature demonstrates, there are hard

EXHIBIT H

NOTES OF DECISIONS (5)

Acts of co-employer
Private right of action

West's Annotated California Codes
Labor Code (Refs & Annos)
Division 2. Employment Regulation and Supervision (Refs & Annos)

§ 226.8. Unlawful actions regarding willful misclassification of individual as independent contractor; civil penalty; violation by licen...

West's Annotated California Codes Labor Code Effective: January 1, 2013 (Approx. 3 pages)

Article 1. General Occupations (Refs & Annos)

Effective: January 1, 2013

West's Ann.Cal.Labor Code § 226.8

§ 226.8. Unlawful actions regarding willful misclassification of individual as independent contractor; civil penalty; violation by licensed contractor; display of notice; issuance of determination by Labor Commissioner; effect on successor entities

Currentness

(a) It is unlawful for any person or employer to engage in any of the following activities:

(1) Willful misclassification of an individual as an independent contractor.

(2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.

(b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars ($5,000) and not more than fifteen thousand dollars ($15,000) for each violation, in addition to any other penalties or fines permitted by law.

(c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars ($10,000) and not more than twenty-five thousand dollars ($25,000) for each violation, in addition to any other penalties or fines permitted by law.

(d)(1) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer that is a licensed contractor pursuant to the Contractors' State License Law has violated subdivision (a), the agency, in addition to any other remedy that has been ordered, shall transmit a certified copy of the order to the Contractors' State License Board.

(2) The registrar of the Contractors' State License Board shall initiate disciplinary action against a licensee within 30 days of receiving a certified copy of an agency or court order that resulted in disbarment pursuant to paragraph (1).

(e) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has violated subdivision (a), the agency or court, in addition to any other remedy that has been ordered, shall order the person or employer to display prominently on its Internet Web site, in an area which is accessible to all employees and the general public, or, if the person or employer does not have an Internet Web site, to display prominently in an area that is accessible to all employees and the general public at

each location where a violation of subdivision (a) occurred, a notice that sets forth all of the following:

(1) That the Labor and Workforce Development Agency or a court, as applicable, has found that the person or employer has committed a serious violation of the law by engaging in the willful misclassification of employees.

(2) That the person or employer has changed its business practices in order to avoid committing further violations of this section.

(3) That any employee who believes that he or she is being misclassified as an independent contractor may contact the Labor and Workforce Development Agency. The notice shall include the mailing address, email address, and telephone number of the agency.

(4) That the notice is being posted pursuant to a state order.

(f) In addition to including the information specified in subdivision (e), a person or employer also shall satisfy the following requirements in preparing the notice:

(1) An officer shall sign the notice.

(2) It shall post the notice for one year commencing with the date of the final decision and order.

(g)(1) In accordance with the procedures specified in Sections 98 to 98.2, inclusive, the Labor Commissioner may issue a determination that a person or employer has violated subdivision (a).

(2) If, upon inspection or investigation, the Labor Commissioner determines that a person or employer has violated subdivision (a), the Labor Commissioner may issue a citation to assess penalties set forth in subdivisions (b) and (c) in addition to any other penalties or damages that are otherwise available at law. The procedures for issuing, contesting, and enforcing judgments shall be the same as those set forth in Section 1197.1.

(3) The Labor Commissioner may enforce this section pursuant to Section 98 or in a civil suit.

(h) Any administrative or civil penalty pursuant to subdivision (b) or (c) or disciplinary action pursuant to subdivision (d) or (e) shall remain in effect against any successor corporation, owner, or business entity that satisfies both of the following:

(1) Has one or more of the same principals or officers as the person or employer subject to the penalty or action.

(2) Is engaged in the same or a similar business as the person or employer subject to the penalty or action.

(i) For purposes of this section, the following definitions apply:

(1) "Determination" means an order, decision, award, or citation issued by an agency or a court of competent jurisdiction for which the time to appeal has expired and for which no appeal is pending.

(2) "Labor and Workforce Development Agency" means the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, or agencies.

(3) "Officer" means the chief executive officer, president, any vice president in charge of a principal business unit, division, or function, or any other officer of the corporation who performs a policymaking function. If the employer is a partnership, "officer" means a partner. If the employer is a sole proprietor, "officer" means the owner.

(4) "Willful misclassification" means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.

(j) Nothing in this section is intended to limit any rights or remedies otherwise available at law.

Credits

(Added by Stats.2011, c. 706 (S.B.459), § 1. Amended by Stats.2012, c. 162 (S.B.1171), § 116.)

Editors' Notes

Relevant Additional Resources

Additional Resources listed below contain your search terms.

HISTORICAL AND STATUTORY NOTES

2011 Legislation

The Senate Daily Journal for the 2011-2012 Regular Session, pages 2490-2491, contained the following letter dated Sept. 9, 2011, from **Senator Ellen M. Corbett**, regarding the intent of Stats.2011, c. 706 (S.B.459):

"September 9, 2011

"The Honorable Greg Schmidt

"Secretary of the Senate

"Dear Mr. Schmidt:

"I am providing this letter to the Journal to document my intent as author of Senate Bill 459.

"SB 459 strives to reduce the incidence of misclassification of employees as independent contractors by creating consequences for employers who willfully misclassify and for those consultants who intentionally advise them to do so. Toward that end, SB 459 creates new civil and administrative penalties and other remedies for the willful misclassification of workers as independent contractors.

"Notwithstanding any subsequent references to damages, the penalties established in Section 226.8 of the California Labor Code, subdivisions (b) and (c) are intended to be penalties to punish and deter violations described in subdivision (a). Nothing in this bill is intended to replace any other penalties, damages, or remedies otherwise authorized by law.

"Sincerely,

"ELLEN M. CORBETT

"Senate Majority Leader"

2012 Legislation

Stats.2012, c. 162 (S.B.1171), made nonsubstantive changes to maintain the code. Subordination of legislation by Stats.2012, c. 162 (S.B.1171), to other 2012 legislation, see Historical and Statutory Notes under Business and Professions Code § 2313.

