

Case No. S279137

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

TAMELIN STONE, ET AL.,
Plaintiffs and Appellants,

v.

ALAMEDA HEALTH SYSTEM,
Defendant and Respondent.

**Request for Judicial Notice in Support of Brief of
Amicus Curiae California Employment Lawyers
Association in Support of Plaintiffs and
Appellants**

After Decision by the Court of Appeal for the First Appellate District,
Division Five, Case No. A164021

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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 Plaintiffs and Appellants:

1. The Senate Judiciary Committee Bill Analysis, dated April 29, 2003, regarding Senate Bill 796, published by the California Legislature at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040SB796 (last visited December 29, 2023), a true and correct copy of which is attached hereto as **EXHIBIT A**.

2. The Assembly Judiciary Committee Bill Analysis, as amended May 26, 2004, regarding Senate Bill 1809, published by the California Legislature at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040SB1809 (last visited December 29, 2023), a true and correct copy of which is attached hereto as **EXHIBIT B**.

3. The Senate Committee on Labor and Industrial Relations Bill Analysis, as amended March 26, 2003, regarding Senate Bill 796, published by the California Legislature at <http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill>

[id=200320040SB796](#) (last visited December 29, 2023), a true and correct copy of which is attached hereto as **EXHIBIT C**.

4. The Assembly Republican Bill Analysis, dated September 2, 2003, regarding Senate Bill 796, found in the Governor's Chaptered Bill File regarding Senate Bill 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 D**.

5. The Assembly Committee on Labor and Employment Bill Analysis, dated July 9, 2003, regarding Senate Bill 796, published by the California Legislature at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040SB796 (last visited December 29, 2023), a true and correct copy of which is attached hereto as **EXHIBIT E**.

6. 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 F**.

7. The Assembly Committee on Appropriations Bill Analysis, as amended July 27, 2004, regarding Senate Bill 1809, published by the California Legislature at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040SB1809 (last visited December 29, 2023), a true and correct copy of which is attached hereto as **EXHIBIT G**.

8. 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> (last visited December 29, 2023) on November 1, 2002 (“Institute of Industrial Relations Report”), a true and correct copy of which is submitted herewith as **EXHIBIT H**.

9. The Senate Committee on Labor and Industrial Relations Bill Analysis, as amended April 12, 2004, regarding

Senate Bill 1809, published by the California Legislature at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040SB1809 (last visited December 29, 2023), a true and correct copy of which is attached hereto as **EXHIBIT I**.

10. The Employment Development Department’s labor market data regarding “California Firms and Employment by Size Range 2021 Q2,” published by the Employment Development Department at <https://labormarketinfo.edd.ca.gov/file/firmsize/CA-2021-Qtr2-FirmSize-ADA.pdf> (last visited December 29, 2023), a true and correct copy of which is attached hereto as **EXHIBIT J**.

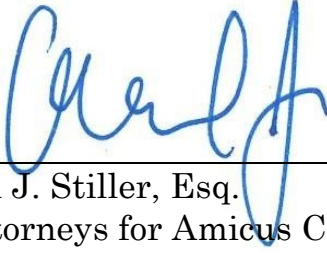
11. The Labor Commission’s “2020-2021 Fiscal Year Report on the Effectiveness of the Bureau of Field Enforcement (BOFE) to the Governor,” published at https://www.dir.ca.gov/dlse/BOFE_LegReport2021.pdf (last visited December 29, 2023) a true and correct copy of which is attached hereto as **EXHIBIT K**.

Reference is made to these documents in the Amicus Curie Brief of the California Employment Lawyers Association in Support of Plaintiffs and Appellants, 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 Dustin L. Collier, the complete records and files of this Court, and the accompanying proposed order granting this motion.

December 29, 2023

STILLER LAW FIRM

By: 
Ari J. Stiller, Esq.
Attorneys for Amicus Curiae
California Employment
Lawyers Association

December 29, 2023

COLLIER SOCKS LLP

By: /s/ Dustin L. Collier
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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 PAGA claims against public entities, the interpretation of which is at issue here.

A. The Court Should Take Judicial Notice of Exhibits A, B, C, D, E, G and I Because These Exhibits Constitute Official Acts of the Legislature in Enacting the Labor Code 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, supra*, 31 Cal.4th at 440.)

The Court should take judicial notice of Exhibit D (the Republican Bill Analysis) because it is a bill analysis developed by Republican Assembly members to understand the bill during the legislative process. Likewise, the Court should take judicial notice of Exhibit A, B, C, E, G, and I because they are bill analyses developed by California State Assembly and Senate 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.)

B. The Court Should Take Judicial Notice of Exhibit F Because the Document is a Letter from a Supporting Legislator Relating to the Legislative Process and Expressed in Argument to the Legislature and Governor.

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 F, Senator Dunn’s Letter to the Governor regarding AB 796, because the letter contains 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.

C. The Court Should Take Judicial Notice of Exhibits J and K 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, supra*, 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 J (EDD labor market data) and Exhibit K (2020-2021 BOFE Report) are noticeable as official agency reports and documents, published on credible government websites. The reports provide information about the number of California employers and employees, 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.

D. The Court Should Take Judicial Notice of Exhibit H Because It Is a State-Sanctioned Publication Regarding the Effectiveness of California Government Labor Code 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 H, 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 the California Labor Code. 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.

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.

December 29, 2023

COLLIER SOCKS LLP

By: /s/ *Dustin L. Collier*

Dustin L. Collier, Esq.
Attorneys for Amicus Curiae
California Employment
Lawyers Association

DECLARATION OF DUSTIN L. COLLIER

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

I, DUSTIN L. COLLIER, 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 Senate Judiciary Committee Bill Analysis, dated April 29, 2003, regarding Senate Bill 796. I obtained the bill analysis from the California Legislature at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040SB796 by following the link that reads “04/30/03 – Senate Committee.”

3. Attached hereto as Exhibit B is a true and correct copy of the Assembly Judiciary Committee Bill Analysis, as amended May 26, 2004, regarding Senate Bill 1809. I obtained the bill analysis from the California Legislature at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040SB1809 by following the link that reads “06/21/04 – Assembly Committee.”

4. Attached hereto as Exhibit C is a true and correct copy of the Senate Committee on Labor and Industrial Relations Bill Analysis, as amended March 26, 2003, regarding Senate Bill 796. I obtained the bill analysis from the California Legislature

at

http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040SB796 by following the link that reads “04/08/03 – Senate Committee.”

5. Attached hereto as Exhibit D is a true and correct copy of the Assembly Republican Bill Analysis, dated September 2, 2003, regarding Senate Bill 796, found in the Governor’s Chaptered Bill File regarding Senate Bill 796. CELA obtained a copy of this document on July 30, 2018, by manual scan of the microfilm records stored at the University of California, Berkeley, School of Law library, in the course of preparing an earlier amicus brief related to PAGA.

6. Attached hereto as Exhibit E is a true and correct copy of the Assembly Committee on Labor and Employment Bill Analysis, dated July 9, 2003, regarding Senate Bill 796. I obtained the bill analysis from the California Legislature at http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040SB796 by following the link that reads “07/08/03 – Assembly Committee.”

7. Attached hereto as Exhibit F is a true and correct copy of a 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. CELA obtained a copy of this document on July 30, 2018, by manual scan of the microfilm records stored at the University of

California, Berkeley, School of Law library, in the course of preparing an earlier amicus brief related to PAGA.

8. Attached hereto as Exhibit G is a true and correct copy of the Assembly Committee on Appropriations Bill Analysis, as amended July 27, 2004, regarding Senate Bill 1809. I obtained the bill analysis from the California Legislature at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040SB1809 by following the link that reads “07/28/04 – Assembly Committee.”

9. Attached hereto as Exhibit H 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, published by University of California Institute for Labor and Employment on November 1, 2002 (“Institute of Industrial Relations Report”). CELA obtained the report from the University of California Institute for Labor and Employment at <https://escholarship.org/uc/item/59c025gh> (last visited December 29, 2023).

10. Attached hereto as Exhibit I is a true and correct copy of the Senate Committee on Labor and Industrial Relations Bill Analysis, as amended April 12, 2004, regarding Senate Bill 1809. I obtained the bill analysis from the California Legislature

at

https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=200320040SB1809 by following the link that reads

“04/26/04 – Senate Committee.”

11. Attached hereto as Exhibit J is a true and correct copy of the Employment Development Department’s labor market data regarding “California Firms and Employment by Size Range 2021 Q2.” I obtained the data from the Employment Development Department at

<https://labormarketinfo.edd.ca.gov/file/firmsize/CA-2021-Qtr2-FirmSize-ADA.pdf> (last visited December 29, 2023)

12. Attached hereto as Exhibit K is a true and correct copy of the Labor Commissioner’s “2020–2021 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_LegReport2021.pdf (last visited December 23, 2023) under the Labor Commissioner’s publications regarding the Bureau of Field Enforcement Reports submitted to the Legislature.

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

Executed on December 29, 2023 at Tiburon, California.

/s/ Dustin L. Collier
Dustin L. Collier

[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: _____, 2024

By: _____

Chief Justice

EXHIBIT A

SENATE JUDICIARY COMMITTEE
 Martha M. Escutia, Chair
 2003-2004 Regular Session

SB 796	S
Senator Dunn	B
As Amended April 22, 2003	
Hearing Date: April 29, 2003	7
Labor Code	9
CJW	6

SUBJECT

Employment

DESCRIPTION

This bill would allow employees to sue their employers for civil penalties for employment law violations, and upon prevailing, to recover costs and attorneys' fees. The bill is intended to augment the enforcement abilities of the Labor Commissioner by creating an alternative "private attorney general" system for labor law enforcement.

This analysis reflects author's amendments to be offered in Committee.

BACKGROUND

California's Labor Code is enforced by the state Labor and Workforce Development Agency (LWDA) and its various boards and departments, which may assess and collect civil penalties for specified violations of the code. Some Labor Code sections also provide for criminal sanctions, which may be obtained through actions by the Attorney General and other public prosecutors.

In 2001, the Assembly Committee on Labor and Employment held hearings about the effectiveness and efficiency of the enforcement of wage and hour laws by the Department of Industrial Relations (DIR), one of four subdivisions of the LWDA. The Committee reported that in fiscal year 2001-2002, the Legislature appropriated over \$42 million to

(more)

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the State Labor Commission for the enforcement of over 300 laws under its jurisdiction. The DIR's authorized staff numbered over 460, making it the largest state labor law enforcement organization in the country.

Nevertheless, evidence received by the Committee indicated that the DIR was failing to effectively enforce labor law violations. Estimates of the size California's "underground economy" - businesses operating outside the state's tax and licensing requirements -- ranged from 60 to 140 billion dollars a year, representing a tax loss to the state of three to six billion dollars annually. Further, a U.S. Department of Labor study of the garment industry in Los Angeles, which employs over 100,000 workers, estimated the existence of over 33,000 serious and ongoing wage violations by the city's garment industry employers, but the DIR was currently issuing fewer than 100 wage citations per year for all industries throughout the state.

As a result of these hearings, the Legislature enacted AB 2985 (Ch. 662, Stats. of 2002), requiring the LWDA to contract with an independent research organization to study the enforcement of wage and hour laws, and to identify state and federal resources that may be utilized to enhance enforcement. The completed study is to be submitted to the Legislature by December 31, 2003.

This bill would propose to augment the LWDA's civil enforcement efforts by allowing employees to sue employers for civil penalties for labor law violations, and to collect attorneys' fees and a portion of the penalties upon prevailing in these actions, as specified below.

CHANGES TO EXISTING LAW

Existing law authorizes the LWDA (comprised of the DIR, the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified. [Labor Code Secs. 201 et seq. .]

Existing law authorizes the Attorney General and other public prosecutors to pursue misdemeanor charges against violators of specified provisions of the code. [Labor Code

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Sec. 215 et seq..]

Existing law authorizes an individual employee to file a claim with the Labor Commissioner alleging that his or her employer has violated specified provisions of the code, and to sue the employer directly for damages, reinstatement, and other appropriate relief if the Commissioner declines to bring an action based on the employee's complaint. [Labor Code Sec. 98.7.]

Existing law further provides that any person acting for itself, its members, or the general public, may sue to enjoin any unlawful, unfair, or fraudulent business act or practice, and to recover restitution and disgorgement of any profits from the unlawful activity. [Bus. & Profs. Code Sec. 17200 et seq..]

This bill would provide that any Labor Code violation for which specific civil penalties have not previously been established shall be subject to a civil penalty of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employee per pay period for continuing violations. (The penalty would be \$500 per violation for a violator who is not an employer.)

This bill further would provide that, for any Labor Code violation for which the LWDA does not pursue a complaint, any aggrieved employee may sue to recover civil penalties in an action brought on behalf of himself or herself or other current or former employees.

This bill would define "aggrieved employee" as "any person employed by the alleged violator within the period covered by the applicable statute of limitation against whom one or more of the violations alleged in the action was committed."

This bill further would provide that an aggrieved employee who prevails in such an action shall be entitled to an award of reasonable attorney's fees and costs.

This bill further would provide that any penalties recovered in an action by an aggrieved employee shall be distributed as follows: 50 percent to the General Fund, 25 percent to the LWDA for employer education, and 25 percent

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to the aggrieved employees. (Penalties recovered against a violator who is not an employer, which under this bill could be pursued only by a public prosecutor or the LWDA, would be divided evenly between the General Fund and the LWDA.)

This bill further would provide that nothing in this section shall limit an employee's right to pursue other remedies available under state or federal law.

This bill further would provide that no action may be maintained by an aggrieved employee under this section where the LWDA initiates proceedings against the alleged violator on the same facts and under the same section or sections of the Labor Code.

COMMENT

1. Stated need for legislation

The California Labor Federation, co-sponsor, states that this bill would "attack the underground economy and enhance our state's revenues" by allowing workers to crack down on labor violators:

In the last decade, as California has grown to become one of the world's largest economies, state government labor law enforcement functions have failed to keep pace. . . . The state's current inability to enforce our existing labor laws effectively is due to inadequate staffing and to the continued growth of the underground economy. This inability coupled with our severe state budget shortfall calls for a creative solution that will help the state crack down on those who choose to flout our laws.

The California Rural Legal Assistance (CRLA) Foundation, also a co-sponsor, states that violations of minimum or overtime wage violations are common, and many other violations for which only rarely enforced criminal penalties exist are increasing: For example, "company store" arrangements in which workers are required to cash their checks with their employer, for a fee, allegedly are widespread in the agricultural industry. The CRLA Foundation notes that the bill's proposed penalty

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structure is "nominal" and is based on existing provisions of the Labor Code.

Protection & Advocacy, Inc., which supports the rights of people with disabilities, asserts that SB 796 will assist disabled employees "by providing some mechanism by which to get an employer to comply with the Labor Code."

2. SB 796 would attach civil penalties to existing provisions

The sponsors state that many Labor Code provisions are unenforced because they are punishable only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely result in criminal investigations and prosecutions.

Accordingly, this bill would attach a civil penalty of \$100 for each aggrieved employee per pay period (increasing to \$200 for each aggrieved employee per pay period for continuing violations) to any Labor Code provision that does not already contain a financial penalty for its violation. The sponsors state that this proposed penalty is "on the low end" of existing civil penalties attached to other Labor Code provisions, but should be significant enough to deter violations.

3. The bill would allow "aggrieved employees" to bring private actions to recover the civil penalties

The sponsors state that private actions to enforce the Labor Code are needed because LWDA simply does not have the resources to pursue all of the labor violations occurring in the garment industry, agriculture, and other industries.

Although the Unfair Competition Law (UCL), Section 17200 of the Business & Professions Code, permits private actions to enjoin unlawful business acts, the sponsors assert that it is an inadequate tool for correcting Labor Code violations. First, the UCL only permits private litigants to obtain injunctive relief and restitution, which the sponsors say is not a sufficient deterrent to

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labor violations. Second, since the UCL does not award attorneys' fees to a prevailing plaintiff, few aggrieved employees can afford to bring an action to enjoin the violations. Finally, since most employees fear they will be fired or subject to hostile treatment if they file complaints against their employers, they are discouraged from bringing UCL actions.

Generally, civil enforcement statutes allow civil penalties to be recovered only by prosecutors, not by private litigants. Private plaintiffs who have been damaged by a statutory violation usually are restricted to traditional damage suits, or where damages are difficult to prove, to "statutory damages" in a specified amount or range. [See , e.g. , Unruh Civil Rights Act, Civ. Code Sec. 51 et seq. , allowing statutory damages in a minimum amount of \$4,000 per violation to prevailing private litigants in actions alleging denial of equal access or other forms of discrimination.]

In this bill, allowing private recovery of civil penalties as opposed to statutory damages would allow the penalty to be dedicated in part to public use (to the General Fund and the LWDA) instead of being awarded entirely to a private plaintiff, as would occur with a damage award. Recovery of civil penalties by private litigants does have some precedent in existing law: The Unruh Civil Rights Act allows either the victim of a hate crime or a public prosecutor to bring an action for a civil penalty of \$25,000 against the perpetrator of the crime. (Civ. Code Secs. 51.7, 52.)

4. Opponents' concerns

The employer groups opposing the bill argue that SB 796 will encourage private attorneys to "act as vigilantes" pursuing any and all types of Labor Code violations on behalf of different employees, and that this incentive will be increased by allowing employees to recover both attorneys' fees and a portion of the penalties. A representative letter states:

There is a major concern that this type of statute could be abused in a manner similar to the legal community's abuse of Business and Professions Code

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Section 17200 when it sued thousands of small businesses for minor violations and demanded settlements in order to avoid costly litigation.

