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The Ralph & Goldy Lewis Center for Regional Policy Studies

....established to promote the study, understanding and solution of regional policy issues, with special reference to Southern California, including problems of the environment, urban design, housing, community and neighborhood dynamics, transportation and economic development....

ANALYSIS OF THE CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY'S ENFORCEMENT OF WAGE AND HOUR LAWS

Prepared for:
The California Labor and Workforce Development Agency



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Final Report
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EXECUTIVE SUMMARY

In 2002, the California State Assembly passed Assembly Bill (AB) 2985, (Chapter 662, Statutes of 2002) requiring that the California Labor and Workforce Development Agency (Labor Agency) contract with a nonprofit, nonpartisan, independent research organization with a proven record of conducting objective research on labor and employment issues in the State of California to study the most effective and efficient means of enforcing wage and hour laws.

In accordance with AB 2985, our analysis highlights the characteristics of the workforce most at risk of wage and hours violations, describes the Division of Labor Standards Enforcement (DLSE) efforts to enforce these violations, and presents a set of recommendations to improve enforcement strategies. To complete the study we relied on the synthesis of state documentation, publicly available data on the workforce, and state administrative data. When appropriate, and the available data permit, we compare the environment and operations in California to Illinois, New Jersey, and Washington, and compare workers and firms associated with complaints and enforcement to non-complaint/enforcement workers and firms.

The primary recommendation to come out of this study is that the Labor Agency should systematically analyze the environment of California's workforce and the agency's enforcement operations on a regular basis to help prioritize wage and hour law enforcement resources. More specifically, the recommendations stemming from our study are highlighted below.

Improve Information Systems and Data Sharing

The Labor Agency should improve the DLSE information systems and data sharing to allow for more efficient, automated computer-based quantitative analyses. It is important to move forward with the DLSE Case Management IT project that is currently underway and address any additional data problems identified in this report through the project; which if fully implemented will allow for more effective data analysis and sharing.

Conduct Strategic Analysis of Existing Data

The DLSE should conduct strategic analysis of existing data to make sure enforcement activities address areas of the California economy and workforce that are "at risk" of wage and hour violations. By utilizing the DLSE wage claim and BOFE data the DLSE can better target enforcement efforts on employers with a history of wage and hours violations and/or industries with relatively high rates of non-compliance. Strategic analyses such as these can help the Labor Agency prioritize its enforcement resources—given limited resources—in addition to identifying additional enforcement needs.

Improve Outreach and Educational Efforts

By identifying areas of the California economy and workforce that are "at risk" of wage and hour violations, the Labor Agency can better target its outreach activities to improve employer and employee knowledge of California labor laws and the Labor Agency's enforcement activities. While the DLSE has a number of informational

programs in place, the DLSE should expand its outreach and educational efforts to increase “compliance through education.” Expanded efforts should seek to provide businesses and workers with information and tools that clarify wage and hour requirements and facilitate compliance. Rather than increase outreach across the board, the agency should coordinate its outreach efforts with data analysis findings to target outreach efforts towards the types of businesses and workers most likely to encounter wage and hour law violations.

Improve Upon Existing External Relations Practices

Joint enforcement efforts appear to produce complementary effects that allow the DLSE to effectively accomplish some of its enforcement activities with shared resources. The Labor Agency can improve upon existing external relations practices and leverage the resources allocated to wage and hour enforcement through more consistent use of inter-department collaboration. In addition to joint enforcement efforts, the DIR should work with other state and federal departments to identify “best practices” related to enforcement, collection, and outreach.

Conduct Additional Analysis of Effective Funding Sources and Programs

There is a strong connection between the level of support the DLSE receives and the level of enforcement activities—particularly in recent years. The analyses conducted for this study are not sufficient enough to make any recommendations on a specific, desirable level of funding for the Labor Agency’s enforcement of wage and hour laws. Therefore, the Labor Agency should conduct an additional analysis of effective funding sources and programs to determine an appropriate level of funding for specific enforcement activities.