Notes of Decisions containing your search terms (0)

View all 5

West's Ann. Cal. Labor Code § 226.8, CA LABOR § 226.8
Current with urgency legislation through Ch. 119 of 2018 Reg.Sess

End of Document

EXHIBIT I

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
DF-46 (REV 08/15)

Fiscal Year	Business Unit	Department	Priority No.
2016/17	7350	Industrial Relations	2
Budget Request Name 7350-003-BCP-DP-2016-GB 0559-003-BCP-DP-2016-GB		**Program** 9900100 - DIVISION OF ADMINISTRATION 6105 - DIVISION OF LABOR STANDARDS ENFORCEMENT	**Subprogram**

Budget Request Description
Private Attorneys General Act (PAGA) Resources

Budget Request Summary

The Labor and Workforce Development Agency and the Department of Industrial Relations (DIR) request 10.0 positions and $1.6 million in resources from the Labor and Workforce Development Fund for the 2016/17 fiscal year and $1.5 million ongoing to stabilize and improve the handling of PAGA cases, largely to the benefit of workers, employers, and the state.

This proposal also requests approval of the attached Trailer Bill Language to implement the statutory changes needed to provide DIR with the enhanced oversight needed to achieve the stated outcomes.

Requires Legislation	Code Section(s) to be Added/Amended/Repealed
☒ Yes ☐ No	Labor Code Sections 2699, 2699.3, 2699.7

Does this BCP contain information technology (IT) components? ☐ Yes ☒ No *If yes, departmental Chief Information Officer must sign.*	Department CIO	Date

For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.
☐ FSR ☐ SPR Project No. Date:

If proposal affects another department, does other department concur with proposal? ☐ Yes ☐ No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By	Date	Reviewed By	Date
Karen Broome	12/24/15	[signature]	12/30/15
Department Director	**Date**	**Agency Secretary**	**Date**
[signature]	12/30/2015	[signature]	1.4.16

Department of Finance Use Only

Additional Review: ☐ Capital Outlay ☐ ITCU ☐ FSCU ☐ OSAE ☐ CALSTARS ☐ Dept. of Technology

BCP Type: ☐ Policy ☐ Workload Budget per Government Code 13308.05

PPBA	Date submitted to the Legislature
[signature]	1/7/16

Analysis of Problem

A. Budget Request Summary

This proposal requests 1.0 position for the Labor and Workforce Development Agency (LWDA), 9.0 positions for the Department of Industrial Relations (DIR), and $1.6 million in the Labor and Workforce Development Fund (LWDF) for the 2016/17 fiscal year ($1.5 million ongoing) to stabilize and improve the handling of Private Attorneys General Act cases, largely to the benefit of workers, employers, and the state.

This proposal also requests statutory changes, as reflected on Attachment I, to provide the enhanced oversight needed to achieve the outcomes contemplated below.

B. Background/History

The Private Attorneys General Act (PAGA) was enacted in 2003 to enable private parties to litigate claims and recover penalties for Labor Code violations that previously could only be pursued by the Labor Commissioner or other divisions within DIR. As amended in 2004, PAGA requires employees or their representatives to initiate a case by sending a written notice to the employer and the LWDA which identifies the alleged violations and the facts and theories supporting the claims. The LWDA then has a short time to decide whether to investigate or cite the employer; and the issuance of a citation will preclude private litigation over the same violation. Current law authorizes private litigants to retain 25% of the penalties recovered in a PAGA case, with the remainder being deposited into the LWDF.

Resource History
(Dollars in thousands)

Program Budget	2010/11	20/11/12	2012/13	2013/14	2014/15
Authorized Expenditures	0	0	0	n/a	n/a
Actual Expenditures	0	0	0	n/a	n/a
Revenues	4,468	5,276	4,529	5,680	8,365
Authorized Positions	n/a	n/a	n/a	.25	1
Filled Positions	n/a	n/a	n/a	.25	1
Vacancies	n/a	n/a	n/a	0	0

Workload History[1]

Workload Measure	2010	2011	2012	2013	2014[2]
PAGA Notices Filed	4,430	5,064	6,047	7,626	6,307
Notices Filed (entered in System)	n/a	n/a	n/a	n/a	2,777

As reflected by the above Resource History chart, neither the LWDA nor DIR has ever had the staffing and resources to effectively review notices, or choose cases for further investigation. DIR took over the administration of PAGA notices/cases in the last quarter of the 2013/14 fiscal year. Since that time, PAGA notices have been sent directly to the headquarters of the Division of Labor Standards Enforcement (DLSE) in San Francisco, where they are reviewed by one employee working under the direction of a unit manager in Oakland. As also reflected above, review and investigations of PAGA claims are quite rare, and usually occur only because a case has been called to the LWDA's attention through some other means besides the PAGA notice. Nevertheless, the ability to review and investigate a PAGA case is

[1] DIR began keeping track of PAGA cases on the behalf of LWDA in the last quarter of the 2013/14 fiscal year. Historically, PAGA cases have not been routinely tracked each fiscal year. Therefore, the "Notices Filed" information is likely understated to some degree. Cases reviewed and investigated cannot be accurately estimated because records have not been historically or systematically tracked. However, the department estimates that less than 1% of cases have historically been reviewed/investigated.

[2] In spite of the apparent reduction in "PAGA Notices Filed" (although this could be a result of an imprecise case count for 2014), it should be noted that the aggregate amount of PAGA deposits rose from 2013/14 to 2014/15 by ~$2.7M, or 47% (from $5.7M to $8.3M).

considered an important check on potential abuses in this arena. Attachment II shows the historical percentage of PAGA notices filed by industry.[3]

C. State Level Considerations

The Administration is committed to reducing unnecessary litigation and lowering the costs of doing business in California to support a thriving economic environment. Given the scope and frequency of PAGA filings, there is great opportunity to increase the rate of administrative handling of cases versus the courts. Reducing the litigation and increasing early resolution will improve outcomes for workers and reduce costs for employers.