The California Chamber of Commerce argues that, since the bill would award attorneys' fees to prevailing employees, but not to employers when they prevail, SB 796 would clog already-overburdened courts because there would be no disincentive to pursue meritless claims.

The California Employment Law Council states that the the Labor Code contains "innumerable penalty provisions, many of which would be applicable to minor and inadvertent actions." Under current law, however, the prospect of excessive penalties is mitigated by prosecutorial discretion, which would disappear under SB 796:

If, for example, a large employer inadvertently omitted a piece of information on a paycheck, a "private attorney general" could sue for penalties that could reach staggering amounts if . . . the inadvertent deletion of information on a paycheck went on for some time.

5. Sponsors say bill has been drafted to avoid abuse of private actions

The sponsors are mindful of the recent, well-publicized allegations of private plaintiff abuse of the UCL, and have attempted to craft a private right of action that will not be subject to such abuse. First, unlike the UCL, this bill would not open private actions up to persons who suffered no harm from the alleged wrongful act. Instead, private suits for Labor Code violations could be brought only by an "aggrieved employee" - an employee of the alleged violator against whom the alleged violation was committed. (Labor Code violators who are not employers would be subject to suit only by the LWDA or by public prosecutors.)

Second, a private action under this bill would be brought by the employee "on behalf of himself or herself or others" - that is, fellow employees also harmed by the alleged violation - instead of "on behalf of the general public," as private suits are brought under the UCL.

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This would dispense with the issue of *res judicata* ("finality of the judgment") that is the subject of some criticism of private UCL actions. An action on behalf of other aggrieved employees would be final as to those plaintiffs, and an employer would not have to be concerned with future suits on the same issues by someone else "on behalf of the general public."

Third, the proposed civil penalties are relatively low, most of the penalty recovery would be divided between the LWDA (25 percent) and the General Fund (50 percent), and the remaining 25 percent would be divided between all identified employees aggrieved by the violation, instead of being retained by a single plaintiff. This distribution of penalties would discourage any potential plaintiff from bringing suit over minor violations in order to collect a "bounty" in civil penalties.

Finally, the bill provides that no private action may be brought when the LWDA or any of its subdivisions initiates proceedings to collect penalties on the same facts and under the same code provisions.

6. Author's amendments

In order to address concerns that the bill might invite frivolous suits or impose excessive penalties, and pursuant to discussions between the sponsors and Committee staff, the author has agreed to accept the following amendments to clarify the bill's intended scope of its private right of action and the assessment and distribution of its civil penalties:

- (a) To clarify who would qualify as an "aggrieved employee" entitled to bring a private action under this section, the author will define the term as follows (at page 2, line 38):

"For purposes of this part, an aggrieved employee means any person employed by the alleged violator within the period covered by the applicable statute of limitations against whom one or more of the violations alleged in the action was committed."

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The bill would further be amended to reflect that any civil penalty recoverable by the LWDA under existing law may be recovered through a civil action "brought by an aggrieved employee on behalf of himself or herself or other current or former employees" (at page 2, lines 31-36).

(b) To clarify that civil penalties would be assessed only with respect to the number of employees aggrieved by the violation, as opposed to the total number of an alleged violator's employees, the author will amend the bill to reflect that penalties will be determined "for each aggrieved employee" instead of "per employee" (at page 3, lines 7 and 8).

(c) To allay opponents' concerns that res judicata issues may arise if all known potential plaintiffs are not included in the private action, the author will amend the bill as follows (at page 3, lines 11-13):

"An aggrieved employee may recover the civil penalty described in subdivision (b) in a civil action filed on behalf of himself or herself or ~~others~~ other current or former employees for whom evidence of a violation was developed during the trial or at settlement of the action ."

(d) To conform its attorney's fees provision with similar provisions in existing law, the author will amend the bill to delete the phrase "in whole or in part" from the provision allowing attorney's fees to be awarded to a prevailing plaintiff (at page 3, lines 13-14).

Support: American Federation of State, County and Municipal Employees (AFSCME); California Conference

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Board of the Amalgamated Transit Union; California Council of Machinists; California Independent Public Employees Legislative Council; 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; Professional and Technical Engineers, Local 21; Protection & Advocacy, Inc.; Region 8 States Council of the United Food & Commercial Workers; Western States Council of Sheet Metal Workers

Opposition: Associated General Contractors of California; California Apartment Association; California Chamber of Commerce; California Employment Law Council; California Landscape Contractors Association; California Manufacturers and Technology Association; Civil Justice Association of California (CJAC); Construction Employers' Association; Motion Picture Association of America; Orange County Business Council

HISTORY

Source: California Labor Federation AFL-CIO; CRLA Foundation

Related Pending Legislation: None Known

Prior Legislation: AB 2985 (Committee on Labor and Private Employment) (Ch. 662, Stats. of 2002) (requires Labor and Workforce Development Agency to contract with independent research organization to study most effective ways to enforce wage and hour laws, and to identify all available state and federal resources available for enforcement; completed study to be submitted to Legislature by December 31, 2003)

Prior Vote: Senate Labor & Industrial Relations Committee
5-3

EXHIBIT B

Date of Hearing: June 22, 2004

ASSEMBLY COMMITTEE ON JUDICIARY
Ellen M. Corbett, Chair
SB 1809 (Dunn) - As Amended: May 26, 2004

SENATE VOTE : 21-13

SUBJECT : LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

KEY ISSUE : SHOULD THE LABOR CODE ENFORCEMENT MECHANISMS ENACTED BY THE AUTHOR'S SB 796 LAST YEAR BE REVISED AND RESTRICTED IN ORDER TO PREVENT POTENTIAL MISUSE?

SYNOPSIS

This bill responds to criticisms of the author's measure last year by which aggrieved employees were permitted to enforce existing Labor Code requirements when state regulators fail to do so. Although supporters maintain that it is sound policy to supplement scarce state enforcement efforts with private efforts by workers whose rights are violated, they believe that it is appropriate to narrow the circumstances in which private actions may be brought and to clarify the power of the courts to exercise discretion in the determination of civil penalties when the employer is found to have violated the law. Despite their opposition to the author's bill last year, opponents of this measure are unmollified by these reforms; they argue for nothing less than the complete repeal of the act.

SUMMARY : Amends the "Labor Code Private Attorneys General Act of 2004," enacted pursuant to SB 796 (Dunn) of 2003. Specifically, this bill :

- 1) Provides that a civil penalty for any violation of a posting or notice requirement of the Labor Code may only be recovered by the Labor and Workforce Development Agency (LWDA) or any of its subordinate agencies or employees.
- 2) States that trial courts have the discretion to award less than the maximum civil penalty available under current law when to do otherwise would be unfair, arbitrary and capricious, or confiscatory, would be wholly disproportionate to any discernible and legitimate legislative goal, and would demonstrably overbalance and outweigh the goals of punishment,

regulation, and deterrence.

- 3) Requires an individual, prior to bringing a civil action, to report the alleged violation in writing to the LWDA and requires that, within 15 calendar days of the report, no state enforcement action has commenced. An individual would be required to file with any civil action a certification stating that he or she has complied with these requirements.
- 4) Specifies that these amendments to the provisions of existing law shall apply to any civil action brought pursuant to this section that is filed on or after, or is pending on, the effective date of the amendments.

EXISTING LAW:

- 1) Establishes a civil penalty where one is not specifically provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employee per pay period for subsequent violations. The penalty is \$500 per violation where the violator does not employ any employees at the time of the violation.
- 2) Authorizes an aggrieved employee to recover civil penalties under the Labor Code in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. (Labor Code section 2699.)
- 3) Provides that no private right of action may be maintained where the LWDA or any of its subdivisions cites the alleged violator on the same facts and theories and under the same section or sections of the Labor Code, or initiates specified proceedings. (Section 2699.)
- 4) Specifies that where the LWDA or any of its subdivisions has discretion to assess a civil penalty, a court may exercise the same discretion with respect to civil penalties established by SB 796. (Section 2699.)
- 5) Provides that the civil penalties recovered against a person that employs one or more employees shall be distributed as follows: 50 percent to the General Fund, 25 percent to the

LWDA for employer and employee education, and 25 percent to the aggrieved employees. Civil penalties recovered against person that do not employ any employees are to be divided evenly between the General Fund and the LWDA. (Section 2699.)

- 6) Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in a civil action. (Section 2699.)

FISCAL EFFECT : As currently in print, this bill is keyed fiscal.

COMMENTS : The author states:

The Labor Code Private Attorney General Act (SB 796 Dunn) was enacted because of inadequate state enforcement of labor laws. California has important worker protections in statute - some of the strongest in the nation. However, these laws are meaningless if they are not enforced.

Last year the Legislature and the governor acknowledged that we are unable to increase state enforcement and we were unwilling to tell workers that the state will turn a blind eye to enforcing laws enacted to protect their safety and their earnings. The law now allows the employee to seek redress directly where the state has not done so on the employee's behalf. That is why we enacted SB 796 and it is still good policy today.

Opponents of SB 796 have asserted that it provided no discretion to reduce the penalties under the law and that insignificant or inadvertent violations can lead to astronomical penalties.

SB 1809 addresses these issues as follows:

It allows a judge the ability to reduce the civil penalties where appropriate.

SB 1809 eliminates the ability of an aggrieved employee to seek to recover civil penalties for violations of posting or notice provisions of the Labor Code.

SB 1809 will be retroactive to the effective date of

SB 796 provided that a matter has not already reached a final, unappealable determination.

As a condition of bringing an action, requires the aggrieved employee to report the alleged violation to the Labor Agency in writing and no state enforcement action is initiated within 15 days.

The Author's SB 796 Last Year Sought To Bolster State Resources For Enforcement of Existing Labor Laws And Augment State Efforts To Enforce These Laws By Allowing Aggrieved Employees To Pursue The Employer For Unlawful Acts When State Fails To Do So.

According to the author, enforcement staff for state labor law agencies has fallen drastically behind the growth in the labor force. "There are only 14 more enforcement staff positions now than there were 15 years ago. At the same time, there are roughly 3 million more workers. Last year 710 positions at the Department of Industrial Relations - roughly 140 of which are attributable to enforcement - were eliminated. The budget picture is getting worse, not better."

SB 796 (Dunn) took effect on January 1, 2004. The co-sponsors of SB 796, the California Labor Federation and the California Rural Legal Assistance Foundation (CRLAF), argued that the bill would address inadequacies in labor law enforcement in two major ways. The bill did not change any obligation employers had under the Labor Code. Rather, the bill assigned civil fines to the large number of Labor Code provisions, which previously carried criminal fines, but not civil penalties. Second, SB 796 authorized employees aggrieved by a violation of the Labor Code to file a civil action to recover civil penalties when the state has not done so on their behalf. That is, SB 796 gave courts the authority - when a defendant is found to have violated the Labor Code in a case brought by an aggrieved worker - to penalize that defendant to the same extent that it could if the State of California had brought the case.

This Bill Revises and Restricts The Circumstances In Which An Employer Can Be Held Liable To An Aggrieved Employee For Violating Existing Labor Laws, And Makes These Changes Retroactive to the Effective Date of SB 796. While SB 796 is still good policy, proponents state, this bill addresses an issue raised by opponents of last year's bill who asserted that it provided no discretion to reduce the penalties under the law

and that significant inadvertent violations could lead to

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astronomical penalties. This bill gives clear indication to trial courts that they have discretion to award less than the maximum civil penalty available under statute when to do otherwise would be unfair, arbitrary and oppressive, or confiscatory.

In addition, this bill eliminates the ability of aggrieved employees to recover civil penalties for violations of "posting" or "notice" provisions of the Labor Code, while preserving the right of the LWDA and its subordinate agencies and employees to assess and collect civil penalties for these violations.

This bill also establishes a mechanism to notify the LWDA of the alleged violation, and gives the LWDA time to issue a citation with respect to that alleged violation. CRLAF also points out that the original provisions of SB 796, which remain unchanged by this bill, specify that no private right of action may be maintained where the LWDA or any of its subdivisions cites the alleged violator on the same facts and theories and under the same section or sections of the Labor Code, or initiates specified proceedings. CRLAF states that, although it supports state labor posting laws and also believes that existing case law precludes large mandatory civil penalty awards, it agrees that the carefully crafted amendments to SB 796 made by this bill are improvements which deserve to be signed into law.

Finally, the bill makes the foregoing changes retroactive to the effective date of SB 796 as to any cases that have not gone to a final unappealable judgment at the time of enactment.

OPPOSITION : The Chamber of Commerce and other business groups strongly opposed last year's bill. But they also oppose the reforms and restrictions the author has offered here. Their general contention is that the bill does nothing to lessen the opportunities made possible by SB 796 for "bounty hunting" private attorneys to sue employers. Opponents argue that the only sufficient step is the complete repeal of SB 796 in order to return labor law enforcement solely to the government.

Specifically, opponents argue that the amendment regarding posting and notice is a superficial improvement because the provision does no more than to direct the payment of the fine solely to the LWDA and the state general fund, instead of the

plaintiff. Moreover, opponents argue, the bill still permits aggressive bounty hunting attorneys to include one or more non

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posting or notice requirement in order to hook the employee and pursue these suits because they would still be entitled to receive attorney fees and court costs. Further, the opponents argue that earlier amendments only provide for very limited instances where a court would be permitted to adjust the enormous civil fines imposed by SB 796, due to the many findings a court would have to make in order to justify such a reduction.

Finally, opponents argue that the notice provisions are far too abbreviated and that subsequent provisions of the bill take away any relief that that court review might have provided.

Opponents argue that 15 calendar days is an insufficient amount of time for the LWDA to commence the required state enforcement action, and therefore this provision does nothing to ensure that fee-seeking attorneys are prevented from abusing the provisions of SB 796.

For example, The California Manufacturers and Technology Association states, "A major concern of employers to SB 796 is it allows private attorneys to bring a civil action on behalf of employees and former employees for alleged Labor Code violations without ever informing state enforcement officials or the employer of the alleged violation. This is a major problem for employers because it takes away any opportunity for them to resolve the alleged violation before going to court. In response to employer complaints, the author amended SB 1809 to require an aggrieved employee to report alleged violations of the Labor Code to the Labor and Workforce Development Agency prior to bringing a civil action. However, the bill provides only 15 calendar days that equal 11 working days for the agency to investigate the alleged violation(s) and issue citation(s) before a civil suit may be brought by an aggrieved employee or former employee." CMTA argues, "? reducing the time period to 15 calendar days in which to act would be counter productive and creates an impossible hurdle for the agency to overcome. Therefore this provision provides no relief for employers and in fact may even encourage the filing of suits."

CMTA also states, "As amended and according to the author, SB 1809 would provide employers relief from real and potentially outlandish awards by allowing the court to award a lesser amount than the maximum civil penalty under the applicable statute. However, the court would have to rely on certain findings based

on the facts and circumstances of the particular case that are so stringent that any relief under this provision by the court is highly unlikely." In addition, it argues that "[w]hile, the

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bill would remove an aggrieved employee or former employee from personally collecting 25 percent of any civil penalty imposed by the court for posting or notice requirement violations, it does not preclude employees from bringing the suit nor does it reduce the total amount of the award."

Despite the general preference for entrepreneurial pursuit of individual interest underlying our economic model, CMTA objects that "SB 796 is being used for personal gain rather than assisting the Labor and Workforce Development Agency in protecting workers from alleged unscrupulous employers." The Civil Justice Association of California similarly asserts that SB 796 "enacted a bounty hunter provision that currently allows unelected private attorneys to sue employers for any violation of the Labor Code, regardless of the severity of the violation. ? The law took the enforcement of California's Labor Code out of the hands of the state Labor Agency and put it in the hands of fee-seeking attorneys."

REGISTERED SUPPORT / OPPOSITION :

Support

American Federation of State, County and Municipal Employees
California Labor Federation, AFL-CIO
California Rural Legal Assistance Foundation

Opposition

California Apartment Association
California Chamber of Commerce
California Manufacturers & Technology Association
California Restaurant Association
Civil Justice Association of California
Consulting Engineers & Land Surveyors of California
National Federation of Independent Business

Analysis Prepared by : Kevin G. Baker / JUD. / (916) 319-2334

EXHIBIT C

Senate Committee on Labor and Industrial Relations
Richard Alarcon, Chair

Date of Hearing: April 9, 2003	2003-2004 Regular Session
Consultant: Liberty Reiter Sanchez	Fiscal:Yes Urgency:No

Bill No: SB 796
Author: Dunn
Amended: March 26, 2003

Subject: Employment

Purpose:

To establish civil penalties for violations of the Labor Code and to enable aggrieved employees to maintain a civil action when the Labor and Workforce Development Agency (including its departments, divisions, commissions, boards, agencies or employees) (Agency) does not pursue such an action.

Analysis:

(1)Existing law, authorizes the Labor and Workforce Development Agency (comprised of the Department of Industrial Relations, the Employment Development Department, the Agricultural Labor Relations Board and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified.

The Attorney General is authorized to seek appropriate injunctive relief and file charges against employers for criminal violations of the Labor Code, where specified.

While many Labor Code sections provide for criminal penalties, many sections do not provide for corresponding civil penalties.