The report is organized into nine sections. Section I introduces the study with a summary of the analytic approach and major findings. Section II provides an overview of the wage and hours laws in California and the three comparison states. Section III looks at the nature and likely magnitude of wage and hours violations in California and the three comparison states. Section IV describes the organization of the DIR and how it interacts with other departments. Section V examines the resources and activities of DIR and how they have changed over time. Section VI assesses worker claims/complaints filed with the DLSE, while Section VII analyzes actions initiated by the BOFE. Section VIII discusses the shortcomings and potential strengths of the DIR data systems. Section IX lays out a number of recommendations based on our study to help the DIR more effectively and efficiently enforce wage and hour laws.

SECTION I: INTRODUCTION

In July of 2002, the DIR became part of the California Labor and Workforce Development Agency (Labor Agency), a newly created cabinet-level state agency. This agency includes the Employment Development Department (EDD), the Workforce Investment Board (WIB), and the Agricultural Labor Relations Board (ALRB), as well as the DIR. The stated goal of this consolidation was to improve the coordination and effectiveness of state workforce development activities, and to create a more comprehensive network of information and data (Riches 2002).

The same year in which the Labor Agency was created, the California State Assembly passed Assembly Bill (AB) 2985, (Chapter 662, Statutes of 2002) requiring that the Labor Agency contract with a nonprofit, nonpartisan, independent research organization with a proven record of conducting objective research on labor and employment issues in the State of California to study the most effective and efficient means of enforcing wage and hour laws.

The Division of Labor Standards Enforcement (DLSE) branch of the Department of Industrial Relations (DIR) is responsible for enforcing statutes contained in the California Labor Code that cover employee-employer relationships and regulations contained in the Industrial Welfare Commission (IWC) Orders. The IWC Orders regulate wages, hours, and working conditions for private sector employees in California. The DLSE fulfills these mandates through its major programs: the Wage Claim Adjudication (WCA), the Bureau of Field Enforcement (BOFE), the Public Works program (PW), and the Discrimination Complaint Investigation Unit (DCI). The Wage Claim Adjudication process handles individual worker-initiated claims of wage and hour law violations. The BOFE handles multiple worker claims and independently initiates workplace investigations.

Analytic Approach

In accordance with AB 2985, our analysis highlights the characteristics of the workforce most at risk of wage and hours violations, describes the DLSE efforts to enforce wage and hour laws, and presents a set of recommendations to improve enforcement strategies. Other recent studies have examined aspects of the DIR. For example, a feasibility study of the DLSE information technology system was conducted in 2001; a hearing report about the DIR's enforcement activities was drafted in 2001 by the California Assembly committee on labor and employment; labor law enforcement in California was the subject of a 2002 report from the University of California Institute for Labor and Employment (Bar-Cohen & Carrillo 2002); and enforcement efforts were the subject of a chapter in a 2000 book examining the garment industry in Los Angeles (Bonacich et al. 2000). This report addresses similar issues discussed in these other studies, but we focus our analysis on the nature of wage and hour law enforcement and how the DLSE enforces wage and hour laws. The report includes the following components:

1. Development of background information on the very low-wage sector of the labor market to identify the economic sectors where compliance with wage laws may be problematic;

2. Documentation and synthesis of the state and federal roles and resources that may be utilized to enforce wage and hour laws;
3. Documentation and synthesis of the wage and hour enforcement efforts in three states;
4. Analysis of firm and worker characteristics related to complaints and enforcement to determine what factors differentiate non-compliant and other firms and workers; and
5. Limited assessment of the relevant data and data system to determine whether the information from the DIR and Employment Development Department can be better utilized.

To accomplish the above components of the study we relied on the synthesis of state documentation, publicly available data on the workforce, and state administrative data. When appropriate, and the available data permit, we compare the environment and operations in California to Illinois, New Jersey, and Washington, and compare workers and firms associated with complaints and enforcement to non-complaint/enforcement workers and firms. The three comparison states were chosen based on discussions with Labor Agency and DIR representatives, and were chosen for their innovative approaches to labor compliance efforts and workforce characteristics.