D. Justification

As indicated in the Resource History and Workload History charts above, historically, the LWDA and DIR have not been staffed to perform the review and oversight functions contemplated by the Labor Code Sections 2698 – 2699.5 (PAGA). This has contributed to a range of concerns about the PAGA statute itself, including that employers are being sued and incurring substantial costs defending against technical or frivolous claims, and that workers and the state often end up being shortchanged when these cases are settled. Employers are also concerned about potential exposure to large back pay and penalty claims, often pursued through PAGA actions, when courts make new precedential determinations in wage and hour cases. This proposal would address these by concerns by providing DIR with the staffing needed to effectively oversee and, when appropriate, step in to handle PAGA cases.

This proposal is needed to stabilize and improve the handling of PAGA cases, largely to the benefit of workers, employers, and the state. Among other things, cases investigated by the state tend to resolve much more quickly with a better outcome for workers in terms of back wages recovered, promptness of payments, and commitments to future compliance, than private PAGA litigation. This will save employers considerable litigation costs and potential liability for plaintiffs' attorneys' fees. In addition, the settlement review authority contemplated by this proposal should deliver better wage recoveries for workers since the current absence of state participation makes it difficult to ensure that settlements are fair to all the affected employees and the state. Finally, greater state oversight and participation in PAGA cases will help reduce PAGA litigation and litigation costs by weeding out marginal and frivolous claims.

If approved, this proposal will create within DIR a unit to carry out the LWDA's responsibilities under PAGA. Under the direction of the Director of Industrial Relations, the PAGA Unit would:

1. **Review PAGA notices to determine whether to accept cases for investigation or authorize commencement of private litigation.**

   As reflected by the Workload History chart, less than 1% of all PAGA cases are reviewed or investigated. The purpose of the current requirement to give the LWDA advance notice of PAGA cases is to enable the LWDA to intercept and investigate claims that may (1) implicate important legal policy issues or (2) overlap with ongoing investigations or other claims that have already come to DIR's attention in another manner. The volume of PAGA notices is as high as 635 notices per month and each requires review from staff with appropriate training/expertise in order to review the case in the time frame required, and make a determination whether to investigate.

2. **Investigate accepted cases and determine whether to (1) cite the employer for Labor Code violations, and (2) settle claims with the employer.**

   When a decision is made to investigate a PAGA case, it forestalls private litigation during the statutory investigation period (currently 120 days), makes that private dispute a matter of public interest, and completely usurps the private claims if a citation is issued to the employer for the same violations asserted in the PAGA notice. Currently, DIR lacks the resources to reach a solid conclusion and cite or settle within the allotted time before losing the ability to forestall private litigation. Two recent PAGA cases required an average of 325 hours in staff time (investigators, auditors, and support), 90 hours of attorney time, plus additional time from high-level decision-makers in each case, all of which had to be

[3] Based on 2014/15 fiscal year data.

squeezed in with other regular casework. Currently, the size of the task coupled with the lack of extra time and resources operate as a great disincentive against accepting PAGA cases for investigation. The additional resources requested in this proposal will allow DIR to accept cases with broader labor policy issues of statewide interest that would otherwise be decided by the courts through essentially private litigation.

3. **Litigate and manage resolution of cases in which the employer has been cited or has settled.**

   A PAGA investigation must conclude with a formal citation of the employer in order to foreclose private litigation against the employer over the same violations. The citation may be an administrative citation that is subject to an appeal and litigation by the employer, or it may take the form of an agency lawsuit which charges the employer with the violations, and which must be litigated in superior court. Both options require a major commitment of resources and professional staff time following the citation. If the requested resources are approved, DIR's goal will be to cite *and settle* with the employer in order to largely avoid this commitment, although settlements themselves must be managed and sometimes must be enforced through court action when terms are violated. To fulfill the purpose of the PAGA procedures for agency notice and involvement, the LWDA must have the resources not only to investigate some of the cases, but also to see a case all the way through once an employer has been cited.

4. **Evaluate and approve proposed settlements of PAGA litigation.**

   Current law authorizes private litigants to retain 25% of the penalties recovered in a PAGA case and to turn over the other 75% to the LWDF. It also requires the superior court to review and approve any settlement involving penalties. However, with the exception of cases involving OSHA violations (in which case the court must also review the adequacy of the safety protections or remedies), there is no requirement to notify or seek agency input on the adequacy of a settlement. Because most judges have no particular expertise in labor law and must rely upon the knowledge and representations of counsel, both of whom are interested in having the settlement approved, there is no assurance that settlements are in fact fair to all the affected employees or the state. The dynamics at play in major litigation tend to work against such assurances: protracted litigation creates strong incentives to settle in a way that best protects the interests of the actual plaintiffs and their attorneys, while discounting the claims and interests of other employee class members. These dynamics also run counter to PAGA's fundamental goal of enabling private parties to aid in the enforcement of labor laws for the public benefit rather than purely their own private interest.

   Requiring that the agency have notice and an opportunity to object to any proposed settlement in a PAGA case (*i.e.* extending the current OSHA requirement to all cases) would provide an effective check and balance to ensure that the public purposes of PAGA are being fulfilled; in particular, that the legal rights of affected employees are being fully protected. Legal staff will be needed to review the proposed settlements and to file objections in those cases where the settlements appear inadequate or unfair. The cost of this work is likely to be offset if not exceeded by larger penalty recoveries to the state, as this mechanism will also provide DIR with the means to ensure that the appropriate amount of revenue for each case is transmitted to the LWDF.

5. **Evaluate petitions for amnesty relief arising out of new precedent or legal development and determine time frame and conditions for amnesty relief.**

   If approved, this proposal will also create a mechanism through which DIR can set up an amnesty plan in situations where an industry-wide practice has been invalidated through a major court decision or other development that creates potentially crippling liabilities under PAGA. The basic goal of such an amnesty is to induce employers to move quickly to make their employees whole for past violations and bring their practices into conformity with current law in exchange for substantial relief from the penalties and other special damages that would be available in a PAGA case. DIR has recently worked on amnesty-style settlements and legislation affecting piece-rate workers and drayage truck operators; and

this experience showed that each plan must be tailored around the specific issues and practices of the affected industries. For this reason, the proposal would give DIR responsibility to determine the need for amnesty relief in a given situation and then to craft and administer an appropriate amnesty plan.