Business and Professions Code Section 17200, also known as the "Unfair Competition Act" (UCA) authorizes aggrieved individuals to act on their own behalf in the capacity of "private attorney general" (PAG) when

maintaining a claim against a business for violating the law or competing unfairly.

Individuals aggrieved by violations of the Labor Code are not expressly permitted to act in the capacity of PAG in the filing of civil actions against their employers.

(2) This Bill, entitled the "Labor Code Private Attorneys General Act of 2004", has four components:

- (a) Authorizes recovery through civil action of civil penalties provided for under the Labor Code by authorizing aggrieved employees to act as PAG on behalf of themselves or others where the Agency does not pursue such an action.
- (b) Establishes civil penalties where the Labor Code is silent in the amount of \$100 per employee per pay period for the initial violation and \$200 per employee per pay period for subsequent violations when the "person" employs one or more employees and \$500 per violation where the "person" does not employ one or more employees.
- (c) Provides for a distribution formula as follows for penalties collected by an aggrieved individual: 50% to the General Fund, 25% to the Agency and 25% to the aggrieved employee.
- (d) Provides for the award of attorneys' fees and costs to aggrieved employees who prevail, in whole or in part in these civil actions.

Comments:

(3) "Private Attorney General" (PAG):

_____ When individuals have a right to act in the capacity of

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PAG such individuals are authorized to maintain a claim on their own behalf or on behalf of others. To this end, the individuals may represent themselves or may retain counsel for such representation. _

(4) Business and Professions Code Section 17200 "Unfair Competition Act" (UCA):

_____ Existing law provides for the right to act in the capacity of PAG for "unfair competition" cases. The law has been interpreted by the courts to provide broad and expansive protections to California's consumers. The

law was first enacted in the 1930's to stop businesses from using unfair practices to gain advantage over competitors. Based on the underlying premise that such anti-competitive behavior creates an unfair playing field to the detriment of consumers, the law has since been used to protect consumers from instances of unfair, unlawful or fraudulent behavior.

An action under this code section may not be brought by an individual in order to vindicate his own interests, instead, such action must be brought on behalf of the general public. To that end, even if the individual bringing the action was actually harmed by the unfair business practice, the individual may not recover damages, but instead remedy is limited to injunction and restitution.

Amongst other things, this law has successfully been used on behalf of employees in cases where a company was found to be ignoring California's overtime laws and where an employer's policy of calculating employees' wages included deduction of losses for unidentified returns.

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(5) Distinction Between Right to Act as Private Attorney

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General Under SB 796 and

The UCA:

— This PAG rights afforded individuals under this bill are separate and distinct from those afforded individuals under the UCA. While PAG rights have been interpreted to have broad applicability under the UCA, the right to act as a PAG under this bill is available to further the purposes of protecting the rights of workers under the Labor Code. Additionally, unlike the UCA, this bill entitles an individual to act in the capacity of PAG to seek remedy of a labor law violation solely because they have been aggrieved by that violation. Finally, this bill provides for a percentage share of penalties to go directly to the aggrieved worker, unlike the UCA, which does not entitle an individual claimant to obtain damages.

— (6) Labor Law Enforcement in an Era of Limited Staff and Resources:

— At issue in this bill is the appropriate role of

employees in protecting their rights under the Labor Code when the government entity mandated to enforce the Labor Code is unable to do so due to budgetary and staff constraints. Conventional wisdom asserts that more resources should be put in place and more staff hired if existing staff and resource allotments are insufficient to effectuate the mandated duties of the government. Additional resource dedication as a remedy is, an impossibility where a budgetary deficit exists.

The bill's intent language states that "adequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws" and that "[s]taffing levels for state labor law enforcement agencies, have, in general, declined over the last decade and are likely to fail to keep up with the growth of the labor market in the future" and that, accordingly, "[i]t is therefore in the public interest to

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provide that civil penalties for violation of the Labor Code may also be assessed and collected by aggrieved employees acting as private attorneys general."

Arguably, in a perfect world, there would be no need for the right to act as PAG, yet the fact remains that due to continuing budgetary and staffing constraints, full, appropriate and adequate Labor Code enforcement is unrealizable if done solely by the Agency.

(7) Staff Comments :

(a)The term "person" is defined for the general purposes of the Labor Code to mean any "person, association, organization, partnership, business trust, limited liability company or corporation." The term "person" has a different definition for application in the "Garment Manufacturing" Part of the Labor Code. That Part of the Labor Code is in the same Division of the Labor Code, entitled "Employment Regulation and Supervision," in which this bill, if enacted, would be located. The term "person" is used throughout the Labor Code, often interchangeably with the term "employer," but when the term "person" is used, it is interpreted to provide a more expansive and comprehensive applicability than the term "employer." Additionally, often when the term "person" is used it is used in conjunction with the phrase "or officer or agent thereof," to provide even broader applicability. As the author is creating a new titled Part to the Labor Code, the author may wish to add a definition of "person" specifically applicable to that Part of the

Labor Code.

(b)The bill specifies a formula for distribution of civil awards where an aggrieved employee has prevailed against a "person employing one or more employees," yet the bill provides no formula for instances where the Agency has prevailed against a person who does not employ one or more employees. The author may wish to

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specify whether such collected penalties should go to the General Fund, the Agency or elsewhere.

(c)The bill specifies that an action, may not be maintained by an aggrieved employee, if the Agency cites a person and initiates proceedings for a violation of the code on the same facts and theories. The author may wish to amend the bill to clarify that this prohibition would only be applicable if the Agency proceeded under the "same labor code section or sections under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others." Ostensibly, without this clarification an aggrieved employee might be inadvertently precluded from maintaining an action under a different Labor Code section violation which the Agency has declined to pursue, but where the basis of such action relies on the same facts and theories as the action which the Agency is pursuing.

(8)Dual Referral:

_____ If passed by this committee, this measure will be re-referred to the Senate Committee on Judiciary.

1. Proponents , the California Labor Federation asserts 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.

Proponents contend that the states current inability to enforce labor laws effectively is due to inadequate staffing and to the continued growth of the underground economy. This inability coupled with the states severe budgetary shortfall requires a creative solution that will help the state crack down on labor law violators.

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The California Rural Legal Assistance Foundation cites the resurgence of violations of Labor Code prohibitions against the "company store," as an example of the need for this bill. This occurs either when the employee is required to cash his check at a store owned by his employer and the employer charges a fee, or where the employer coerces the employee to purchase goods at that store. Currently, violations of these code sections are misdemeanors but no civil penalty is attached. Advocates are unaware of any misdemeanor prosecution having been undertaken in relation to these code sections.

2. Opponents , contend that this bill tips the balance of Labor Law protection in disproportionate favor to the employee to the detriment of already overburdened employers. Opponents cite the fact that employees are entitled to attorneys' fees and costs if they prevail in their actions under this bill, yet the bill fails to provide similar attorneys fees and costs for prevailing employers. Additionally, opponents cite the fact that there are no requirements imposed upon employees prior to filing civil action such as preliminary claim filing with the Labor Commissioner. Furthermore, opponents complain that aggrieved employees may file on behalf of a class, but are not required to fulfill class certification requirements.

The California Manufacturers and Technology Association (CMTA) asserts that California has a formal administrative procedure to handle Labor Code violations that is both economical and efficient. According to the CMTA, in many instances the amount in dispute is so small that it would not warrant an employer going to court because the cost of legal representation would be so high. Finally, the CMTA alleges that, since there is no requirement for the employee to exhaust the administrative procedure or even file with the Labor Commissioner the bill is an "invitation for bounty hunting attorneys to aggressively pursue these cases."

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Support:

American Federation of State, County, and Municipal Employees
California Applicants' Attorneys Association
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Independent Public Employees Legislative Council
California Labor Federation, AFL-CIO
California Rural Legal Assistance Foundation
California State Association of Electrical Workers
California State Pipe Trades Council
California Teamsters Public Affairs Council
Consumer Attorneys of California
Engineers and Scientist of California, IFPTE Local 20, AFL-CIO
Hotel Employees & Restaurant Employees International Union
Professional and Technical Engineers, IFPTE Local 21, AFL-CIO
Region 8 States Council of the United Food & Commercial Workers
Western States Council of Sheet Metal Workers

Opposition:

Associated General Contractors of California and the AGC, San Diego Chapter
California Employment Law Council
California Manufacturers and Technology Association
California Chamber of Commerce
Civil Justice Association of California

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Senate Committee on Labor and Industrial Relations

EXHIBIT D

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.

Policies / Questions

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?

Subtitles

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

Support

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

Assembly Republican Bill Analysis

SB 796 (Dunn)

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."

Fiscal Effect

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.

Comments

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 E

Date of Hearing: July 9, 2003

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT
Paul Koretz, Chair
SB 796 (Dunn) - As Amended: July 2, 2003

SENATE VOTE : 21-14

SUBJECT : Employment.

SUMMARY : Establishes an alternative "private attorney general" system for labor law enforcement that allows employees to pursue civil penalties for employment law violations. Specifically, this bill enacts the "Labor Code Private Attorneys General Act of 2004" which:

- 1) Establishes a civil penalty where one is not specifically provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, and \$200 for each aggrieved employees per pay period for subsequent violations. The penalty would be \$500 per violation for a violator who is not an employer.
- 2) Authorizes aggrieved employees to sue to recover civil penalties under the Labor Code in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. However, no private action may be maintained where the Labor and Workforce Development Agency (LWDA) or any of its subdivisions initiates proceedings against the alleged violator on the same facts and theories and under the same section or sections of the Labor Code.
- 3) Defines an "aggrieved employee" as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."
- 4) Provides that civil penalties recovered against a person that employs one or more employees shall be distributed as follows: 50% to the General Fund, 25% to the Labor and Workforce Development Agency (LWDA) for employer and employee education, and 25% to the aggrieved employees. Civil penalties recovered against persons that do not employ one or more employees are to be divided evenly between General Fund and the LWDA.

- 5) Provides for the award of reasonable attorney's fees and costs to an aggrieved employee who prevails in such an action.

EXISTING LAW

- 1) Authorizes the LWDA (comprised of the Department of Industrial Relations, the Employment Development Department, the Agricultural Labor Relations Board, and the Workforce Investment Board) to assess and collect civil penalties for violations of the Labor Code, where specified.
- 2) Authorizes an individual employee to file a claim with the Labor Commissioner alleging that his or her employer has violated specified provisions of the law, and to sue the employer directly for damages, reinstatement, and other appropriate relief.
- 3) Authorizes the Attorney General and other public prosecutors to seek appropriate injunctive relief and file criminal charges against employers for criminal violations of the Labor Code, where specified.
- 4) Further provides that any person acting for itself, its members, or the general public, may sue to enjoin any unlawful, unfair, or fraudulent business act or practice, and to recover restitution and other appropriate remedies.

FISCAL EFFECT : This measure was approved by the Senate Appropriations Committee pursuant to Senate Rule 28.8.

COMMENTS : Generally, civil enforcement statutes allow civil penalties to be recovered only by prosecutors, not by private litigants. Private plaintiffs who have been damaged by a statutory violation usually are restricted to traditional damage suits, or where damages are difficult to prove, to "statutory damages" in a specified amount or range.

The Labor Code is enforced by the LWDA and its various subordinate entities, which may assess and collect civil penalties for specified violations of the code. Some Labor Code sections also provide for criminal sanctions, which may be obtained through actions by the Attorney General and other public prosecutors.

The State of Labor Law Enforcement in California

At issue in this bill is the appropriate role of employees in protecting their rights under the Labor Code when the government entity mandated to enforce the Labor Code is unable to do so adequately due to budgetary and staff constraints. The bill's intent language states that "adequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws" and that [s]taffing levels for state labor law enforcement agencies have, in general, declined over the last decade and are likely to fail to keep up with the growth of the labor market in the future."

In 2001, the Assembly Committee on Labor and Employment conducted hearings regarding the effectiveness and efficiency of the enforcement of wage and hour laws by the Department of Industrial Relations (DIR). The committee reported that in fiscal year 2001-2002, the Legislature appropriated over \$42 million to the Division of Labor Standards Enforcement (DLSE) within DIR for the enforcement of over 300 laws under its jurisdiction. The DIR's authorized staff numbered over 460, making it the largest state labor law enforcement organization in the country.

Nevertheless, evidence indicated that the DIR was failing to effectively enforce labor law violations. Estimates of the size of California's "underground economy" - businesses operating outside the state's tax and licensing requirements - ranged from 60 to 140 billion dollars a year, representing a tax loss to the state of three to six billion dollars annually. Further, a U.S. Department of Labor study of the garment industry in Los Angeles, which employs over 100,000 workers, estimated the existence of over 33,000 serious and ongoing wage violations by the city's garment industry employers, but that DIR was issuing fewer than 100 wage citations per year for all industries throughout the state.

Moreover, evidence demonstrates that the resources dedicated to labor law enforcement have not kept pace with the growth of the economy in California. California's enforcement 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). However, according to

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a recent study, the resources available to the labor enforcement divisions remain below the levels of the mid-1980s. (Bar-Cohen, Limor and Deana Milam Carillo. "Labor Law Enforcement in California, 1970-2000." The State of California Labor . (2002),

p. 135). According to the same study, 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. Similarly, DLSE and Cal/OSHA staffing levels have decreased 7.6 percent and 10.8 percent, respectively, over the last two decades.

As a result of the legislative hearings discussed above, the Legislature enacted AB 2985 (Assembly Committee on Labor and Employment), Chapter 662, Statutes of 2002, requiring the LWDA to contract with an independent research organization to study the enforcement of wage and hour laws, and to identify state and federal resources that may be utilized to enhance enforcement. The completed study is to be submitted to the Legislature by December 31, 2003.

Arguments in Support :

The co-sponsors of the measure, the California Labor Federation, AFL-CIO and the California Rural Legal Assistance (CRLA) Foundation, argue that this bill will address inadequacies in labor law enforcement in two major ways. First, this bill assigns nominal civil fine amounts to the large number of Labor Code provisions which currently carry criminal, but not civil, penalties. Second, it authorizes the filing of civil actions to recover existing and new civil penalties by aggrieved workers acting as private attorneys general.

The sponsors state that many Labor Code provisions are unenforced because they are punishable only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely result in criminal investigations and prosecutions. The CRLA Foundation cites the resurgence of violations of Labor Code prohibitions against the "company store," as an example of the need for this bill. This occurs, for example, when the employer coerces the employee to purchase goods at that store. Currently, violations of these code sections are misdemeanors but no civil penalty is attached. The CRLA Foundation notes that the bill's proposed penalty structure

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is "nominal" and is based on existing provisions of the Labor Code.

Proponents also contend that the state's current inability to enforce labor laws effectively is due to inadequate staffing and the continued growth of the underground economy. This inability, coupled with the state's severe budgetary shortfall requires a creative solution that will help the state crack down

on labor law violators. Therefore, private actions to enforce the provisions of the Labor Code are necessary to ensure compliance with the law.

In addition, the sponsors claim that recent hiring freezes and elimination of vacant positions announced in response to the budget crisis may dramatically impact the LWDA and its enforcement activities.

Arguments in Opposition :

Opponents contend that this bill tips the balance of labor law protection in disproportionate favor to the employee to the detriment of already overburdened employers. Several employer groups, including the California Chamber of Commerce, cite the fact that employees are entitled to attorney's fees and costs if they prevail in their action under this bill, yet similar attorney's fees and costs are not provided for prevailing employers. Additionally, opponents cite the fact that there is no requirement imposed upon employees prior to filing civil action such as preliminary claim filing with the Labor Commissioner.

Opponents also expresses concern that this bill will encourage private attorneys to "act as vigilantes" pursuing frivolous violations on behalf of different employees. Opponents liken the danger of the bill to recent alleged abuse of Business and Professions Code Section 17200. Representative of this sentiment is the California Landscape Contractors Association, who notes:

[This bill] will create an entirely new litigation arena that will encourage employees, particularly employees who were terminated or subject to a disciplinary action, to file retaliatory claims against

their employer. As we have seen with similar causes of action under Section 17200?, innocent businesses will be pressured to settle these claims because of the high cost of defense and the relatively small amounts involved.

Opponents also contend that California already has a formal administrative procedure to handle these type of claims under the Labor Code that is both economical and efficient.

Relationship Between SB 796 and the "Unfair Competition Law"

_____(UCL) :

As discussed above, some opponents have expressed concern about the relationship between this bill and the "Unfair Competition Law" (UCL), Section 17200, et seq., of the Business and Professions Code. As reported in press accounts and further illuminated by a joint legislative hearing conducted earlier this year by the Senate and Assembly Committees on Judiciary, there have been allegations of abuse of the UCL by certain law firms and individual attorneys. In light of the recent attention focused on the UCL, a brief discussion of that law's relationship to this bill, and the arguments thereto on both sides, is warranted here.

California law has contained a statute prohibiting "unfair" practices in competition since the first Civil Code was enacted in 1872. Numerous amendments to the UCL and case law interpreting its provisions have provided broad and expansive protections to California consumers to prevent businesses from using unfair practices to gain advantage over competitors. Based on the underlying premise that such anti-competitive behavior creates an unfair playing field to the detriment of consumers, the law has since been used to protect consumers from instances of unfair, unlawful or fraudulent behavior.