Data from the Labor Agency's Labor Market Information Division (LMID) and the U.S. 2000 Census were used to develop an overview of the low-wage labor market in California and comparison states. Documentation on state resources and organization (collected by the Labor Agency) were analyzed to understand the operations of the DIR and the interaction across departments. We used available state administrative data to examine the characteristics and nature of firms and workers associated with wage and hour complaints and enforcement. We utilized DLSE data on worker claims/complaints filed in 2001 and 2002, BOFE data on actions initiated in 2001, and Base Wage/ES-202 data from the Employment Development Department (EDD) covering the third quarter of 2001 through the second quarter of 2002.

Major Findings and Recommendations

The body of this report is organized into eight sections. Section II provides an overview of the wage and hours laws in California and the three comparison states. Section III looks at the nature and likely magnitude of wage and hours violations in California and the three comparison states. Section IV describes the organization of the DIR and how it interacts with other departments. Section V examines the resources and activities of DIR and how they have changed over time. Section VI assesses worker claims/complaints filed with the DLSE, while Section VII analyzes actions initiated by the BOFE. Section VIII discusses the shortcomings and potential strengths of the DIR data systems. Section IX lays out a number of recommendations based on our study to help the DIR more effectively and efficiently enforce wage and hour laws. The major findings and recommendations from the study are highlighted below.

Wage and Hour Requirements and Likely Magnitude of Violations

- Generally, California has more stringent laws regarding hours and wages than the federal government or the comparison states. The number of exemptions to these laws varies from state to state, and the federal government has the greatest number of specific exemptions to wage and hour laws.
- A greater number of restrictions and less regulatory flexibility may result in a greater number of wage and hour law infractions than if those restrictions were not present.
- California's workforce appears to be more "at risk" of wage and hour law violations than comparison states.

Resources for Enforcement

- On a constant-dollar basis, and per-worker basis, budget and staffing levels for the DIR generally decreased over the 10-year period, while budget and staffing levels for the DLSE generally increased.
- The overall DLSE staffing level in 2000 was similar to the level in 1990 and 1980, but when normalized by the size of the workforce, the 2000 staffing level is 7% lower than in 1990 and 36% lower than in 1980.
- California allocates similar, if not more, resources to wage and hour enforcement efforts than comparison states. However, these comparisons may reflect somewhat different enforcement programs between the states.
- Since California has higher wage and hour standards and its workforce is more "at risk" of labor law violations, more funding must be allocated for enforcement to provide the same level of service as other states.

Enforcement Activities

- The number of wage claims and BOFE inspections fluctuated over time, and in recent years, enforcement activities appear to be tied to the size of the DLSE budget;
- Compared to other states, California processed more wage claims in 2002 relative to the size of its workforce.
- Few worker complaints and BOFE citations are related to minimum wage or overtime violations.
- The DLSE wage claim adjudication program serves a more disadvantaged population relative to the overall population, but wage claims do not appear to be overwhelmingly concentrated in particular industries or earnings classifications.
- Characteristics of garment and farm labor contractor (FLC) industry firms suggest that they are more likely to experience problems with wage and hours laws, while characteristics of workers in these industries suggest that they are less likely to use the DIR's services.
- There is a potential problem with firms making systematic wage and hour infractions affecting more than one worker and a potential benefit from identifying firms with multiple claims.
- In conducting our analysis, four major data issues came up. The first is the extreme difficulty in linking the data sets. The second is a high rate of incomplete information. The third is the lack of coding of key information. The fourth is the lack of key information. (As with all data systems, there are also problems that appear to be associated with data entry errors.)