The proposal would provide DIR with the attorneys, investigators, and support staff to exercise oversight functions under PAGA as listed above, including those functions that would be added through PAGA reform legislation. The requested LWDA Assistant General Counsel position is necessary to fulfill LWDA's oversight responsibilities, as the LWDA is ultimately responsible for oversight and implementation of the PAGA statutes. The attorney's responsibilities will include helping to stand-up the program by establishing the PAGA program policy parameters and monitoring the new program, reviewing and providing oversight and direction in the more complicated PAGA settlements, reviewing and assisting with DLSE litigation arising from cases in which the employer has been cited, advising the LWDA Secretary and the General Counsel on PAGA related legal and statewide policy issues, and responding to LWDA PAGA Public Records Act requests. Estimated annual outcomes are listed in the Outcomes and Accountability section below.

See Attachment III for additional workload by position.

This proposal will also make a number of modest revisions to the PAGA statute to improve the state's oversight of PAGA cases and better insure that they are pursued in the public's interest and not just for private purposes. Proposed revisions would provide for the following:

- Require more detail in the PAGA claim notices filed with the LWDA and require that claims for ten or more employees be verified and accompanied by a copy of the proposed complaint.
- Extend the LWDA's time to review PAGA notices from 30 to 60 days, and specify that employers may submit a request for the LWDA to investigate a PAGA claim.
- Require PAGA notices and employer responses to be submitted online and accompanied by a filing fee.
- Extend the time for the LWDA to investigate an accepted claim from 120 to 180 days.
- Require the Director of Industrial Relations to be served with a copy of the complaint when a PAGA case is filed.
- Require court approval of all PAGA case settlements, and require that the Director of DIR be provided with notice and an opportunity to object before the court determines whether to approve a settlement.
- Create a separate procedure through which interested parties may ask the Director of DIR to establish a temporary amnesty and safe harbor program to provide expedited back wage payments to employees and penalty relief to employers following the invalidation of a widespread industry practice (similar to Assembly Bill 1513, Chapter 754, Statutes of 2015).

E. Outcomes and Accountability

Projected Outcomes

Workload Measure	CY	2016	2017	2018	2019	2020
Review of PAGA Notices	250	900	900	900	900	900
Case Investigation (Cases retained)	n/a	45	45	45	45	45
Settlement Review/Approval	n/a	270	270	270	270	270
Case Litigation	n/a	Unknown	Unknown	Unknown	Unknown	Unknown
Review of Amnesty Petitions	n/a	1	1	1	1	1

F. Analysis of All Feasible Alternatives

1. Continue to process receipt of PAGA filings with current staffing levels.

Pros: No additional resources required.

Cons: While LWDA's notice and investigation rights are perceived as an important check and balance on potential abuses in PAGA litigation, the reality is that LWDA lacks the ability to meaningfully review notices or investigate more than handful of the thousands of claims that come through.

As a practical matter, the typical PAGA notice will not get reviewed or investigated unless someone calls it to the special attention of LWDA. In addition, while current law requires court approval of settlements involving penalties, courts lack the means to provide effective oversight, and there is no way to determine if the public's interest is being served or appropriate penalties being recovered in individual cases.

The process may continue at its current level, however the potential for time and workload savings, improved outcomes for private litigants, and reduced litigation overall will accordingly continue to elude the state. It could be argued that the ongoing societal costs tied to this alternative would dwarf the resources requested by this proposal.

2. Remove the statutory provision (Labor Code section 2698 et sec.) that allows PAGA.

Pros: The purpose for PAGA's adoption and amendment in 2004 was to give private litigants the ability to take over some of the enforcement work that previously had been entrusted exclusively to DIR and the Labor Commissioner. This was in response to DIR's limited capacity to address the broad range of claims and violations under the Labor Code. PAGA could be repealed to return all penalty enforcement authority to the exclusive jurisdiction of DIR and curtail what some regard as abusive private litigation under PAGA.

Cons: This would simply return the state to the status quo of 2003, when DIR could not come close to absorbing and handling all of the enforcement work that had been entrusted to it under the Labor Code.

3. Approve the proposal.

Pros: Additional staffing would enable the PAGA Unit resources to stabilize and improve the handling of PAGA cases, largely to the benefit of workers, employer, and the state.

Cons: Additional cost to the State.

G. Implementation Plan

LWDA and DIR would begin hiring once the BCP is approved and the funds are appropriated. Resources would be augmented to support the functions described in this proposal. Improved tracking, review and monitoring will enable ongoing evaluation of performance and progress in handling filings administratively, as deemed appropriate. Reports will be reviewed and updated for management review and for purposes of informing the administration of cost avoidance achieved through this proposal.

H. Supplemental Information

N/A

I. Recommendation

Approve this request for 1.0 position for the Labor Workforce and Development Agency, 9.0 positions for the Department of Industrial Relations, and $1.6 million in the LWDF for the 2016/17 fiscal year ($1.4 million ongoing) to stabilize and improve the handling of PAGA cases, largely to the benefit of workers, employers, and the state (See Attachments IV and V for current/proposed Fund Conditions).

Approve the attached Trailer Bill Language to implement the statutory changes needed to provide DIR with the enhanced oversight needed to the stated outcomes.

SECTION 1. Section 2699 of the Labor Code is amended as follows:

2699. (a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

(b) For purposes of this part, "person" has the same meaning as defined in Section 18.

(c) For purposes of this part, "aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

(d) For purposes of this part, "cure" means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole. A violation of paragraph (6) or (8) of subdivision (a) of Section 226 shall only be considered cured upon a showing that the employer has provided a fully compliant, itemized wage statement to each aggrieved employee for each pay period for the three-year period prior to the date of the written notice sent pursuant to paragraph (1) of subdivision (c) of Section 2699.3.