Although the UCL permits private actions to enjoin unlawful business acts, the sponsors assert that it is an inadequate tool for correcting Labor Code violations. First, the UCL only permits private litigants to obtain injunctive relief and restitution, which the sponsor claim is not a sufficient deterrent to labor law violations. Second, since the UCL does not award attorney's fees to a prevailing plaintiff, few aggrieved employees can afford to bring an action to enjoin the

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violations. Finally, sponsors assert that since most employees fear they will be fired or subject to hostile treatment if they file complaints against their employers, they are discouraged from bringing UCL actions.

Opponents, on the other hand, argue that this measure, if enacted, will result in abuse similar to that alleged involving the UCL. For example, the Civil Justice Association of California (CJAC) argues that this bill 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. CJAC argues that similar private attorney general actions have resulted in an excessive amount of meritless, fee-motivated lawsuits. Allowing such "bounty hunter" provisions will increase costs to businesses of all sizes, and

add thousands of new cases to California's already over-burdened civil court system.

Similarly, the California Motor Car Dealers Association, writing in opposition to the bill, states, "a private enforcement statute in the hands of unscrupulous lawyers is a recipe for disaster."

The sponsors are mindful of the recent, well-publicized allegations of private plaintiffs abuse of the UCL, and have attempted to craft a private right of action that will not be subject to such abuse, pointing to amendments taken in the Senate to clarify the bill's intended scope. First, unlike the UCL, this bill would not open up private actions to persons who suffered no harm from the alleged wrongful act. Instead, private suits for Labor Code violations could only be brought by an "aggrieved employee" - an employee of the alleged violator against whom the alleged violation was committed.

Second, a private action under this bill would be brought by the employee "on behalf of himself or herself and other current or former employees" - that is, fellow employees also harmed by the alleged violation - instead of "on behalf of the general public," as private suits are brought under the UCL.

Third, the proposed civil penalties are relatively low. Most of the penalty recover would be divided between the LWDA (25 percent) and the General Fund (50 percent), and the remaining 25 percent would be divided between all identified employees

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aggrieved by the violation, instead of being retained by a single plaintiff. The sponsors contend that this distribution of penalties would discourage any potential plaintiff from bringing suit over minor violations in order to collect a "bounty" in civil penalties.

Finally, the bill provides that no private action may be brought when the LWDA or any of its subdivisions initiates proceedings to collect penalties on the same facts or theories under the same code provisions.

Related Legislation :

AB 276 (Koretz) of 2003 increases various civil penalties under the Labor Code, many of which have not been increased for decades. AB 276 is currently pending before the Senate Committee on Labor and Industrial Relations.

REGISTERED SUPPORT / OPPOSITION :

Support

California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Independent Public Employees Legislative Council
California Labor Federation, AFL-CIO
California Pipe Trades Council
California Rural Legal Assistance Foundation
California State Association of Electrical Workers
California Teamsters Public Affairs Council
Engineers and Scientists of California, Local 20
Hotel Employees, Restaurant Employees International Union
Peace Officers Research Association of California (PORAC)
Professional and Technical Engineers, Local 21
Region 8 States Council of United Food & Commercial Workers
Sierra Club California
Western States Council of Sheet Metal Workers

Opposition

Alliance of American Insurers
Associated Builders and Contractors of California
Association of California Water Agencies
California Apartment Association
California Chamber of Commerce

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California Landscaper Contractors Association
California Manufacturers & Technology Association
California Motor Car Dealers Association
California Restaurant Association
Civil Justice Association of California
Motion Picture Association of America, California Group
Wine Institute

Analysis Prepared by : Ben Ebbink / L. & E. / (916) 319-2091

EXHIBIT F

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California State Senate

SENATOR
JOSEPH L. DUNN
THIRTY-FOURTH SENATORIAL DISTRICT



September 16, 2003

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

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.

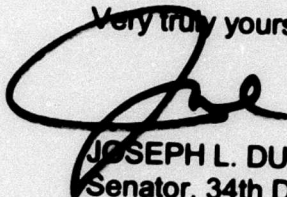
The bill contains two other important protections for employers. An employee can't bring an action in court if the labor commissioner is already pursuing the claim. Also, employers are protected from excessive fines by a provision that gives a judge discretion to adjust a civil penalty if a judge believes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

SB 1809
Page 1

Date of Hearing: July 28, 2004

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Judy Chu, Chair

SB 1809 (Dunn) - As Amended: July 27, 2004

Policy Committee:	Labor and
Employment	6-2
Vote:	
Judiciary	6-3

Urgency: Yes State Mandated Local Program:
No Reimbursable:

SUMMARY

This bill significantly amends "The Labor Code Private Attorneys General Act of 2004" (SB 796, Dunn, Chapter 906 of 2003), by enacting specified procedural and administrative requirements that must be met prior to bringing a private action to recover civil penalties for Labor Code violations. Specifically, this bill:

1) Serious Labor Code Violations . Establishes a new procedure that an aggrieved employee must follow prior to bringing a civil action to recover penalties for enumerated, serious Labor Code violations (including, but not limited to, violations of wage and hour, overtime, child labor, agricultural, entertainment and garment industry labor laws, and public works laws).

- a) The aggrieved employee must provide written notice of the violation to the Labor and Workforce Development Agency and employer. The Labor Agency has 30 days to decide if it will investigate the violation.
- b) If the Labor Agency decides to investigate the alleged violation, it must notify the employer and the aggrieved employee within 33 days. Within 120 days of that decision, the Labor Agency may investigate the alleged violation and issue any appropriate citation.
- c) If the Labor Agency fails to act, the aggrieved employee may pursue a civil action pursuant to SB 796.

2) Notice and Cure Procedures for Other Labor Code Violations .

Establishes Notice and Cure provisions for those Labor Code violations not enumerated in paragraph (1) above, nor subject to the Cal-OSHA provisions specified in paragraph (3) below.

- a) The aggrieved employee must give written notice to the Labor Agency and the employer of the alleged violation.
- b) The employer may cure the alleged violation within 33 days and give written notice to the employee and the Labor Agency if the alleged violation is cured.
- c) If the alleged violation is cured, no civil action pursuant to SB 796 may commence.
- d) If the alleged violation is not cured within the 33-day period, the aggrieved employee may commence a civil action pursuant to SB 796.
- e) For the aggrieved employee to dispute that the alleged violation has been cured, the employee must provide written notice to the employer and the Labor Agency. Within 17 days the Labor Agency must review the actions of the employer and provide written notice of whether the alleged violation has been cured.
- f) If the Labor Agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the aggrieved employee may proceed with a civil action pursuant to SB 796. If the agency has determined that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.
- g) No employer may avail himself or herself of the Notice and Cure provisions 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.

3) Health and Safety (Cal-OSHA) Violations . Establishes a new procedure that an aggrieved employee must follow prior to initiating a civil action to recover penalties for violations of Labor Code provisions pertaining to occupational safety and health (Cal-OSHA), other than sections that are specifically enumerated in paragraph (1).

- a) The aggrieved employee must give written notice to the Division of Occupational Safety and Health (DOSH) within the Department of Industrial Relations (DIR) and the employer of the alleged violation.
- b) DOSH must inspect or investigate the alleged violation pursuant to existing provisions of law.
- c) If DOSH issues a citation, no civil action pursuant to SB 796 may commence.
- d) If, by the end of the period for inspection or investigation, DOSH fails to issue a citation and the employee disputes that decision, the employee may challenge the decision in the superior court. If the court finds that DOSH should have issued a citation and orders DOSH to issue a citation, then no civil action pursuant to SB 796 may commence.
- e) If DOSH fails to inspect or investigate the alleged violation within the period specified in existing law, the Notice and Cure provisions outlined above in paragraph (2) apply to the determination of the alleged violation.
- f) Requires superior court review of any proposed settlement of alleged safety in employment violations to ensure that they are at least as effective as the protections or remedies provided in federal and state law.

4)Judicial Discretion Over Award Amounts . Authorizes a court to award a lesser amount than the maximum civil penalty amount allowed if to do otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory."

5)Exemption for Minor Violations . Provides that no action under SB 796 may be brought for any violation of a posting, notice, agency reporting, or filing requirement except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

6)Prohibition on Retaliation . Prohibits an employer from retaliating against any employee that brings a civil action under SB 796 in the form of discharge or any manner of discrimination.

FISCAL EFFECT

1)Appropriates \$150,000 from the General Fund to the Labor

Agency to implement this act. The Labor Agency indicates that its costs likely will exceed this amount, and it will redirect resources as necessary to accomplish the purposes of this act.

- 2)Modifies the civil penalty distribution formula under SB 796 that applies in cases where the employer employs one or more employees, as follows:
- a) Increases the amount distributed to the Labor Agency for enforcement and education from 25% to 75%, and adds a continuous appropriation for these purposes.
 - b) Eliminates the distribution of 50% of these civil penalties to the General Fund.
 - c) Retains the current distribution of 25% of these civil penalties to the aggrieved employees.
- 3)Modifies the civil penalty distribution formula under SB 796 that applies in cases where the employer employs does not employ one or more employees, as follows:
- a) Increases the amount distributed to the Labor Agency for enforcement and education from 50% to 100%, and adds a continuous appropriation for these purposes.
 - b) Eliminates the distribution of 50% of these civil penalties to the General Fund.

(The Labor Agency reports that most civil actions brought to date under SB 796 have been settled out of court, where these civil penalty distributions formulas do not apply. To date, the Labor Agency has only received distribution of civil penalty revenues, totaling less than \$100.)

COMMENTS

1)Background . SB 796, Dunn, Chapter 906 of 2004, established an alternative "private attorneys general" system for labor law enforcement that allows employees to pursue civil penalties for employment law violations. SB 796 established a civil

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penalty where one was not specifically provided under the Labor Code of \$100 for each aggrieved employee per pay period for an initial violation, \$200 for each aggrieved employee per pay period for subsequent violations, and \$500 per violation where the violator did not employ any employees at the time of the violation.

SB 796 authorizes an aggrieved employee to recover civil

penalties plus reasonable attorney's fees and costs in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. SB 796 provides that no private right of action may be maintained where the Labor Agency cites the alleged violator on the same facts and theories and under the same section or sections of the Labor Code, or initiates specified proceedings.

The civil penalties and private right of action established by SB 796 were intended to improve Labor Code enforcement. Under prior law, many Labor Code violations were punishable only as misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely resulted in criminal investigations and prosecutions.

2)Rationale . Business groups and others opposed to SB 796 argue that it tips the balance of labor law protection in disproportionate favor of employees, by encouraging private attorneys to act as bounty hunters pursuing frivolous violations on behalf of employees, in the same manner in which Business and Professions Code Section 17200 has been abused.

This bill significantly amends the provisions of SB 796 by enacting specified procedural and administrative requirements that must be met prior to bringing a private action to recover civil penalties. Moreover, this bill provides that no action shall be brought for a posting, notice, agency reporting, or filing requirement, except as specified.

This bill also expands judicial review of SB 796 claims by requiring courts to review and approve any penalties sought as part of a proposed settlement agreement, and those portions of settlements concerning violations of health and safety laws. In addition, courts are authorized to award a lesser amount if

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to do so otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

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EXHIBIT H

UC Berkeley

The State of California Labor, 2002

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Labor Law Enforcement in California, 1970-2000

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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 non-compliance 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 (Cleland 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, work-site 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 non-compliance. 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 through 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/querynp.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>.

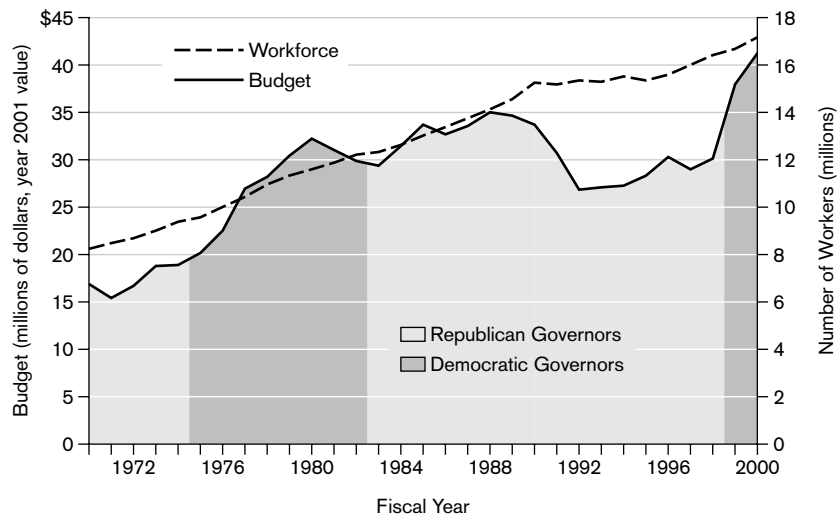


FIGURE 5.1 DLSE Budget and the Number of Workers in California, Fiscal Years 1970-2000.

SOURCE: Computed from EDD and California State Budget data.

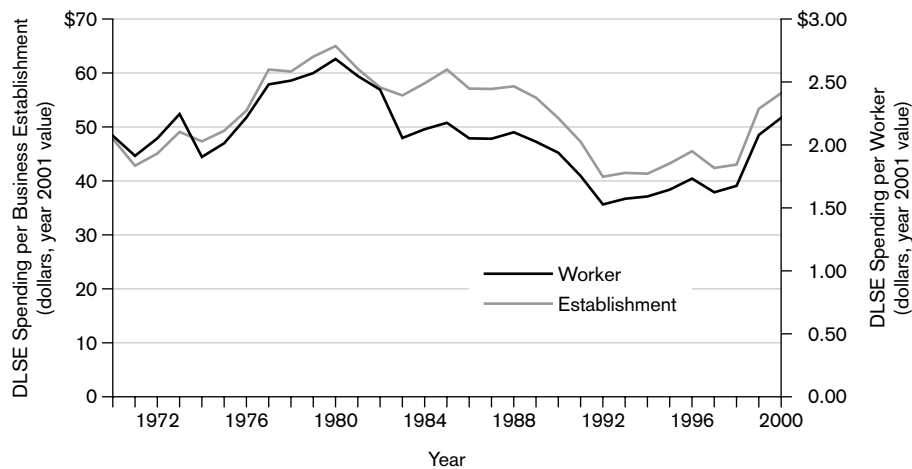


FIGURE 5.2 Ratio of Dollars Spent by DLSE to the Number of Business Establishments and Workers in California, 1970-2000.

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.

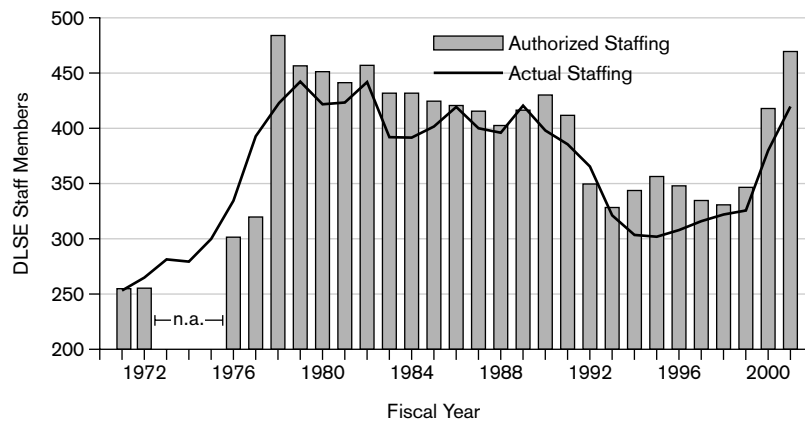


FIGURE 5.3 DLSE Staffing, at Authorized and Actual Levels, Fiscal Years 1970–2000.
SOURCES: Computed from DLSE and California State Budget data.

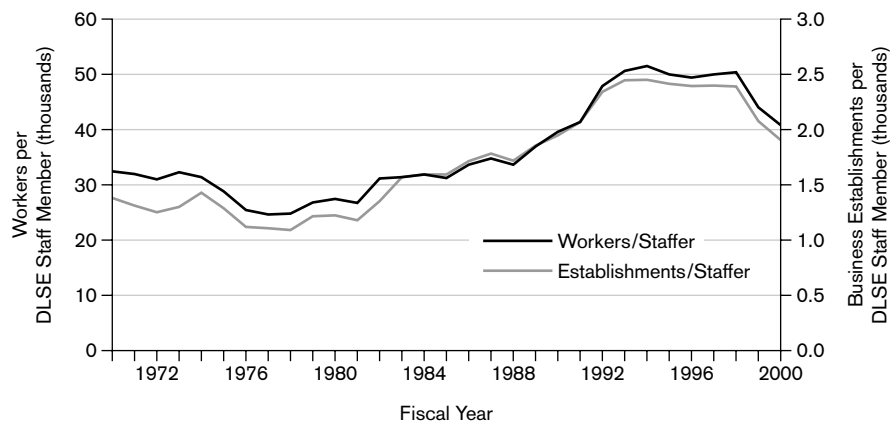


FIGURE 5.4 Actual DLSE Staffing per Business Establishment and per Worker in California, 1970–2000.
SOURCES: Computed from EDD and DLSE data.

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.