Recommendations

- Systematically analyze the environment of California’s workforce and the Labor Agency’s enforcement operations on a regular basis to help prioritize wage and hour law enforcement resources.
- Improve information systems and data sharing to allow for more efficient, automated computer-based quantitative analyses.
- Conduct strategic analysis of existing data to make sure outreach and enforcement activities address areas of the California economy and workforce that are “at risk” of wage and hour violations.
- Improve outreach and educational efforts to target outreach efforts towards the types of businesses and workers most likely to encounter wage and hour law violations, and increase “compliance through education.”
- Improve upon existing external relations practices to leverage the Labor Agency’s resources allocated to wage and hour enforcement through more consistent use of inter-department collaboration.
- Conduct additional analysis of effective funding sources and programs to determine an appropriate level of funding for specific enforcement activities.

SECTION II: WAGE AND HOUR REQUIREMENTS

Introduction

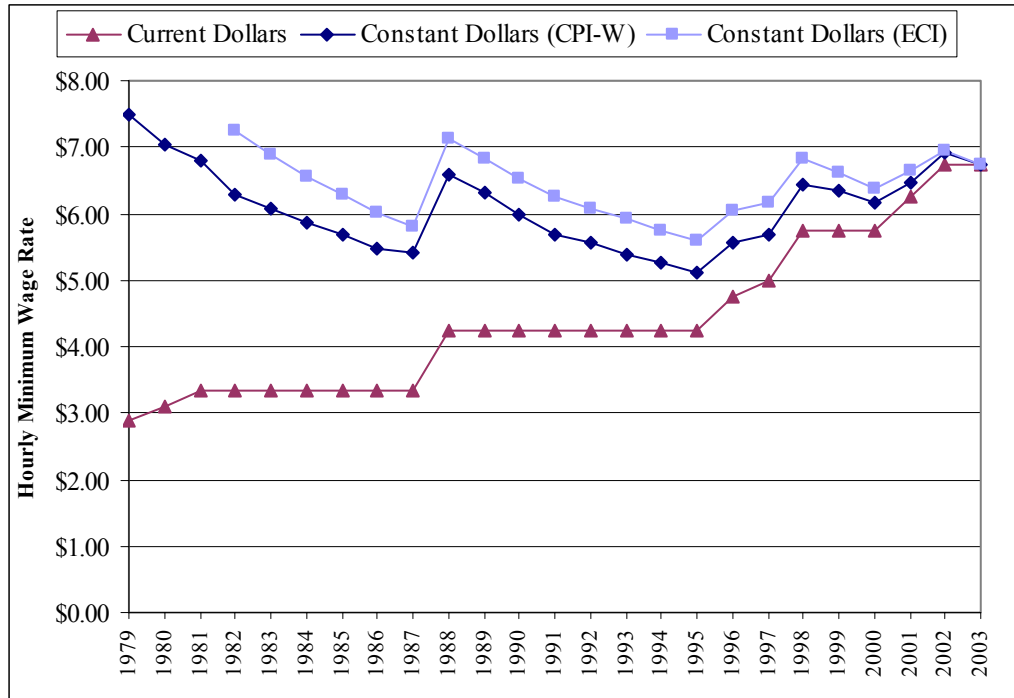
This section summarizes information on wage and hour laws at the federal level and in California and three other comparison states (Illinois, New Jersey, and Washington). These states were chosen in consultation with staff at the California Labor Agency. Part I of this section looks at minimum wage levels; Part II examines work-hour rules; and Part III summarizes rules on piece rates, record-keeping requirements, and explains workers' compensation laws. Within each of these parts, emphasis is given to California law and requirements. The key points of this section include:

- California minimum wage has historically tracked the federal minimum wage rate, but in recent years has been higher than the federal level and all comparison states except Washington.
- California has done a better job than Illinois, New Jersey, and the federal government at maintaining the real value of the minimum wage in recent years.
- Generally, California has more stringent laws regarding hours and wages than the federal government or the comparison states. The number of exemptions to these laws varies from state to state, and the federal government has the greatest number of specific exemptions to wage and hour laws.