(e) (1) For purposes of this part, whenever the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars ($500).

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee

per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

(3) If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty.

(g) (1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid pursuant to paragraph (1)(D) of subdivision (a) of Section 2699.3. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

(h) No action may be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in Section 2699.3 for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

(j) Civil penalties recovered under paragraph (1) of subdivision (f) shall be distributed to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.

(k) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of this code for liability against an employer for the compensation for any injury to or death of an employee arising out of and in the course of employment.

(l)(1) Within 10 days following commencement of a civil action pursuant to this part,

the aggrieved employee or representative shall provide the Director of Industrial Relations with a file-stamped copy of the complaint that includes the case number assigned by the court, and shall thereafter notify the director of any proposed settlement in accordance with subparagraph (2).

(2) The superior court shall review and approve any ~~penalties sought as part of a~~ proposed settlement ~~agreement~~ of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the director at the same time that it is submitted to the court, and the director shall be provided with an opportunity to object to or comment upon the proposed settlement before the court determines whether to approve the penalties sought as part of the settlement.

(3) Items required to be submitted to the director under this subdivision or to the Division of Occupational Safety and Health pursuant to paragraph (4) of subdivision (b) of Section 2699.3, shall be transmitted online through the same system established for the filing of notices and requests under subdivisions (a) and (c) of Section 2699.3.

(m) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

(n) The agency or any of its departments, divisions, commissions, boards, or agencies may promulgate regulations to implement the provisions of this part.

SECTION 2. Section 2699.3 of the Labor Code is amended as follows:

2699.3. (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) (A) The aggrieved employee or representative shall give written notice by ~~certified mail to~~ by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including a statement setting forth the relevant facts, legal contentions, and ~~theories to~~ authorities supporting ~~the~~ each alleged violation. The notice shall also include an estimate of the number of current and former employees against whom the alleged violations were committed and on whose behalf relief is being sought.

(B) If the aggrieved employee or representative is seeking relief on behalf of ten or more employees, the notice shall be verified in the manner prescribed by Section 446 of the Code of Civil Procedure, and a copy of the proposed complaint shall be attached to the notice.

(C) Within 30 days after receiving the notice prescribed by paragraph (A), the employer may request the Labor and Workforce Development Agency to investigate

one or more of the claims raised in the notice. The employer's request shall be filed online with the Labor and Workforce Development Agency and sent by certified mail to the aggrieved employee or representative, and shall specify the basis for requesting the investigation.

(D) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) shall be accompanied by a filing fee of $150.00 if also subject to requirements of subparagraph (B), or $75.00 in all other cases. An employer request filed with the Labor and Workforce Development Agency pursuant to subparagraph (C) shall be accompanied by a filing fee of $50.00. The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(E) The fees paid pursuant to subparagraph (D) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (j) of Section 2699.

(2) (A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within ~~30~~ 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within ~~33~~ 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within ~~33~~ 65 calendar days of the postmark date of the notice received pursuant to paragraph (1). Within ~~120~~ 180 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee of that decision within five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within the ~~158~~ 245 day period prescribed by subparagraph (A) and this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

(C) Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.

(b) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give notice by online filing with ~~certified mail to~~ the Division of Occupational Safety and Health and by certified mail to

the employer, with a copy to the Labor and Workforce Development Agency, of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The division shall inspect or investigate the alleged violation pursuant to the procedures specified in Division 5 (commencing with Section 6300).

(i) If the division issues a citation, the employee may not commence an action pursuant to Section 2699. The division shall notify the aggrieved employee and employer in writing within 14 calendar days of certifying that the employer has corrected the violation.

(ii) If by the end of the period for inspection or investigation provided for in Section 6317, the division fails to issue a citation and the aggrieved employee disputes that decision, the employee may challenge that decision in the superior court. In such an action, the superior court shall follow precedents of the Occupational Safety and Health Appeals Board. If the court finds that the division should have issued a citation and orders the division to issue a citation, then the aggrieved employee may not commence a civil action pursuant to Section 2699.

(iii) A complaint in superior court alleging a violation of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall include therewith a copy of the notice of violation provided to the division and employer pursuant to paragraph (1).

(iv) The superior court shall not dismiss the action for nonmaterial differences in facts or theories between those contained in the notice of violation provided to the division and employer pursuant to paragraph (1) and the complaint filed with the court.

(B) If the division fails to inspect or investigate the alleged violation as provided by Section 6309, the provisions of subdivision (c) shall apply to the determination of the alleged violation.

(3) (A) Nothing in this subdivision shall be construed to alter the authority of the division to permit long-term abatement periods or to enter into memoranda of understanding or joint agreements with employers in the case of long-term abatement issues.

(B) Nothing in this subdivision shall be construed to authorize an employee to file a notice or to commence a civil action pursuant to Section 2699 during the period that an employer has voluntarily entered into consultation with the division to ameliorate a condition in that particular worksite.

(C) An employer who has been provided notice pursuant to this section may not then enter into consultation with the division in order to avoid an action under this section.

(4) The superior court shall review and approve any proposed settlement of alleged violations of the provisions of Division 5 (commencing with Section 6300) to ensure that the settlement provisions are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged violation. The provisions

of the settlement relating to health and safety laws shall be submitted to the division at the same time that they are submitted to the court. This requirement shall be construed to authorize and permit the division to comment on those settlement provisions, and the court shall grant the division's commentary the appropriate weight.

(c) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met:

(1)(A) The aggrieved employee or representative shall give written notice by online filing with ~~certified mail to~~ the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including a statement setting forth the relevant facts, legal contentions, and ~~theories to~~ authorities supporting ~~the~~ each alleged violation. The notice shall also include an estimate of the number of current and former employees against whom the alleged violations were committed and on whose behalf relief is being sought.

(B) If the aggrieved employee or representative is seeking relief on behalf of ten or more employees, the notice shall be verified in the manner prescribed by Section 446 of the Code of Civil Procedure, and a copy of the proposed complaint shall be attached to the notice.