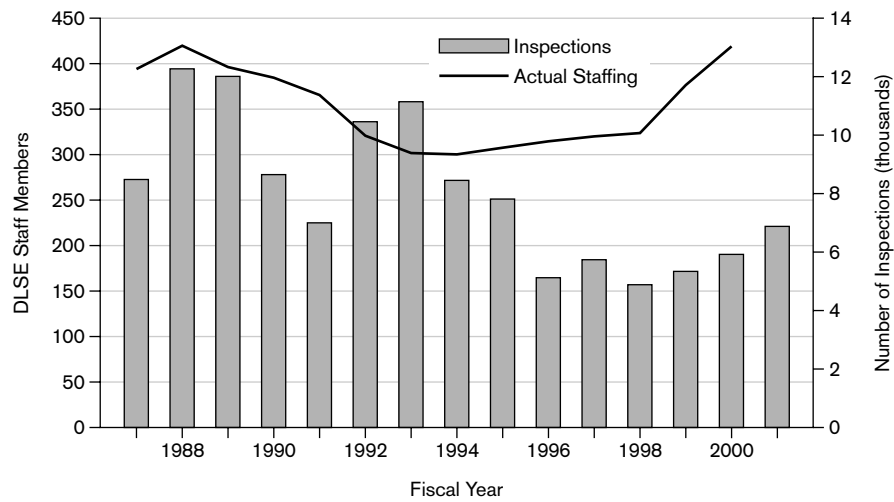


FIGURE 5.5 Actual DLSE Staffing Levels and the Number of Workplace Inspections, Fiscal Years 1974–2000.

SOURCES: Computed from California State Budget and DSLE data.

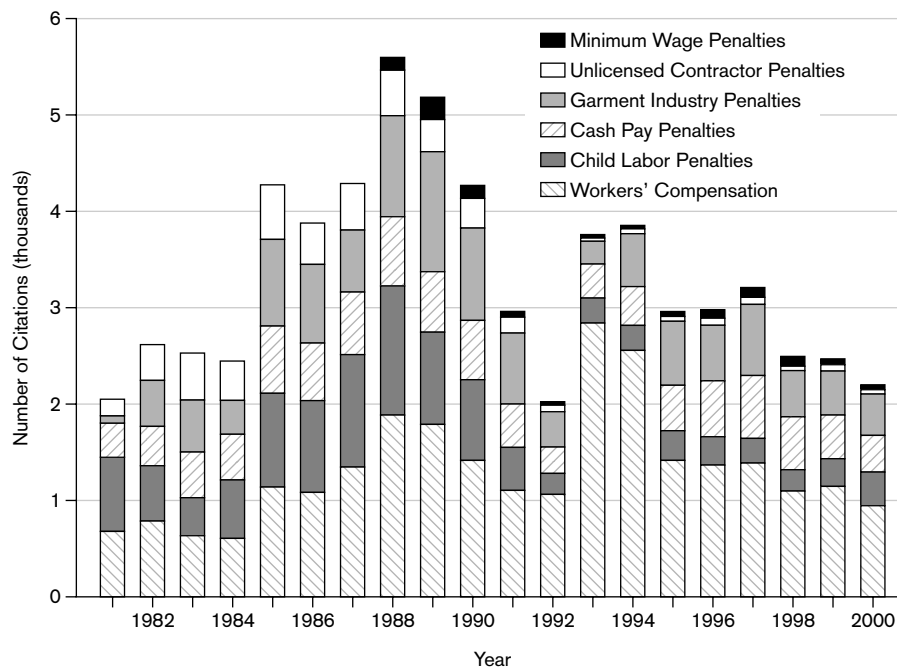


FIGURE 5.6 Number of Citations Issued by DLSE and BOFE, Stacked by Type, 1981–2000.

SOURCE: DLSE.

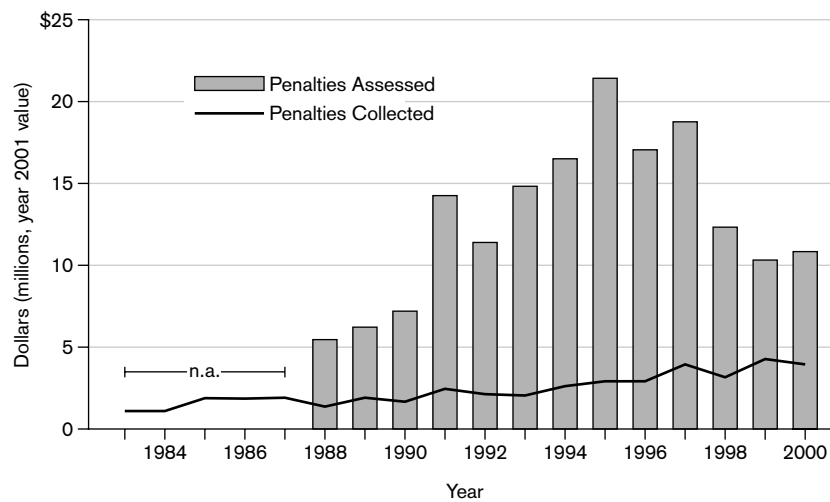


FIGURE 5.7 BOFE Penalties Assessed and Collected, by Dollar Amount, 1983–2000.
SOURCE: BOFE.

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.

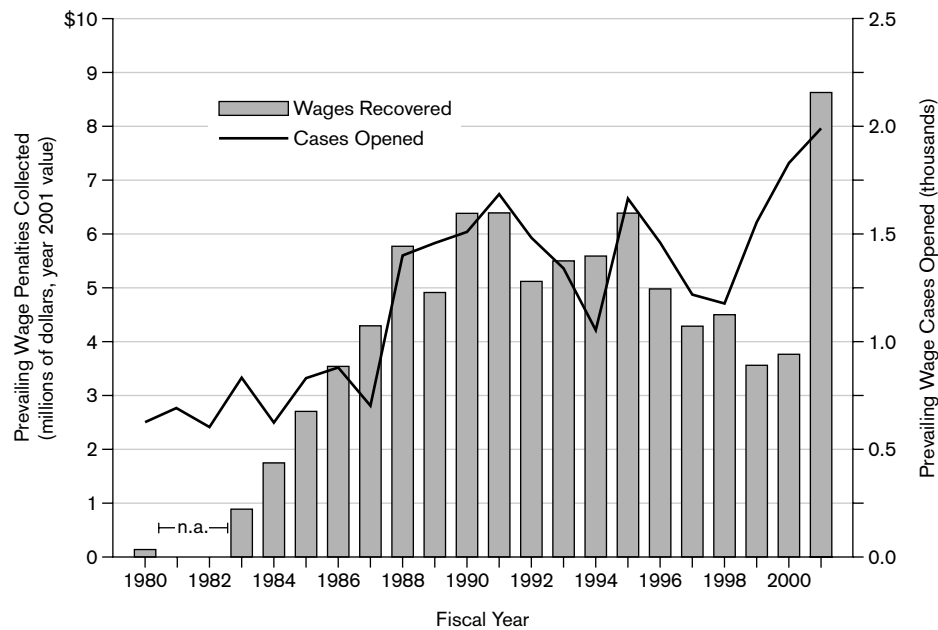


FIGURE 5.8 Prevailing Wage Cases Opened and Wages Recovered, by Dollar Amount, by DLSE and BOFE, 1980–2001.

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

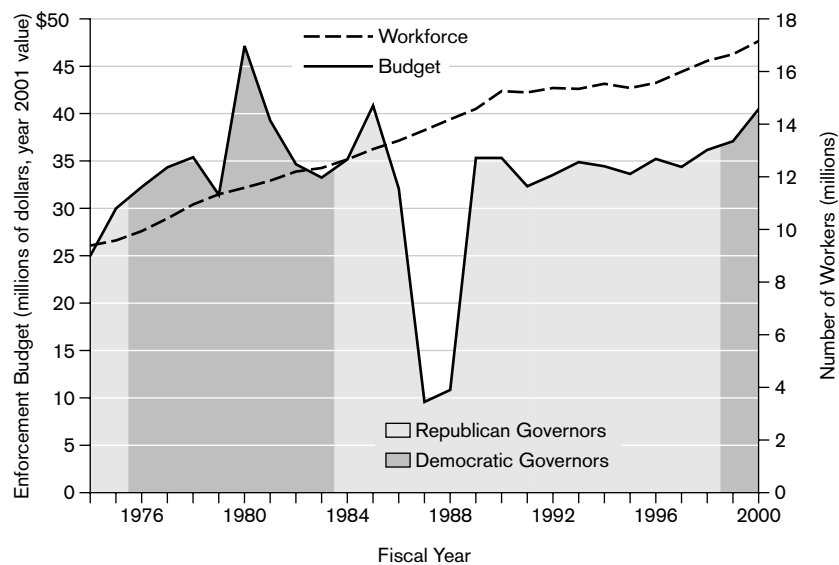


FIGURE 5.9 Cal/OSHA Field Enforcement Budget and the Number of Workers in California, Fiscal Years 1974-2000.

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

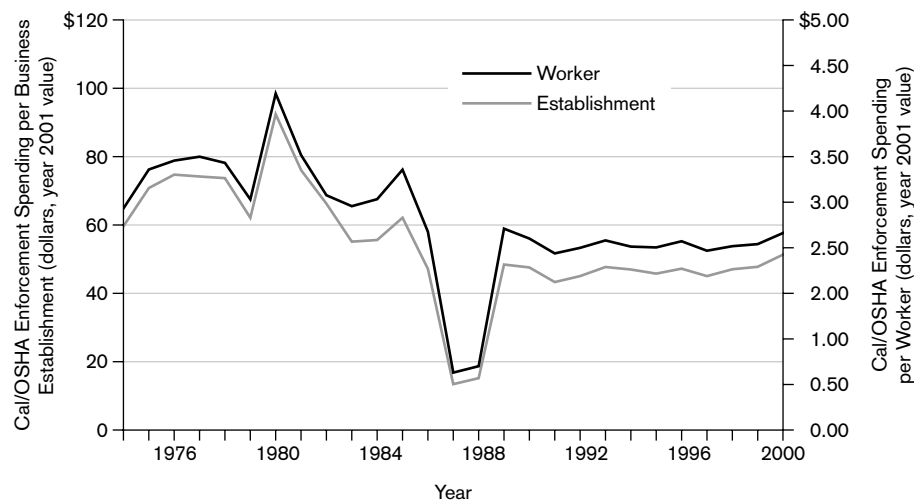


FIGURE 5.10 Ratio of Dollars Spent on Cal/OSHA Enforcement to the Number of Business Establishments and Workers in California, Fiscal Years 1974-2000.
SOURCES: Computed from DIR, EDD, and California Budget Project (CBP) data.

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.

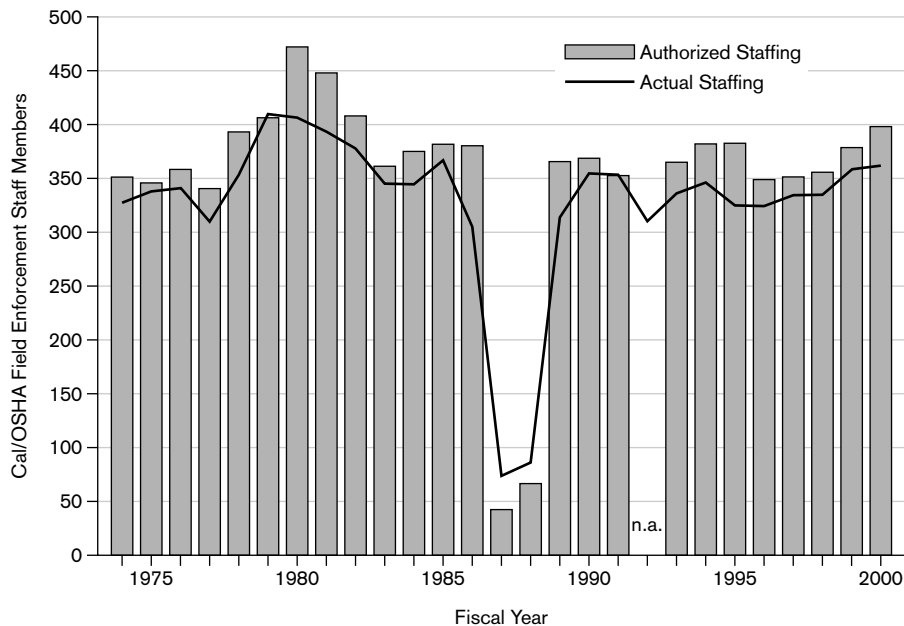


FIGURE 5.11 Cal/OSHA Enforcement Staffing, at Authorized and Actual Levels, Fiscal Years 1974-2000.

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).

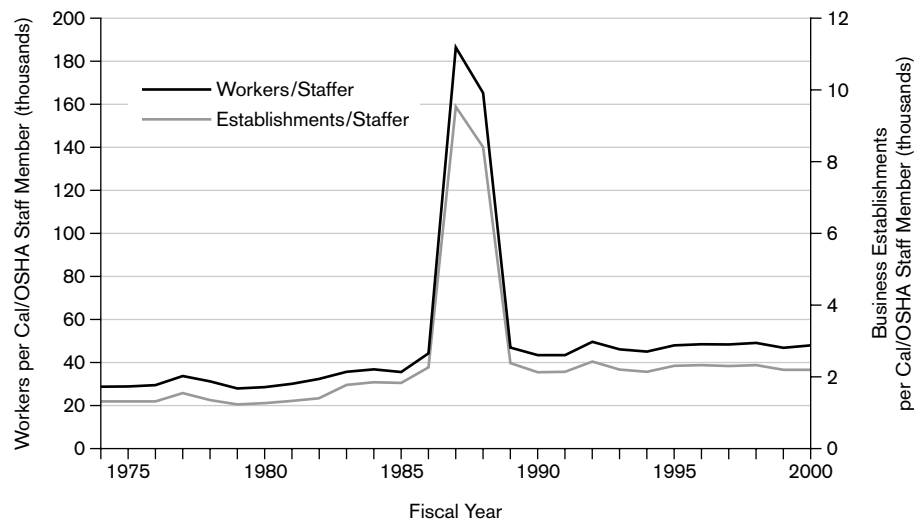


FIGURE 5.12 Actual Cal/OSHA Enforcement Staffing per Business Establishment and per Worker in California, Fiscal Years 1974–2000.

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

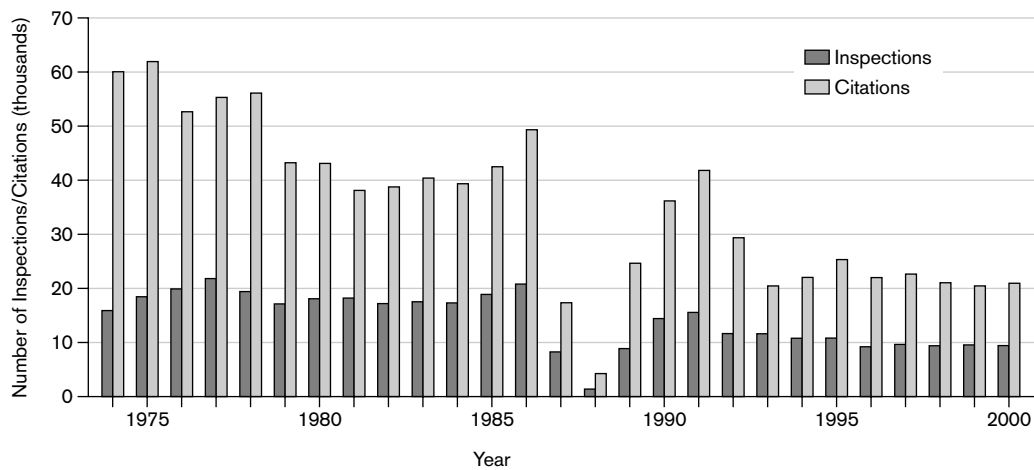


FIGURE 5.13 Cal/OSHA Inspections and Citations, 1974–2000.
SOURCE: California Division of Labor Statistics and Research.

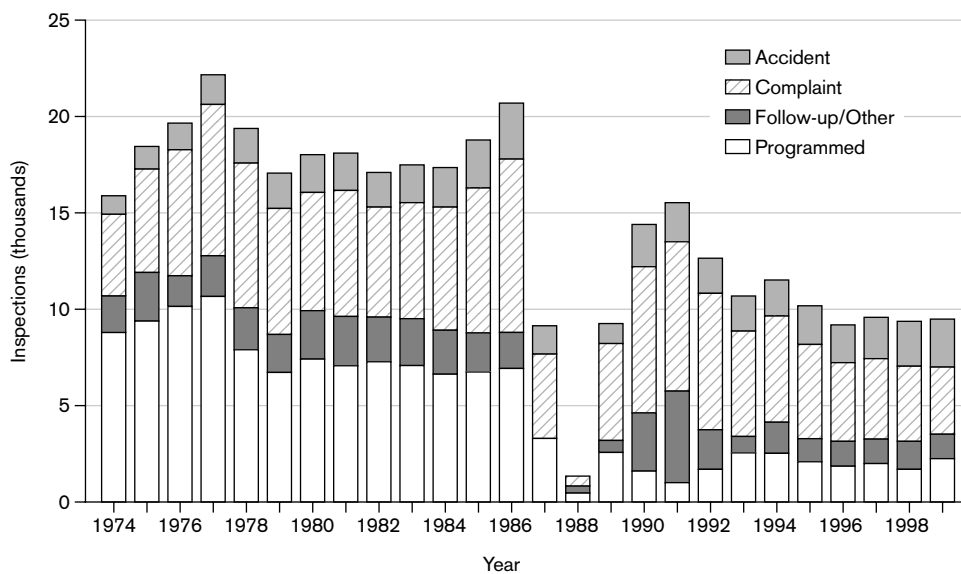


FIGURE 5.14 Cal/OSHA Inspections, Stacked by Reason for the Inspection, 1974–1999.
SOURCE: Cal/OSHA.