Part I. Minimum Wage

California began to implement minimum wage standards separate from federal government regulations in 1943. Throughout its history the California minimum wage has tracked the federal minimum wage closely, and in the last 24 years the minimum wage standard in California has risen from \$2.90 per hour in 1979 to its current level of \$6.75 per hour, which was made effective on January 1, 2002. During the 15-year period between 1981 and 1995, California's minimum wage increased only once, from \$3.35 to \$4.25 per hour. In contrast, since 1995, the state's minimum wage has increased six times, increasing from the 1995 rate of \$4.25 per hour to the current rate of \$6.75 per hour. Inflation has altered the real value of the minimum wage even during the periods in which there was no legislated or regulated change. In real terms, the California minimum wage has fluctuated between \$5.00 and \$7.00 per hour for most years since 1979 (See Figure 2.1), in 2003 constant dollars, whether measured by the U.S. Department of Labor's Consumer Price Index (CPI) or their Employment Cost Index (ECI). As a result of the more frequent increases in recent years, the constant dollar value of the minimum wage in California has remained steadier than in the period between 1981 and 1995. California law also requires that the state minimum wage should not drop below the federal minimum wage. (CA Labor Code 1182b)

Figure 2.1: California Minimum Wage Standards

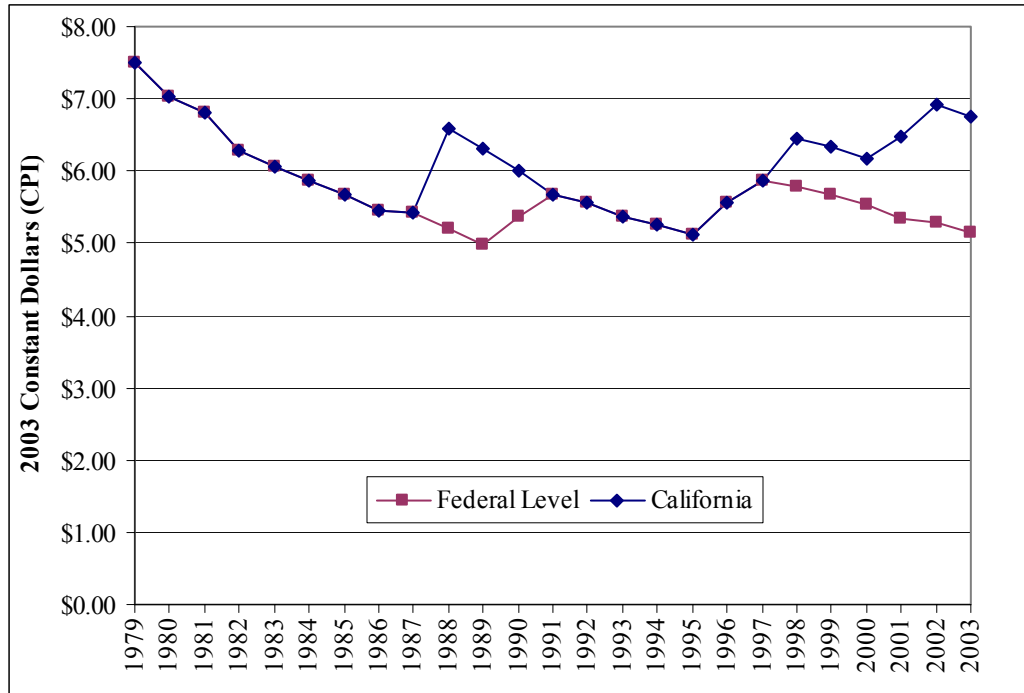


Source: Monthly Labor Review 1980-2002 and U.S. Department of Labor

Note: When there was more than one change in minimum wage in a calendar year, only the first wage of the year was included in the graph. The CPI-W is the Consumer Price Index for Urban Wage Earners and Clerical Workers. The ECI is the Employment Cost Index. Constant dollar values are benchmarked to 2003.

Federal wage and hours laws are part of the Fair Labor Standards Act (FLSA) of the U.S. Code, which was first enacted in 1938. The FLSA set the current minimum wage of \$5.15 per hour on September 1, 1997. Some states set their own minimum wage rates at higher levels than the federal standard. Figure 2.2 shows that California’s minimum wage has exceeded the level of the federal standard since 1998. In terms of 2003 constant dollars (as measured by the CPI), the federal minimum wage fell below the \$6.00 per hour rate in 1984 and has remained below that level since then. The California minimum wage briefly rose above this \$6.00 per hour level in the late 1980s and has been above that level since 1998.