(C) Within 30 days after receiving the notice prescribed by paragraph (A), the employer may request the Labor and Workforce Development Agency to investigate one or more of the claims raised in the notice. The employer's request shall be filed online with the Labor and Workforce Development Agency and sent by certified mail to the aggrieved employee or representative, and shall specify the basis for requesting the investigation.

(D) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) shall be accompanied by a filing fee of $150.00 if also subject to requirements of subparagraph (B), or $75.00 in all other cases. An employer request filed with the Labor and Workforce Development Agency pursuant to subparagraph (C) or a cure notice submitted pursuant to paragraph (2)(A) of this subdivision, whichever is submitted first, shall be accompanied by a filing fee of $50.00. The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(E) The fees paid pursuant to subparagraph (D) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (j) of Section 2699.

(2) (A) The employer may cure the alleged violation within 33 calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice ~~by certified mail~~ within that period of time by certified mail to the aggrieved employee or representative and by online filing with the agency if

the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

(B) (i) Subject to the limitation in clause (ii), no employer may avail himself or herself of the notice and cure provisions of this subdivision more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(ii) No employer may avail himself or herself of the notice and cure provisions of this subdivision with respect to alleged violations of paragraph (6) or (8) of subdivision (a) of Section 226 more than once in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(3) If the aggrieved employee disputes that the alleged violation has been cured, the aggrieved employee or representative shall provide written notice by online filing with the agency and by certified mail to the employer, including specified grounds to support that dispute, to the employer and the agency. Within 17 calendar days of the ~~postmark date~~ receipt of that notice, the agency shall review the actions taken by the employer to cure the alleged violation, and provide written notice of its decision by certified mail to the aggrieved employee and the employer. The agency may grant the employer three additional business days to cure the alleged violation. If the agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the employee may proceed with the civil action pursuant to Section 2699. If the agency determines that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.

(d) The periods specified in this section are not counted as part of the time limited for the commencement of the civil action to recover penalties under this part.

SECTION 3. Section 2699.7 of the Labor Code is added as follows:

2699.7 Notwithstanding any other statute, the Director of Industrial Relations may establish a temporary amnesty or safe harbor program to provide expedited back wages to workers and penalty relief to employers, consistent with the requirements of this Section, when the conditions of subdivision (a) are met.

(a) A temporary amnesty or safe harbor program may be established upon the petition of one or more interested parties and findings by the director that all of the following are true:

(1) A published decision of the Supreme Court or a court of appeal or a similar legal development has invalidated a commonplace industry practice which a substantial segment of the industry previously believed in good faith to be legal.

(2) The decision or development referred to paragraph (1) affects 10,000 or more

employees and is likely to lead to the filing of actions against at least five different employers to recover penalties under the Labor Code pursuant to this part.

(3) Good cause exists to establish a temporary or safe harbor program, including that the program is likely to provide more relief to employees than private litigation.

(b) A party filing a petition for relief under this Section shall provide notice and copies of the petition and supporting documentation to other parties known to be interested in the potential amnesty or safe harbor program, including but not necessarily limited to representatives of employees, employers, and worker or industry advocacy groups. Any party receiving the petition shall have fifteen days to submit a response to the director and shall provide copies of that response and supporting documentation to the petitioner and other interested parties identified in the petition. The director may expand the parties entitled to notice and any time limits for responding to a petition or to a response to a petition.

(c) An amnesty or safe harbor plan established by the director pursuant to this Section shall include the following:

(1) A requirement to fully compensate employees, including former employees, for back wages due in light of the decision or development referred to paragraph (1) of subdivision (a).

(2) A time frame, including beginning and ending dates, for determining the back wages due to each employee.

(3) Any requirements for determining and adding interest or other amounts to the back wages due.

(4) A time limit, not to exceed eighteen (18) months, for making back payments to employees.

(5) Requirements to provide appropriate documentation, consistent with the requirements of Section 226, for all back payments, and to retain records of calculations and back payments for at least four years after the time limit referred to in paragraph (4) of this subdivision.

(6) Requirements to make diligent good faith efforts to locate former employees and to pay the amounts due to employees who cannot be located to the Unpaid Wage Fund pursuant to Section 96.7, together with a prescribed administrative fee.

(7) A provision providing for the suspension of the statute of limitations for affected wage, damages, and penalty claims during the time frame referred to in paragraph (2) of this subdivision.

(8) A provision providing for the reduction in whole or in part of statutory penalties and damages under the Labor Code for employers who comply with the terms of the amnesty or safe harbor program.

(d) An amnesty or safe harbor program established by the director pursuant to this

Section shall not extend to any of the following:

(1) Claims in litigation prior to the decision or development referred to paragraph (1) of subdivision (a).

(2) Claims resolved by an order or judgment that was final and not subject to further appeal prior to the effective date of the amnesty or safe harbor program.

(3) Claims arising on or after the effective date of the amnesty or safe harbor program.

(e) The decision to establish or not establish an amnesty or safe harbor program under this Section is within the sole discretion of the director and is not subject to the rulemaking or adjudication procedures of the Administrative Procedure Act in Chapters 3.5 (commencing with Section 11340), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Department of Industrial Relations
Fiscal Year 2016/17 Budget Change Proposal
Private Attorneys General Act (PAGA) Resources
Percentage of PAGA Cases by Industry

Industry	
Professional, Technical, Clerical, Mechanical & Similar Occupations	55.1%
Public Housekeeping Industry	16.1%
Mercantile Industry	11.9%
Transportation Industry	5.4%
Manufacturing Industry	2.8%
Certain on-site occupations in the construction, drilling, logging and mining industries	2.6%
Personal Service Industry	1.7%
Amusement and Recreation Industry	1.3%
Agricultural Occupations	0.9%
Broadcasting Industry & Motion Picture Industry	0.6%
Broadcasting Industry	0.4%
Laundry, Linen Supply, Dry Cleaning & Dyeing Industry	0.3%
Industries Handling Products after Harvest	0.3%
Household Occupations	0.2%
Canning, Freezing, and Preserving Industry	0.2%
Industries Preparing Agricultural Products for Market on the Farm	0.2%
Miscellaneous Employees	0.0%