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

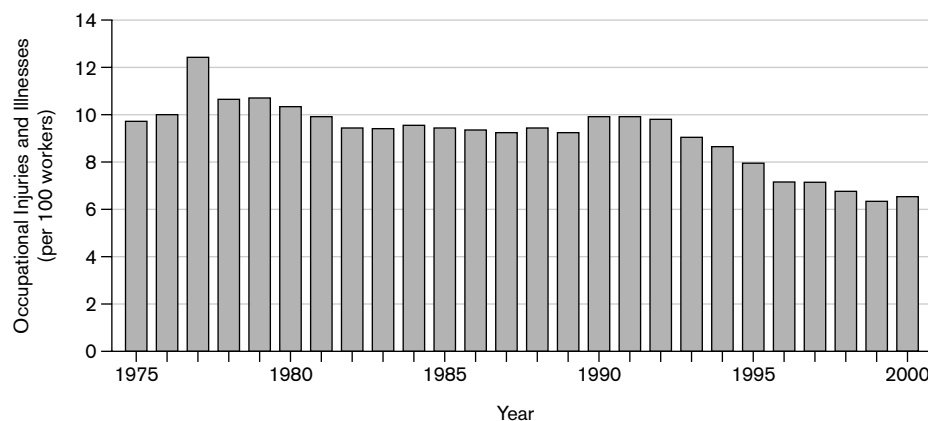


FIGURE 5.15 Occupational Illness and Injury Rates in California, 1975–2000.
SOURCES: Computed from DIR data and California Statistical Abstract.

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

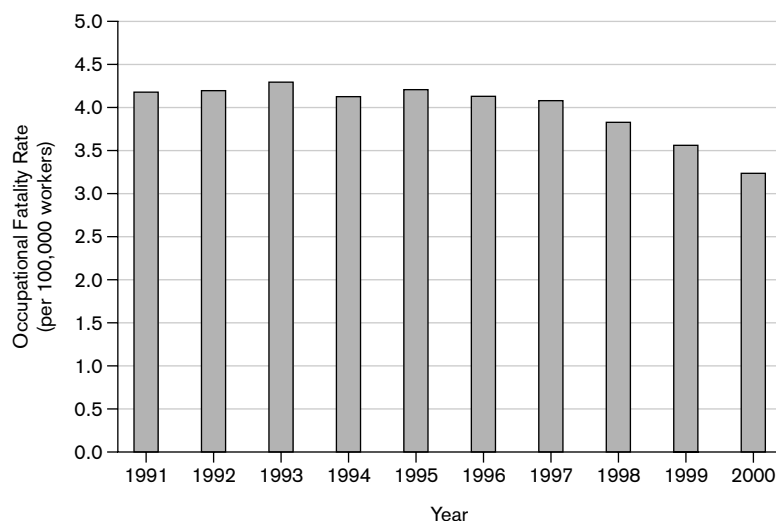


FIGURE 5.16 Occupational Fatality Rates in California, 1991–2000.

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

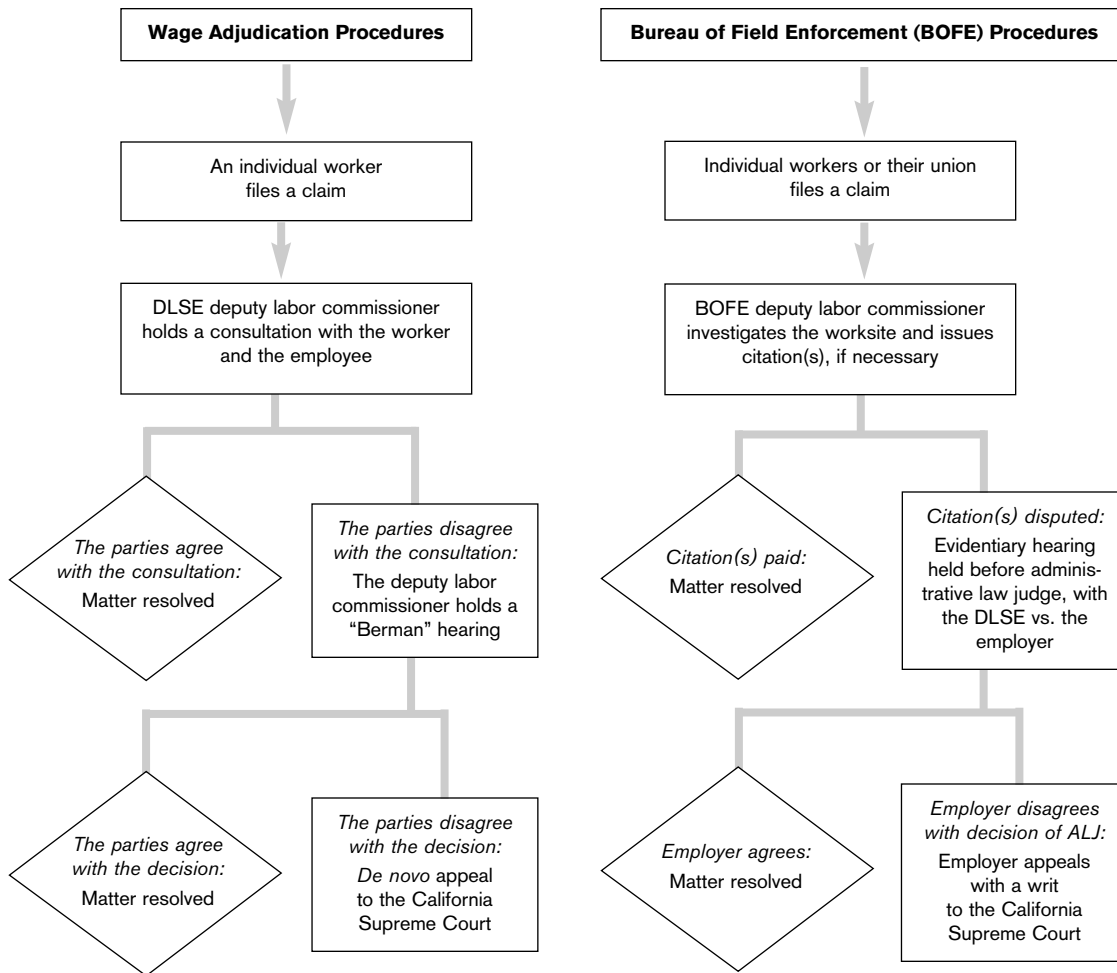
We began our work by reviewing the annual and biennial reports of the Department of Industrial Relations (DIR) over the past thirty years. We also reviewed California budget allocations for the DIR from 1970 to 2002.

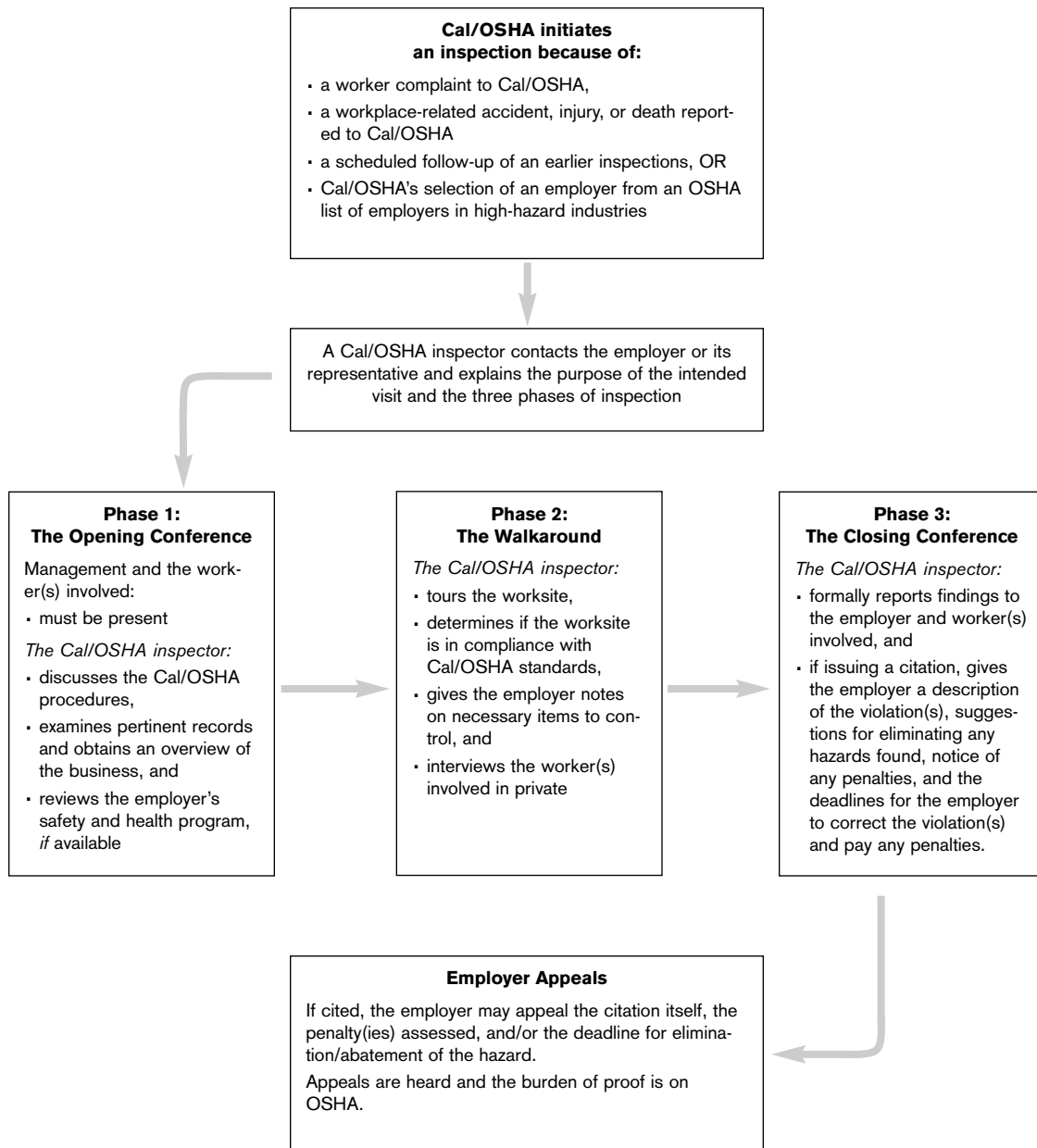
The DLSE provided us with outcome measures from their enforcement activities. These included BOFE Statistical Reports (1987-2000), Summary of Labor Standard Enforcement Statistics for Hearings, Targeted Industries Reports, and DLSE staffing levels. With these data we analyzed the composition of the enforcement 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

<i>Year</i>	<i>Budget (in 000s)</i>	<i>DLSE Staffing Authorized</i>	<i>DLSE Actual Staffing</i>	<i>BOFE No. of in- spections</i>	<i>BOFE Citations Issued</i>	<i>BOFE Penalties Assessed</i>	<i>BOFE Penalties Collected</i>	<i>Number of Establishments in California</i>	<i>Workforce in California</i>
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 in- spections	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

<i>Year</i>	<i>Workers' Compensation</i>	<i>Child Labor Penalties</i>	<i>Cash Pay Penalties</i>	<i>Garment Industry Penalties</i>	<i>Unlicensed Contractor Penalties</i>	<i>Minimum Wage Penalties</i>	<i>Overtime Citations</i>	<i>Total Citations</i>
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

<i>Year</i>	<i>Cal/OSHA Budget (in 000s)</i>	<i>Staff Authorized</i>	<i>Staff Filled</i>	<i>Inspections</i>	<i>Violations/ Citations issued</i>	<i>Penalties Collected</i>	<i>Penalties Assessed</i>
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**

<i>Year</i>	<i>Occupational Fatalities</i>	<i>Fatality Rate</i>	<i>Injuries & Illnesses (per 100 workers)</i>
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.

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 I

Senate Committee on Labor and Industrial Relations
Richard Alarcon, Chair

Date of Hearing: April 28, 2004 2003-2004 Regular
Session
Consultant: Frances Low Fiscal:Yes
Urgency:No

Bill No: SB 1809
Author: Dunn
Amended: April 12, 2004

Subject:

Employment: Labor Code Private Attorneys General Act of
2004.

Purpose:

To amend the Labor Code Private Attorneys General Act of
2004 to:

Provide that only the Labor and Workforce Development
Agency (LWDA) or any of its subordinate agencies or
employees may recover a civil penalty for violation of a
posting or notice requirement of the Labor Code

Clarify that a court is authorized to exercise the same
discretion in assessing a civil penalty as LWDA or any of
its subordinate agencies or employees.

Analysis:

Existing law allows employees to bring civil actions
against their employers to recover penalties for violations
of the Labor Code if the Labor and Workforce Development
Agency (LWDA), or its subordinate agencies or employees do
not do so. LWDA enforcement actions have primacy over any
private enforcement efforts undertaken pursuant to this
act. Any penalties recovered by an aggrieved employee must
be distributed as follows: 50 percent to the General Fund,
25 percent to LWDA for employer education and 25 percent to
the aggrieved employees

This Bill would provide, that a civil penalty for violation

of a posting or notice provision of the state Labor Code may only be recovered by the LWDA or its subordinate agencies or employees. It would also clarify that a court is authorized to exercise the same discretion in assessing a civil penalty as LWDA or any of its subordinate agencies or employees. The provisions of this bill will be retroactive to January 1, 2004, provided that a matter has not already reached a final, unappealable determination.

Comments:

1. Proponents including the California Rural Legal Assistance Foundation (CRLAF), sponsor of SB1809, argue that last year's enactment of SB 796, (Dunn), Chapter 906, 2003, was a result of the Governor and the Legislature acknowledging that enforcement staff of the state labor law enforcement agencies had fallen drastically behind the growth in the labor force and would continue to worsen with the state budget crisis. Rather than turn a blind eye toward labor law enforcement, SB 796 was enacted, which allows employees to seek redress directly when the state has not done so on their behalf. Today, the budget picture is even worse and SB 796 is still good policy.

This measure addresses an issue raised by opponents of SB 796 who asserted that it provided no discretion to reduce the penalties under the law and that insignificant or inadvertent violations could lead to astronomical penalties. This bill would give clear indication to trial courts that they have discretion to award less than the maximum civil penalty available under the statute when to do otherwise, would be unfair, arbitrary and oppressive, or confiscatory. In addition, this measure eliminates the ability of an aggrieved employee to seek to recover civil penalties for violations of "posting" or

Hearing Date: April 28, 2004 SB
1809

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Senate Committee on Labor and Industrial Relations

"notice" provisions of the Labor Code, while preserving the right of LWDA and its subordinate agencies and

employees to assess and collect civil penalties for these violations.

Support:

California Rural Legal Assistance Foundation, CRLA
(co-sponsor)
American Federation of State, County and Municipal
Employees (AFSCME)
California Federation of Labor
California Labor Federation, AFL-CIO
United Nurses Associations of California/Union of Health
Care Professionals

Opposition:

Associated Builders and Contractors of California
California Bankers Association (CBA)
California Chamber of Commerce
California Employment Law Council (CELC)
California Manufacturers and Technology Association (CMTA)
Western Growers

* * *

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EXHIBIT J

California Firms and Employment by Size Range 2021 Q2

Size Range by Number of Employees	Number of Firms	Share of Firms	Number of Employees	Share of Employees
1 to 4	909,369	75.0%	1,377,879	9.6%
5 to 9	133,656	11.0%	878,883	6.1%
10 to 19	83,419	6.9%	1,125,869	7.9%
20 to 49	52,587	4.3%	1,580,200	11.1%
50 to 99	17,488	1.4%	1,204,874	8.4%
100 to 249	10,370	0.9%	1,565,454	10.9%
250 to 499	3,127	0.3%	1,074,573	7.5%
500 to 999	1,519	0.1%	1,041,685	7.3%
1000 to 2999	882	0.1%	1,427,145	10.0%
3000+	316	0.0%	3,023,578	21.1%
Total	1,212,733	100.0%	14,300,140	100.0%

Source: QCEW, 2021 Second Quarter

Private sector firms by size range.

A firm is an establishment or a combination of establishments defined by a unique Employer Identification Number.

Number of firms is the count of all firms in the employment size range.

Share of firms is the percent of firms in the employment size range.

Number of employees is the count of employees in working for firms in the employment size range.

Share of employees is the percent of employees in the employment size range.



EXHIBIT K

2020-2021
THE BUREAU OF FIELD ENFORCEMENT
FISCAL YEAR REPORT
CALIFORNIA LABOR COMMISSIONER'S OFFICE
DEPARTMENT OF INDUSTRIAL RELATIONS



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 includes: (1) the enforcement plan adopted by the Labor Commissioner and the rationale for its 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) is a division of the California Department of Industrial Relations. It consists of several units working together to provide a wide variety 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's Office 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 BOFE, which investigates complaints and takes enforcement actions to ensure that employees are neither required nor permitted to work under unlawful conditions. Some of the actions taken by BOFE investigators include: the enforcement of minimum wage and overtime requirements, child labor laws, and employers' workers' compensation insurance requirement; audits of payroll records; collection of unpaid wages such as prevailing wages on public works jobs; issuance of citations for violations of any applicable Labor Code sections; confiscation of illegally manufactured garments; and injunctive relief to prevent further violations of the law.