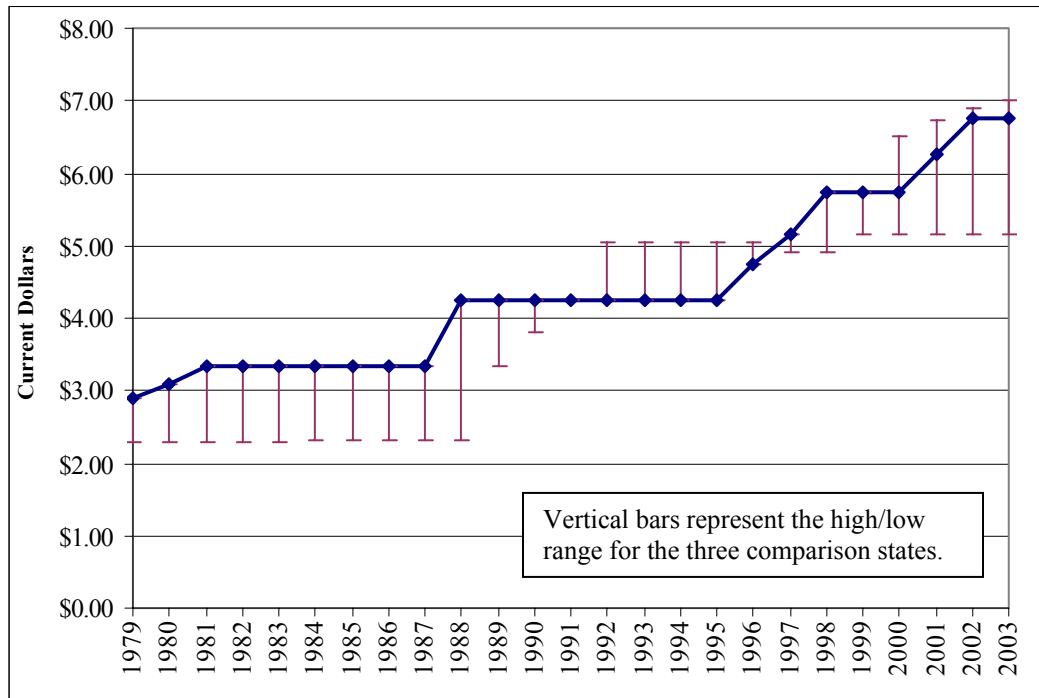
Figure 2.2: California and Federal Minimum Wage Standards



Source: Monthly Labor Review 1980-2002 and U.S. Department of Labor

California had the highest or equaled the highest minimum wage rate of the other comparison states during the period from 1979 through 1991. Among the four states, Washington has the highest current minimum wage at \$7.01 per hour. Legislation effective since January 2000 requires that Washington’s minimum wage increase annually according to the Federal Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Except for a period in the early to mid-1990s for New Jersey and a period in the early 1980s for Illinois, those two states have tracked the federal minimum wage for most of the last 24 years. Compared to California, New Jersey had an equivalent minimum wage standard during the early 1980s, and both Washington and Illinois were below this level. During the early to mid-1990s, California’s minimum wage rate fell below those of New Jersey and Washington, but since 1997 California and Washington have continued to increase their minimum wage standards, while the other two states have allowed them to erode due to inflation. Figure 2.3 compares the California minimum wage to the range of minimum wages from the four states in the study.

Figure 2.3: Comparison of California Minimum Wage with High/Low Range for Illinois, New Jersey, and Washington



Sources: Monthly Labor Review 1980-2002 and U.S. Department of Labor

Note: When there was more than one change in minimum wage in a calendar year, only the first wage of the year was included in the graph.