Department of Industrial Relations
Fiscal Year 2016/17 Budget Change Proposal
Private Attorneys General Act (PAGA) Resources
Workload

Attachment III

Review of PAGA Notices	IRC	Legal Analyst	Investigator	Auditor	OT
Number of Reviews	0	900	0	900	900
Hours/Review	0	1	0	3	2
Total Hours	**0**	**900**	**0**	**2,700**	**1,800**

Case Investigations	IRC	Legal Analyst	Investigator	Auditor	OT
Number of Cases	45	45	45	45	45
Hours/Case	80	15	80	4	4
Total Hours	**3,600**	**675**	**3,600**	**180**	**180**

Review/Approval of Settlements	IRC	Legal Analyst	Investigator	Auditor	OT
Number of Reviews	270	270	270	270	270
Hours/Review	6	2	2	1	1
Total Hours	**1,620**	**540**	**540**	**270**	**270**

	IRC	Legal Analyst	Investigator	Auditor	OT
Total Hours	5,220	2,115	4,140	3,150	2,250
Total Positions Requested	**3**	**1**	**2**	**2**	**1**

ATTACHMENT IV

DEPARTMENT OF INDUSTRIAL RELATIONS
FISCAL YEAR 2016-17 BUDGET CHANGE PROPOSAL
Private Attorneys General Act Resources
CURRENT FUND CONDITION
(dollars in thousands)

	Actual 2013-14	Actual 2014-15	Estimated 2015-16	Projected 2016-17	Projected 2017-18	Projected 2018-19	Projected 2019-20	Projected 2020-21
3078 Labor and Workforce Development Fund								
BEGINNING BALANCE	9,289	10,012	12,634	12,590	12,546	12,502	12,458	12,414
Prior Year Adjustments	-31		-	-		-	-	-
Adjusted Beginning Balance	9,258	10,012	12,634	12,590	12,546	12,502	12,458	12,414
REVENUES AND TRANSFERS								
Revenues:								
4173500 Settlements and Judgments - Other	5,680	8,365	6,000	6,000	6,000	6,000	6,000	6,000
				-				
Total Revenues and Transfers	5,680	8,365	6,000	6,000	6,000	6,000	6,000	6,000
Total Resources	14,938	18,377	18,634	18,590	18,546	18,502	18,458	18,414
EXPENDITURES								
Expenditures:								
0559 Labor and Workforce Development Agency (State Operations)	232	269	324	324	324	324	324	324
7300 Agricultural Labor Relations Board (State Operations)	1,000	1,093	1,167	1,167	1,167	1,167	1,167	1,167
7350 Department of Industrial Relations (State Operations)	3,668	4,377	4,543	4,543	4,543	4,543	4,543	4,543
8880 Financial Information System for California (State Operations)	26	4	10	10	10	10	10	10
Total Expenditures	4,926	5,743	6,044	6,044	6,044	6,044	6,044	6,044
FUND BALANCE	10,012	12,634	12,590	12,546	12,502	12,458	12,414	12,370
Reserve for economic uncertainties	10,012	12,634	12,590	12,546	12,502	12,458	12,414	12,370

ATTACHMENT V

DEPARTMENT OF INDUSTRIAL RELATIONS
FISCAL YEAR 2016-17 BUDGET CHANGE PROPOSAL
Private Attorneys General Act Resources
PROPOSED FUND CONDITION
(dollars in thousands)

	Actual 2013-14	Actual 2014-15	Estimated 2015-16	Projected 2016-17	Projected 2017-18	Projected 2018-19	Projected 2019-20	Projected 2020-21
3078 Labor and Workforce Development Fund								
BEGINNING BALANCE	9,289	10,013	12,635	13,091	11,979	10,943	9,907	8,871
Prior Year Adjustments	-31		-	-		-	-	-
Adjusted Beginning Balance	9,258	10,013	12,635	13,091	11,979	10,943	9,907	8,871
REVENUES AND TRANSFERS								
Revenues:								
4173500 Settlements and Judgments - Other	5,680	8,365	6,500	6,500	6,500	6,500	6,500	6,500
Total Revenues and Transfers	5,680	8,365	6,500	6,500	6,500	6,500	6,500	6,500
Total Resources	14,938	18,378	19,135	19,591	18,479	17,443	16,407	15,371
EXPENDITURES								
Expenditures:								
0559 Labor and Workforce Development Agency (State Operations)	232	269	324	324	324	324	324	324
0559 16/17 PAGA Unit BCP				**207**	**199**	**199**	**199**	**199**
7300 Agricultural Labor Relations Board (State Operations)	1,000	1,093	1,167	1,167	1,167	1,167	1,167	1,167
7350 Department of Industrial Relations (State Operations)	3,668	4,377	4,543	4,543	4,543	4,543	4,543	4,543
7350 16/17 PAGA Unit BCP				**1,361**	**1,293**	**1,293**	**1,293**	**1,293**
8880 Financial Information System for California (State Operations)	26	4	10	10	10	10	10	10
Total Expenditures	4,926	5,743	6,044	7,612	7,536	7,536	7,536	7,536
FUND BALANCE*	10,013	12,635	13,091	11,979	10,943	9,907	8,871	7,835
Reserve for economic uncertainties	10,013	12,635	13,091	11,979	10,943	9,907	8,871	7,835