BOFE focuses on major underground economy industries in California with the most rampant labor law violations, including agriculture, garment, construction, car wash, and restaurants. In the past few years, the Bureau has increased its focus on industries where wage theft has been particularly challenging to combat, such as janitorial work, residential care homes, and warehousing. The pandemic continued to affect the performance of BOFE and its ability to conduct onsite inspections and in-person interviews. BOFE had to refocus its efforts on compliance with health and safety issues, keeping the public safe, and ensuring employers were abiding by their obligations under the various paid sick leave statutes.

Strategic Enforcement Plan

In the past eleven years, BOFE 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 scofflaws 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 the strategic targeting of law-breaking employers. The Labor Commissioner has adopted an approach that uses active collaboration with key partners on the ground and improved data to target businesses that are intentionally cheating. The Labor Commissioner's Office has also devoted considerable resources to ensuring every tool at its disposal is used 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 nongovernmental 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 in order to uncover and understand the nature of violations in the workplace. Deputy Labor Commissioners interview witnesses off-site and outside regular business hours to maximize their ability to gain worker trust and participation. The Bureau does not rely solely on complaint-based investigations but also engages in proactive, strategic enforcement based on leads obtained by organizations, associations, and industry representatives.

Over the past several years, legislative changes have increased BOFE's civil citation authority for violations that were once enforceable only through the Berman wage claim process or through private lawsuits. For example, the Bureau can issue citations for liquidated damages when minimum wage violations occur and for waiting-time penalties under Labor Code section 203. These changes did not expand liability for employers breaking the law but streamlined the Division's ability to crack down on perpetrators of underground economy violations, protecting honest employers and resulting in a more efficient use of government resources. Other changes expanded 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 part of the Labor Commissioner's continued effort to fight wage theft, BOFE investigators not only focus on civil penalties but also 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.

In addition, the Labor Commissioner's Office partners with other state agencies, community groups, industry associations, and other law enforcement agencies to enhance the enforcement of labor laws. The Labor Commissioner's enforcement efforts generate substantial revenue for the state in the form of penalties paid by employers that violate 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, BOFE has performed fewer inspections overall than in prior years, but continues to find more wages owed to workers in California than at any time in BOFE's history.

The Labor Commissioner's Office offers training, particularly on conducting wage audits, to determine the extent of wage theft and to return wages to workers, 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 enables BOFE to conduct deeper, more substantive investigations.

The Labor Commissioner's Office publicizes the results of notable BOFE investigations through news releases. These news releases create a deterrent to wage theft and other labor law violations by highlighting the hefty penalties issued to employers for failing to comply with the law. An archive of news releases can be found here: https://www.dir.ca.gov/dlse/DLSE_whatsnew.htm

Enforcement Results

In the fiscal year 2020-2021, BOFE conducted 492 inspections and issued citations for 589 violations.¹ The largest single source of violations and citations was once again employers' failure to carry workers' compensation insurance resulting in 139 citations issued for this violation. The second highest number of citations was for failure to issue an itemized wage statement resulting in 95 violations issued for this violation.

¹ The *total* number of inspections and citations and all statistics throughout this report comprises the performance of all BOFE programs, including the Labor Enforcement Task Force.

The following tables illustrate BOFE'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).

The amounts below do not include citations that were reduced or dismissed in the fiscal year 2020-2021 due to settlement or for other reasons. In the fiscal year 2020-2021, 339 violations were reduced or dismissed for a total reduction of \$27,899,303 in wages and penalties. These reduced or dismissed citations may have been assessed in prior fiscal years.

Table 1. Bureau Assessed Report (Including Public Works) FY 2020-2021, Results by Industry

Industry	# of Inspections	# of Penalty Violations	Penalties Assessed	Wages Assessed
Other	183	218	\$6,769,438.84	\$25,677,308.84
Agriculture	16	33	\$329,700.00	\$639,528.91
Auto Repair	12	17	\$166,205.47	\$90,984.59
Car Wash	10	21	\$183,650.00	\$341,832.85
Construction	23	19	\$599,550.00	\$1,842,768.64
Garment	13	28	\$331,980.00	\$3,871,932.92
Hotel	7	9	\$111,900.00	\$82,697.34
Janitorial	8	8	\$31,650.00	\$833,633.38
Nail Salon	23	19	\$63,600.00	
Res Care	5	6	\$40,770.02	\$3,032,341.95
Restaurant	123	148	\$2,986,617.48	\$8,140,535.25
Retail	59	62	\$561,850.00	\$1,416,180.08
Security Guard	8	1	\$27,000.00	
Warehouse	2			
Grand Total	492	589	\$12,203,911.81	\$45,969,744.75
Public Works	1,964	516 ^a	\$12,598,321.60 ^b	\$10,979,508.51
TOTALS	2,456	1,105	\$24,802,233.41	\$56,949,253.26

^a The Public Works Unit does not conduct inspections but, rather, measures performance based on cases opened for audit purposes. Thus, the data in this table should be understood as 1,964 audits conducted, with 516 civil wage and penalty assessments (CWPA's) issued (rather than the number of citations/violations). These measurements are included here to provide a full picture of the Division's performance.

^b Includes penalty assessments under Labor Code sections 1775, 1777.7, 1813, and 1776.

Table 2. BOFE (Including Public Works) FY 2020-2021 Amounts Collected by Industry

Employer Industry	Wages Collected ^a	Penalties Collected	Interest Collected	Total Collected
Other	\$4,370,780.45	\$1,668,209.90	\$92,608.15	\$6,131,598.50
Agriculture	\$163,168.71	\$81,575.66	\$4,856.49	\$249,600.86
Auto Repair	\$42,641.74	\$306,756.64	\$63,249.74	\$412,648.12
Car Wash	\$59,922.62	\$201,424.97	\$93,705.38	\$355,052.97
Construction	\$371,013.36	\$122,649.43	\$20,073.51	\$513,736.30
Garment	\$57,517.47	\$65,651.29	\$4,158.43	\$127,327.19
Hotel	\$77,861.05	\$132,400.00	\$11,084.12	\$221,345.17
Janitorial	\$39,185.23	\$116,231.36	\$11,433.68	\$166,850.27
Nail Salon	\$217,250.00	\$77,954.56	\$762.77	\$295,967.33
Res Care	\$315,842.43	\$39,524.85	\$1,758.47	\$357,125.75
Restaurant	\$4,508,244.24	\$958,018.12	\$78,173.85	\$5,544,436.21
Retail	\$408,706.78	\$181,126.40	\$23,732.07	\$613,565.25
Security Guard		\$4,400.00		\$4,400.00
BOFE Total	\$10,632,134.08	\$3,955,923.18	\$405,596.66	\$14,993,653.92 ^b
Public Works Total	\$9,228,127.24	\$4,792,107.30 ^c		\$14,020,234.54
Grand Total Collected				\$29,013,888.46^d

^a Because of the ongoing nature of BOFE investigations and collections from employers, these amounts might include what is later determined to be penalties, instead of wages. As a result, some of these amounts continue to be allocated by the Labor Commissioner's Office.

^b Penalties and wages collected in fiscal year 2020-2021 might include the collection of wages assessed in earlier reporting periods. This statistic also includes wages collected as a result of Bureau-assisted employer self-audits as well as actions taken by the Legal Unit, such as litigation, settlements, and Legal Unit-assisted employer self-audits, all of which were initiated by BOFE.

^c Includes penalty collections under Labor Code sections 1775, 1777.7, 1813, and 1776.

^d Penalties and wages collected in fiscal year 2020-2021 may include collection of penalties and wages found due in earlier reporting periods. This statistic also includes wages collected as the result of Bureau-assisted employer self-audits as well as actions taken by the Legal Unit, such as litigation, settlements, and Legal Unit-assisted employer self-audits, all of which were initiated by BOFE.

Table 3. BOFE (including Public Works) FY 2020-2021, Results by Violation Category

Violation Category	# of Penalty Violation	Penalties Assessed	Wages Assessed
Workers' Compensation	139	\$1,907,383.67	
Child Labor	33	\$63,500.00	
Itemized Statement (L.C. 226)	95	\$5,159,380.00	\$5,044,787.00
Minimum Wage	65	\$643,750.00	\$7,803,412.55
Split Shift	18	\$82,600.00	\$116,687.84
Liquidated Damages			\$9,927,221.12
Overtime	63	\$437,400.00	\$5,533,479.56
Garment	6	\$6,000.00	
Garment Registration	8	\$69,200.00	
Janitorial Registration	3	\$23,900.00	
Car Wash Registration	9	\$79,600.00	
Unlicensed Construction Contractor	3	\$9,200.00	
Rest and Meal Period	56	\$500,650.00	\$3,281,563.32
Paid Sick Leave (LC 246)			\$137,158.71
Paid Sick Leave (LC 248.1)			\$2,250.00
Paid Sick Leave Poster Requirement	64	\$6,400.00	
Misclassification	7	\$650,000.00	
Unlicensed Farm Labor Contractor	4	\$30,500.00	
Violation of Payment of Wages Provision (L.C. 204)	15	\$2,530,248.14	
Reimbursable Business Expenses			\$1,180.00
Violation of Reporting Time	1	\$4,200.00	\$18,063.72
Contract Wages Above Minimum Wage			\$2,173,548.76
Waiting Time Penalties			\$11,930,392.17
Total	589	\$12,203,911.81	\$45,969,744.75
Public Work Totals	516 ^a	\$12,598,321.60 ^b	\$10,979,508.51
GRAND TOTALS	1,105	\$24,802,233.41	\$56,949,253.26

^a The Public Works Unit does not conduct inspections but, rather, measures performance based on cases opened for audit purposes. Thus, the data in this table should be understood as 1,964 audits conducted, with 516 civil wage and penalty assessments (CWPAs) issued (rather than the number of citations/violations). These measurements are included here to provide a full picture of the Division's performance.

^b Includes penalty collections under Labor Code sections 1775, 1777.7, 1813, and 1776.

Table 4. BOFE (including Public Works) FY 2020-2021, Amounted Collected by Violation Category

Violation Category	Wages Collected	Penalties Collected	Interest Collected	Total Collected
Workers' Compensation		\$2,259,312.36	\$240,838.52	\$2,500,150.88
Child Labor		\$67,500.00	\$710.80	\$68,210.80
Itemized Statement	\$542,008.01	\$1,082,206.89	\$88,578.58	\$1,712,793.48
Contract Rate	\$91,378.83			\$91,378.83
Minimum Wage	\$2,007,624.93	\$131,551.69	\$2,734.28	\$2,141,910.90
Split Shift	\$149,003.18	\$14,750.00	\$232.05	\$163,985.23
Liquidated Damage	\$2,915,633.26	\$0.00	\$0.00	\$2,915,633.26
Overtime	\$2,283,213.77	\$86,300.52	\$19,184.45	\$2,388,698.74
Garment		\$15,143.26	\$630.61	\$15,773.87
Garment Registration		\$600.00	\$77.34	\$677.34
Car Wash Registration		\$119,810.94	\$48,627.98	\$168,438.92
Unlicensed Construction Contractor		\$37,518.74	\$47.02	\$37,565.76
Rest and Meal Period	\$1,829,217.44	\$102,913.26	\$3,266.00	\$1,935,396.70
Misclassification		\$1,100.00		\$1,100.00
Violation of Janitorial Registration		\$2,647.36		\$2,647.36
Tips	\$5,721.56			\$5,721.56
Reimbursable Business Expenses	\$3,670.20			\$3,670.20
Farm Labor Contractor Registration		\$14,300.00		\$14,300.00
Violation of Payment of Wage		\$14,768.16		\$14,768.16
Sick Leave Poster Requirement	\$3,362.16	\$5,500.00		\$8,862.16
Waiting Time Penalties	\$801,300.74		\$669.03	\$801,969.77
BOFE Total	\$10,632,134.08	\$3,955,923.18	\$405,596.66	\$14,993,653.92
Public Works Total	\$9,228,127.24	\$4,792,107.30 ^a		\$14,020,234.54
Grand Total				\$29,013,888.46^b

^a Includes penalty collections under Labor Code sections 1775, 1777.7, 1813, and 1776.

^b Penalties and wages collected in fiscal year 2020-2021 may include collection of penalties and wages found due in earlier reporting periods. This statistic also includes wages collected as the result of Bureau-assisted employer self-audits as well as actions taken by the Legal Unit, such as litigation, settlements, and Legal Unit-assisted employer self-audits, all of which were initiated by BOFE.

Audits

The Labor Commissioner's Office continued to train staff to uncover issues involving the nonpayment of wages, which resulted in more audits of employers' payroll records. The Bureau also continued its 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 Bureau conducts a thorough investigation and audit to discover unpaid wages. A sampling of notable outcomes of payroll audits performed under the supervision and direction of the Bureau staff, which resulted in the assessment of wages due to workers (shown in the statistics above), includes:

June 2021

- Riverside-based warehouse, La Minda De Oro, Inc. and six other businesses were cited \$1.4 million for wage theft violations affecting 28 workers.

April 2021

- Santa Ana-based Perfect Point Corp. dba South Coast Gymnastics. was cited \$1.3 million for wage theft violations affecting 107 workers.

March 2021

- Van Nuys- based G & D Investments Inc., dba Baja Fresh and seven other legal entities were cited \$375,806 for multiple wage theft and labor law violations affecting 188 workers.

March 2021

- Los Angeles-based Green Messengers Inc. was cited \$6.4 million for wage theft violations affecting 718 workers.

February 2021

- Long Beach-based construction company, Fullerton Pacific Interiors Inc., was cited \$1,964,679 for wage theft violations affecting 472 workers.

February 2021

- San Diego-based wholesale bakery, Baked in the Sun, Inc., cited \$1.3 million for multiple wage theft and labor law violations affecting 189 workers.

Strategic Enforcement Outcomes

The Bureau's Strategic Enforcement approach has proven effective in proactively targeting egregious violators in low-wage industries. This approach involves aggressive outreach and media efforts with the goal of identifying leads that would otherwise not be uncovered and deterring bad actors throughout California as we amplify the payment of unpaid wages.

The Bureau has entered into strategic partnerships with key stakeholders, including community organizations, associations, and industry representatives. The Bureau has successful partnerships in the agriculture, car wash, construction, garment, janitorial, restaurant, and warehouse industries. Through these partnerships, the Bureau has been able to take on cases of far greater magnitude and consequently increased its impact in the respective industries.

The Bureau conducts 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 approach has been successful in producing high-quality, in-depth investigations that have uncovered violations assessing more wages owed to workers than at any other time in the history of BOFE per inspections. In fiscal year 2014-2015, 83%; in 2015-2016, 85%; 2016-2017, 148%; 2017-2018, 150%; 2018-2019, 207%; 2019-2020, 160%; and in 2020-2021, 120% (see Figure 1).²

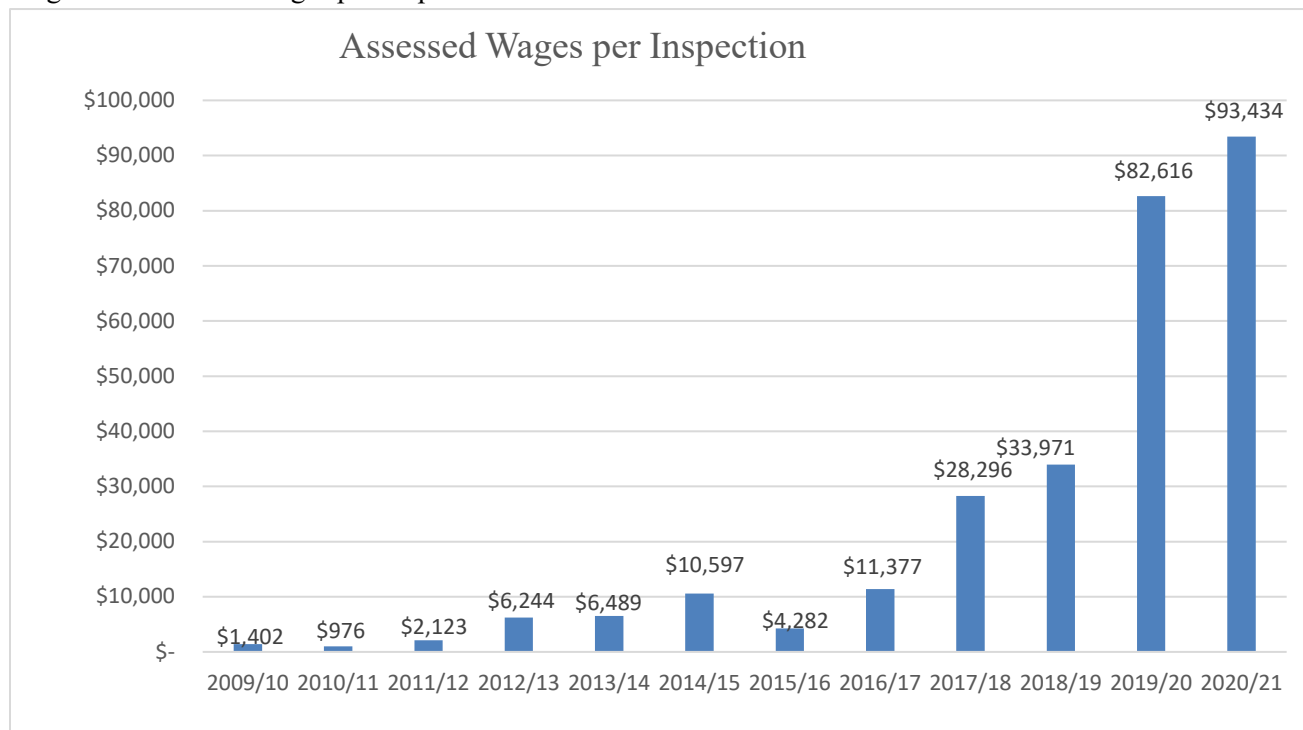
Figure 1. Violations as a Percentage of Inspections



² Past reports on the effectiveness of the Bureau have included data related to Public Works in this graph. The Public Works unit investigates complaints arising from violations of prevailing wage and apprenticeship laws. For a clearer look at the impacts of strategic field enforcement, Public Works data has been excluded from the graph.