Exemptions from minimum wage law

California law allows employment of learners, apprentices, trainees, and people with disabilities at wages below the legal minimum after obtaining a special certificate by the local labor agency. In most cases, this agency will also specify the wage to be paid and the length of the period during which learners, apprentices, trainees, and people with disabilities can be subject to this reduced wage. Also, workers covered by a collective bargaining agreement are generally exempted from the minimum wage standard. (CA Labor Code 1182.4, 1191, 1192)

Federal exemptions to the minimum wage law include workers under collective bargaining agreements, learners, apprentices, and people with disabilities. The U.S. Code also makes provisions for full-time students to receive wages of at least 85% of the minimum wage level. Also exempted are administrators, executives, and professionals, which differs from California's laws. Another exemption particular to the U.S. Code is an exemption for workers under 20 years of age who are exempted for the first 90 days of their employment, under specific restrictions. (29 USC § 206, 213, 214)

The other three comparison states have exemptions to minimum wage laws similar to those of California and the U.S. Code. These include exemptions applying to learners, apprentices, and people with disabilities as well as those under collective bargaining agreements (NJSA § 34:11-56a17, RWC § 49.46.060, 820 ILCS § 105/5, 105/10). As does the federal government, Washington exempts administrators, executives, and professionals by excluding them from its definition of employee. New Jersey has an exemption similar to that of the U.S. Code regarding full-time students (RWC §

49.46.010). In Illinois, the employer of employees who receive gratuities as part of their hourly wage is entitled to an allowance for gratuities, not to exceed 40% of the applicable minimum wage. Camp counselors at non-profit corporations are also exempt (820 ILCS § 105/4). In New Jersey, exemptions are allowed for the following employees: part-time employees engaged in the care of children in the home of the employer; outside salesmen in certain specific circumstances; persons employed as volunteers at a county or agricultural fair organized by a non-profit or religious organization; and summer camps, conferences, and retreats operated by non-profit or religious organizations from June through September (NJSA § 34:11-56a4, 34:11-56a4.1).

With the exception of Washington, California has the highest minimum wage and has done the best job recently of preserving its real value. Washington's decision to peg its minimum wage to increases in the CPI-W has resulted in a strong preservation of the real value of the minimum wage rate. In other states, the eroding value of the minimum wage due to inflation is occasionally corrected by legislative action. The longer the times between these corrections of the minimum wage, the less the value of the minimum wage is to workers over this time period, and the more concentrated the effect of its increase is upon businesses that employ those workers. With regards to enforcement, a steadily increasing nominal minimum wage could increase the amount of work required of businesses by forcing them to recalculate wages and pay schedules every year for all workers who work at minimum wage, but it would prevent shocks to businesses that occur when the minimum wage rate is raised significantly after several years of no increases.

In summary, as the constant dollar value of the minimum wage increases, the minimum wage standard may become more difficult to enforce. An increasing value for the minimum wage would increase the incentive for businesses to skirt the regulations and keep their workers off of the financial books and pay them less than the regulated minimum. Accordingly, upward shocks in the constant dollar value from periodic minimum wage increases may temporarily increase the rate of infractions as businesses take time to come into compliance. Also as the minimum wage of California deviates from those in the other states and labor becomes more expensive, businesses also have incentives to violate the minimum wage standards.

Part II. Hours, Overtime, and Breaks

The definitions of the workweek and compensation for overtime are uniform in all of the states in this study and in the U.S. Code. However, exemptions to these standards vary widely by state. Where an employee is subject to both state and federal overtime laws, the employee is entitled to overtime according to the higher standard (i.e., the standard that will provide the higher rate of pay). Regarding legislation on hours worked, California generally has equivalent or more stringent laws than the other comparison states in this study. California's laws on hours worked are often very similar in nature to the U.S. Code. However, federal law contains many more specific exemptions to the standard workweek regulations than does California. Table 2.1 compares hours, overtime, and breaks laws in California to the federal and comparison states.