BCP Fiscal Detail Sheet

BCP Title: Private Attorney General Act Resources

DP Name: 7350-003-BCP-DP-2016-GB

Budget Request Summary

	FY16					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Positions - Permanent	0.0	9.0	9.0	9.0	9.0	9.0
Total Positions	**0.0**	**9.0**	**9.0**	**9.0**	**9.0**	**9.0**
Salaries and Wages						
Earnings - Permanent	0	688	688	688	688	688
Total Salaries and Wages	**$0**	**$688**	**$688**	**$688**	**$688**	**$688**
Total Staff Benefits	0	353	353	353	353	353
Total Personal Services	**$0**	**$1,041**	**$1,041**	**$1,041**	**$1,041**	**$1,041**
Operating Expenses and Equipment						
5301 - General Expense	0	14	14	14	14	14
5302 - Printing	0	7	7	7	7	7
5304 - Communications	0	10	10	10	10	10
5306 - Postage	0	14	14	14	14	14
5320 - Travel: In-State	0	22	22	22	22	22
5322 - Training	0	1	1	1	1	1
5324 - Facilities Operation	0	115	115	115	115	115
5344 - Consolidated Data Centers	0	30	30	30	30	30
5346 - Information Technology	0	35	35	35	35	35
5368 - Non-Capital Asset Purchases - Equipment	0	72	4	4	4	4
Total Operating Expenses and Equipment	**$0**	**$320**	**$252**	**$252**	**$252**	**$252**
Total Budget Request	**$0**	**$1,361**	**$1,293**	**$1,293**	**$1,293**	**$1,293**

Fund Summary

Fund Source - State Operations						
3078 - Labor and Workforce Development Fund	0	1,361	1,293	1,293	1,293	1,293
Total State Operations Expenditures	**$0**	**$1,361**	**$1,293**	**$1,293**	**$1,293**	**$1,293**
Total All Funds	**$0**	**$1,361**	**$1,293**	**$1,293**	**$1,293**	**$1,293**

Program Summary

Program Funding						
6105005 - Labor Standards Enforcement Program	0	1,361	1,293	1,293	1,293	1,293

9900100 - Administration	0	1,361	1,293	1,293	1,293	1,293
9900200 - Administration - Distributed	0	-1,361	-1,293	-1,293	-1,293	-1,293
Total All Programs	**$0**	**$1,361**	**$1,293**	**$1,293**	**$1,293**	**$1,293**

BCP Title: Private Attorney General Act Resources

DP Name: 7350-003-BCP-DP-2016-GB

Personal Services Details

Positions	Salary Information Min	Mid	Max	CY	BY	BY+1	BY+2	BY+3	BY+4
1139 - Office Techn (Typing)				0.0	1.0	1.0	1.0	1.0	1.0
4175 - Auditor I				0.0	2.0	2.0	2.0	2.0	2.0
5237 - Legal Analyst				0.0	1.0	1.0	1.0	1.0	1.0
5780 - Atty IV				0.0	3.0	3.0	3.0	3.0	3.0
8610 - Investigator				0.0	1.0	1.0	1.0	1.0	1.0
9504 - Dep Labor Commissioner III				0.0	1.0	1.0	1.0	1.0	1.0
Total Positions				**0.0**	**9.0**	**9.0**	**9.0**	**9.0**	**9.0**

Salaries and Wages	CY	BY	BY+1	BY+2	BY+3	BY+4
1139 - Office Techn (Typing)	0	38	38	38	38	38
4175 - Auditor I	0	90	90	90	90	90
5237 - Legal Analyst	0	54	54	54	54	54
5780 - Atty IV	0	365	365	365	365	365
8610 - Investigator	0	63	63	63	63	63
9504 - Dep Labor Commissioner III	0	78	78	78	78	78
Total Salaries and Wages	**$0**	**$688**	**$688**	**$688**	**$688**	**$688**
Staff Benefits						
5150350 - Health Insurance	0	85	85	85	85	85
5150600 - Retirement - General	0	173	173	173	173	173
5150900 - Staff Benefits - Other	0	95	95	95	95	95
Total Staff Benefits	**$0**	**$353**	**$353**	**$353**	**$353**	**$353**
Total Personal Services	**$0**	**$1,041**	**$1,041**	**$1,041**	**$1,041**	**$1,041**

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PROOF OF SERVICE

Case: LAWSON v. ZB, N.A.
Court of Appeal Case Nos. D071279 & D071376 (Consolidated)
San Diego County Superior Court, No. 37-2016-00005578-CU-OE-CTL

I am over the age of 18 years and not a party to the within entitled action; my business address is 1330 Broadway, Suite 1630, Oakland, California 94612. On August 29, 2018 I served the foregoing documents described as:

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF *AMICUS CURIAE* BRIEF IN SUPPORT OF REAL PARTY IN INTEREST; PROPOSED ORDER GRANTING

on the interested parties to said action by the following means:

[X] (By FedEx) By placing a true copy thereof, enclosed in a sealed envelope or package provided by FedEx and addressed to the persons at the addresses shown below. I am readily familiar with this business's practice for collection and processing of correspondence with FedEx, and deposited the sealed envelope, with postage thereon fully prepaid on account, at an office or a regularly utilized drop box for collection and delivery the same day following ordinary business practices with FedEx.

ADDRESSEE	
James L. Morris Brian C. Sinclair Gerard M. Mooney RUTAN & TUCKER, LLP 611 Anton Boulevard, Suite 1400 Costa Mesa, California 92626-1931 *Attorneys for Petitioners and Defendants ZB, N.A. and Zions Bancorporation*	
Michael Rubin Kristin Marie Garcia ALTSHULER BERZON, LLP 177 Post Street, Suite 300 San Francisco, CA 94108	Edwin Aiwazian Arby Aiwazian Joanna Ghosh LAWYERS FOR JUSTICE, PC 410 Arden Avenue, Suite 203 Glendale, CA 91203
Attorneys for Plaintiff and Real Party in Interest Kalethia Lawson	

Clerk of the Court Supreme Court of California 350 McAllister Street San Francisco, California 94102	Electronically Submitted *(with Original + 8 copies)*
Office of the Attorney General, State of California 600 West Broadway, Suite 1800 San Diego, California 92101-3702	
Clerk of the Court California Court of Appeal, Fourth Appellate Dist., Div. 1 750 B Street, Suite 300 San Diego, California 92101	
Office of the Clerk San Diego County Superior Court 330 West Broadway San Diego, CA 92101	

I declare under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. Executed on August 29, 2018 at Oakland, California.

Julie Law