Although there were fewer inspections, due to challenges caused by the pandemic, in 2020-2021 than in 2019-2020, the assessed wages per inspection increased steadily and dramatically. In 2010, the total was \$1,402; in 2016-2017, \$11,377; 2017-2018, \$28,296; 2018-2019, \$33,971; 2019-2020 \$82,616; and in 2020-2021 \$93,434 (see Figure 2).³

Figure 2. Assessed Wages per Inspection



Unlawfully Uninsured Employers Enforcement Program

As previously mentioned, the lack of workers' compensation insurance remains the violation most often identified in the Bureau's investigations. As a result of the passage of Senate Bill 869 (Chapter 662) in 2008, the Bureau began a 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 might be unlawfully uninsured. In fiscal year 2021-2021, BOFE issued citations for 26 violations, assessed \$298,100 in penalties, and \$350,383 in wages arising from these efforts. The process and the results of the Senate Bill 869 enforcement activities are detailed in a separate legislative report.

³ Past reports on the effectiveness of the Bureau have included data related to Public Works in this graph. The Public Works unit investigates complaints arising from violations of prevailing wage and apprenticeship laws. For a clearer look at the impacts of strategic field enforcement, Public Works data has been excluded from the graph.

Car Washing and Polishing Businesses

On January 1, 2007, BOFE began a concerted enforcement effort to ensure compliance with the registration requirements for 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 continue to receive training to better identify wage-audit issues and uncover wage theft, while 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. In the fiscal year 2020-2021, BOFE conducted 10 inspections, and issued 21 citations for this violation, which led to assessments of \$183,650 for violations of various labor laws, including nonregistration and penalties. Additionally, BOFE assessed \$341,833 in wages. The results of car washing and polishing establishments' inspections, including re-inspections, in these statistics, are shown in Table 5.

Table 5. Car Washing and Polishing Businesses FY 2020-2021 Results by Citation Category*

Citation Category	# of Violations	Penalties Assessed	Wages Assessed
Workers' Compensation	3	\$22,500.00	
Child Labor	1	\$500.00	
Car Wash Registration	9	\$79,600.00	
Itemized Statement	1	\$47,750.00	\$96,900.00
Rest and Meal Period	2	\$9,750.00	\$30,118.00
Minimum Wages	1	\$15,300.00	\$73,496.45
Split Shift	1	\$1,000.00	\$1,939.00
Liquidated Damages			\$94,070.91
Waiting Time Penalties			\$11,421.90
Overtime Wages	1	\$7,050.00	\$33,886.59
Paid Sick Leave Poster Requirement	2	\$200.00	
TOTAL	21	\$183,650.00	\$341,832.85

* 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 issued by Bureau investigators for up to \$300 per calendar day when contractors violate apprenticeship law, pursuant to Labor Code section 1777.5.

Table 6. Public Works, FY 2020-2021 Activities

Cases Opened	1,964
Cases Closed	1,400
Civil Wage and Penalty Assessments (CWPA) Issued	516
Settlements	453

Table 7. Public Works, FY 2020-2021 Assessed and Collected Report

	Assessed	Collected
Prevailing Wages	\$10,627,949.68	\$8,916,453.01
Training Funds	\$351,558.83	\$311,674.23
Total Wages	\$10,979,508.51	\$9,228,127.24^a
Penalties per Labor Code sections 1775/1813/1776	\$9,088,353.35	\$2,816,468.81
Penalties per Labor Code section 1777.7	\$3,509,968.25	\$1,975,638.49
Total Penalties	\$12,598,321.60	\$4,792,107.30^b

^a Wages recovered may include monies found due in earlier reporting periods.

^b Penalties collected may include monies found due in earlier reporting periods.

In the fiscal year 2020-2021, the Labor Commissioner signed orders of debarment for one construction company and individual. 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>

Judgment Enforcement Unit

Despite the ongoing challenges caused by the pandemic, the Division's Judgment Enforcement Unit continued to recover significant amounts owed to workers and the state pursuant to Bureau citations and wage judgments. The Judgment Enforcement Unit's work contributed to the collection of \$13,068,238.06 in citations and unpaid wages in the 2020-2021 fiscal year.

While the Bureau has started the process of filing its own judgments and liens, the Judgment Enforcement Unit continued to assist in various judgment enforcement activities. These activities include: investigating, serving and enforcing stop-work orders against businesses that fail to pay wage judgments; issuing levies and other judgment enforcement documents; seeking suspension of various licenses held by businesses that fail to pay Labor Commissioner judgments; negotiating and arranging payment plans with employers; investigating and gathering evidence to support litigation against businesses that engage in fraudulent transfer of assets and other schemes to evade liability for Labor Commissioner citations and judgments; and, helping train and support BOFE deputies in asset investigation and other matters related to effective enforcement of claims against business debtors.

In the fiscal year 2020-2021, the Judgment Enforcement Unit filed 427 liens, including nine mechanic's liens. In addition, the unit issued 684 levies on bank accounts and other funds controlled by businesses that failed to pay final judgments. In the fiscal year 2020-2021, the unit maintained over 108 in-depth investigations of defendants and assets, including investigations of fraudulent transfers, corporate shell games, and Labor Code section 238 investigations (stop-work orders for businesses' failure to comply with wage judgments).

Legal Unit

The Labor Commissioner's Legal Unit continued and enhanced its support for BOFE's enforcement efforts in the fiscal year 2020-2021. The unit continued its traditional work of representing the Labor Commissioner's office in Superior Court in defense of penalty citation awards in the writ of administrative mandamus challenges, prosecution of public works Civil Wage and Penalty Assessments (CWPAs) in administrative hearings, enforcement of investigative subpoenas, conducting investigative depositions, obtaining tolling agreements, negotiating settlement agreements, and advising BOFE in the application of the law to its field investigation planning. The unit also assumed responsibility for the 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 BOFE to assess minimum wages and liquidated damages through citations.⁴ Some examples of the unit's work in 2020-2021 include:

Administrative Enforcement Proceedings

- **Attic Pros:** BOFE Legal obtained a \$1.4 million settlement with a local attic cleaning and insulation business, affecting over 240 mostly non-English-speaking vulnerable workers. Investigators found that the business misclassified workers as independent contractors and paid them a flat daily rate with no overtime, despite requiring work days as long as fourteen hours. In addition, the business discouraged meal and rest breaks, failed to give workers wage statements and/or keep accurate payroll records. BOFE attorneys presented evidence at a multiday hearing over several months, resulting in the hearing officer upholding the citations for \$2,769,780. The Labor Commissioner leveraged the settlement by filing a fraudulent transfer action with regard to several properties the business owner sought to place in a trust. The employer has made the initial \$476,000 payment, representing minimum wages and overtime, and will make additional installment payments for distribution to current and former workers.
- **Centinela Car Wash, Inc. (DBA Playa Vista Car Wash):** BOFE Legal assisted BOFE deputies in an investigation of the Culver City-based Centinela Car Wash Inc. In March of 2019, BOFE issued citations for wage assessments and penalties totaling \$2.36 million. The citations are the largest issued against a car wash business by the Labor Commissioner's Office. After repeated delays by Appellants, BOFE Legal is currently defending the citations in an administrative appeal hearing, which began in August 2021.
- **Garcia's Pallets:** BOFE cited the pallet company, with approximately 50 workers, for various violations including workers compensation coverage, overtime, meal period, minimum wage, wage statement violations, and waiting time penalties. The employer appealed the citation, and a citation appeal hearing was held wherein BOFE Legal prevailed on the merits. BOFE Legal then entered into a settlement agreement with the employer for an initial payment of \$491,124.30, which was distributed immediately to

⁴ The resulting penalties and/or wages collected are included in the Bureau's statistics, depending on the process used to achieve the end results.

workers and a payment plan (secured by a deed of trust) for the \$500,000 in workers compensation penalties.

- **Foster Farms Chicken:** In August of 2020, the County Health Department ordered the company to close its operations for cleaning due to a COVID-19 outbreak at the Livingston's Plant. By January of 2021, 12 workers (eight from the Livingston plant and four from the Fresno plant) died from exposure to the virus. In light of these developments, BOFE investigators began an investigation with the assistance of BOFE Legal. BOFE Legal obtained an inspection warrant for the company's Livingston operations. After reviewing documents obtained by the inspection warrant, BOFE investigators were able to confirm the employer's compliance with California Paid Sick leave and Supplemental Covid-19 Paid Sick Leave payments for the workers directly employed by Foster Farms. BOFE cited three temporary staffing agencies, including joint employer Foster Farms, for nearly \$3.8 million for Supplemental Covid-19 Paid Sick Leave violations in April of 2022. The investigation is ongoing for compliance issues related to Labor Contractors who provide additional workers to Foster Farms.
- **Genwa Inc. and J.B.K. Wilshire Corp.:** BOFE legal obtained a \$675,000 settlement for workers at two Korean barbecue restaurants. BOFE investigators discovered that the restaurants failed to pay workers for split shifts, meal periods, minimum wage, overtime, and issuing inaccurate wage statements. A settlement agreement was reached and will be paid by the employer in an installment plan.
- **Klassic Castle Carwash:** A BOFE citation was issued and after a citation appeal hearing was held the Hearing Officer upheld the BOFE citations for minimum wage, rest period, wage statement violations, and waiting time penalties in the amount of \$215,141.19.
- **Fullerton Pacific Interiors:** A BOFE citation was issued and after a citation appeal hearing was held the Hearing Officer affirmed the BOFE citations for wages and penalties for \$1,964,679.30 against a construction industry employer.
- **California Suites Hotel:** BOFE Legal assisted BOFE deputies in defending a citation award for \$140,380.41 for minimum wages, overtime wages, liquidated damages and waiting time penalties for 40 workers. The Hearing Officer affirmed a \$60,850 penalty assessment for violations of itemized wage statement provisions.
- **Z&Y Restaurant:** Following the issuance of citations for minimum wage, overtime and wage statement violations, and the filing of a civil lawsuit seeking purloined tips, the Labor Commissioner reached a settlement agreement with the corporate defendant and its owners/officers. The settlement agreement provides for the recovery of minimum wages, overtime wages, liquidated damages, appropriated tips, penalties for failure to timely pay all wages due upon separation of employment, amounts due for wage statement and paid sick leave violations, interest on wages owed, and civil penalties. Under the terms of this settlement agreement, the defendants began paying monthly installment payments, which will total over \$1.6 million for the 22 workers who were the victims of wage and tip theft, recovering an average of nearly \$70,000 per worker. These payments are secured by a lien on properties owned by defendants, and in the event of a default, provisions in the settlement agreement will enable the Labor Commissioner to recover an additional \$400,000. The settlement agreement also established fair and transparent tip pooling distribution protocols going forward and provided for Labor Commissioner staff to provide workers' rights

training sessions to the restaurant's non-exempt workers during paid worktime, and management duties training sessions to the restaurant's managers and supervisors.

Superior Court Litigation

- **DLSE v. Save Mart Supermarkets, Santa Barbara Superior Court Case No. 21CV03151:** This lawsuit seeks \$7.9 million for violations of paid sick leave, waiting-time penalties, and civil penalties. Save Mart had an unlawful one-day waiting period before workers could receive a paid sick day. The waiting period violated paid sick leave under Labor Code section 246.5, which affected over 900 workers. The employer removed the case to federal court, which DLSE successfully moved for remand to state court. The case is currently in litigation.
- **Vista Santa Rosa v. DLSE, Riverside Superior Court Case No. PSC 1806608:** DLSE asserts that final wages were not paid to farmworkers at the time that they were discharged at the end of the grow cycle. This is the first agricultural waiting-time-penalties case brought in superior court. DLSE seeks \$650,000 in waiting-time penalties for 1,730 violations. The case is currently in litigation.
- **Lilia Garcia-Brower v. Alco Harvesting, Santa Barbara Superior Court Case No. 21CV02855:** In July 2021, the Labor Commissioner filed an enforcement action against Alco Harvesting, a farm labor contractor. Alco did not provide proper paid sick leave and COVID-19 supplemental paid sick leave. As a result, many H-2A field workers living in company housing got COVID. The Labor Commissioner is also working collaboratively with the California Rural Legal Assistance, who brought a PAGA complaint alleging Alco did not pay its H-2A workers for time spent on company buses between company housing and the fields where they worked. Both complaints, along with a second PAGA claim regarding meal and rest violations, seek damages and penalties potentially totaling over \$40 million. The case is currently in litigation.
- **Lilia Garcia-Brower v. Uber, Alameda Superior Court, Case No. RG20070281; Lilia Garcia-Brower v. Lyft, Alameda County Superior Court Case No. RG20070283:** In August 2020, the Labor Commissioner filed two enforcement actions against Uber and Lyft alleging the misclassification of hundreds of thousands of drivers as independent contractors. These cases are coordinated with a similar case brought by the California Attorney General and numerous PAGA actions. The Labor Commissioner seeks billions of dollars in unpaid wages and penalties, while also advancing the legislature's clear mandate in AB5 and the Supreme Court's ruling in Dynamex that workers doing a company's usual course of business are entitled to the basic protections of the Labor Code. The cases also implicate the cutting edge legal issues of Proposition 22's effect, and the government's power to enforce the Labor Code despite arbitration agreements between companies and workers. These cases have been coordinated with cases brought by the Attorney General and numerous private PAGA cases and class actions. The case is currently in litigation.
- **Lilia Garcia-Brower v. Mobile Wash Inc., Los Angeles County Superior Court Case No. 20STCV24800:** In July 2020, the Labor Commissioner's Office filed a lawsuit against a gig-economy car wash company in Southern California for misclassifying workers as independent contractors. Mobile Wash, Inc. misclassified at least 500 workers, harming both workers and law-abiding businesses in the car washing industry. Through this misclassification, Mobile Wash has evaded its obligations under California

law, including minimum wage, overtime, rest periods, reimbursements for equipment and miles driven by car washers, paid sick leave, and accurate itemized wage statements. The case is currently in litigation.

- **Lilia Garcia-Brower v. Calcrete Construction, Inc. and Calcrete, Inc., Los Angeles County Superior Court Case No. BC667644**: In July 2017, the Labor Commissioner's Office filed a lawsuit against a construction company for failing to pay its workers overtime, paid sick leave, waiting time penalties, and failing to provide accurate wage statements. The total damages in this case are over \$3 million. This case is currently in litigation.

Other Partnerships

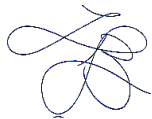
Labor Enforcement Task Force (LETf)

The LETf, under the direction of the Department of Industrial Relations, 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 California Department of Tax and Fee Administration (CDTFA), and the Bureau of Automotive Repair (BAR). LETf teams target noncompliant employers for inspection using referrals and data-matching techniques. Each agency on its own does not have access to the full range of data and other information that LETf teams can access through cooperation. The task force also reflects the Labor Commissioner's 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 operations without the required licenses, and a focus on the garment, agriculture, construction, car wash, automotive repair, restaurant, and other industries in which labor law violations are prevalent. This report contains LETf statistics only for the Labor Commissioner's Office; LETf Legislative Reports showing enforcement results from other LETf partners can be found at:

https://www.dir.ca.gov/letf/LETf_Legislative_Reports.html

Transfers to the General Fund

In the fiscal year 2020-2021, the Labor Commissioner's office deposited \$7,068,441.61 in fines, penalties, and wages collected to the General Fund.



Respectfully submitted,
Lilia García-Brower
Labor Commissioner

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 years and not a party to this action. My business address is 16133 Ventura Blvd., Suite 1200, Encino, CA 91436.

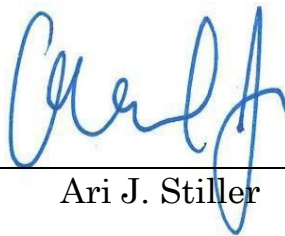
On **January 4, 2024**, I served true copies of the following document(s) described as: **Request for Judicial Notice in Support of Brief of Amicus Curiae California Employment Lawyers Association in Support of Plaintiffs and Appellants** on interested parties in this action to:

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_____ **BY MAIL:** I enclosed the document(s) in a sealed envelope/package addressed to the addressee(s) designated and placed it for mailing, following our ordinary business practices. I am readily familiar with the mailing practice of my place of employment in respect to the collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business with postage fully prepaid.

 X **BY ELECTRONIC SERVICE:** I caused such documents to be served via e-mail to the above email addresses through TrueFiling.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 4, 2024, at Los Angeles, California.



Ari J. Stiller

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Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **STONE v. ALAMEDA HEALTH
SYSTEM**

Case Number: **S279137**

Lower Court Case Number: **A164021**

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

1/4/2024

Date

/s/Ari Stiller

Signature

Stiller, Ari (294676)

Last Name, First Name (PNum)

Stiller Law Firm

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