California defines a "workweek" as any consecutive seven 24-hour days or 168 consecutive hours, and it defines a "workday" as "any consecutive 24-hour period commencing at the same time each day" (CA Labor Code § 500a, 500b). Within this

workweek the standard maximum amount of work is 40 hours, for a workday the standard maximum is eight hours of work. Within these limits an employer may pay the standard wage. If these limits are exceeded, then overtime pay is required by law. In excess of eight hours per day and in excess of 40 hours per week, the employer is obligated to pay one and one-half times the standard wage. In excess of 12 hours per day, the employer is required to pay two times the standard wage. Also, the employer is required to pay two times the standard wage from time in excess of eight hours on the seventh consecutive day of work (CA Labor Code § 510a).

Table 2.1: Comparison of Federal and State Hours, Overtime and Breaks Laws

	Federal	California	Illinois	New Jersey	Washington
Standard Week for Regular Rate	40 hours	40 hours	40 hours	40 hours	40 hours
Overtime for hours in excess of Standard Week	1.5 times Standard Wage	1.5 times Standard Wage	1.5 times Standard Wage	1.5 times Standard Wage	1.5 times Standard Wage
Standard Workday	No Regulations	0-8 hours of work: Standard Wage 9th – 12th hours of work: 1.5 times Standard Wage Over 12 hours of work: 2 times Standard Wage	No Regulations	No Regulations	No Regulations
Breaks	No Regulations	<3.5 hours of work: no breaks required 4 consecutive hours of work: 10 minute rest break 5+ hours of work: 30 minute meal break Breaks are cumulative	5+ hours of work: 20 minute meal break	4 consecutive hours of work: 10 minute rest break 5+ hours of work: 30 minute meal break Breaks are cumulative	No Regulations

In California, an “alternative workweek” is any regular workweek in which an employee works more than eight hours in a 24-hour workday (CA Labor Code § 500c). The alternative workweek is the major source of exceptions to the workday rules stated above. These exceptions include agreements on alternative workweek schedules made in certain collective bargaining agreements; cases in which employees have chosen (through a prescribed voting arrangement) to adopt an alternative workweek; and work schedules of emergency workers, those involved in the protection of life or property, and any workers related to the movement of trains (CA Labor Code § 510a, 511, 514, 554). Exemptions outside the alternative workweek regulations are made for physicians, computer software employees, and for certain salaried professionals, administrators, and executives, with the exemptions for the last three overseen by the International Welfare Commission (CA Labor Code § 515, 515.5, 515.6). Another exemption to the workday requirement is given to employees who voluntarily “catch-up” on hours missed out of the

standard schedule due to personal reasons. However, this catch-up is restricted to a maximum of 11 hours per day before overtime wages take effect, and the 40-hour standard maximum for the workweek still applies (CA Labor Code § 513). The California Labor Code gives no specific exemptions for the agricultural industry.

California's Labor Code specifies that hourly paid employees who work more than five hours a day are entitled to a meal break of at least 30 minutes. An employee is also entitled to a rest period of at least 10 minutes for every four hours worked; this break should be scheduled, as practicable, in the middle of each work period. For an eight-hour shift, employees are entitled to two 10-minute breaks. In 2001, a new amendment to the California Labor Code specified that if an employer fails to provide a meal or rest period, the employer must pay the employee one additional hour of pay for each day of the missed period. Breaks are not required for employees whose total daily work time is less than three and one-half hours (CA Labor Code § 512). California also guarantees one day of rest out of a seven-day workweek, though this is subject to the exemptions listed above. (CA Labor Code § 551, 552)

The FLSA sets the same workweek limit of 40 hours per week as does California (29 USC § 207a). Should an employee's hours exceed this limit, those hours must be compensated at a rate of one and one-half times the standard wage. U.S. Code does not regulate workday requirements with the exception of hospital workers. These workers may work, under prior agreement with the employer, using a 14-day work period. In this case, the maximum standard limits of eight hours per day and 80 hours per 14-day work period apply. In excess of these limits, the minimum rate of one and one-half times the standard wage applies (29 USC § 207j). The FLSA also does not require meal breaks or rest periods as do California's regulations.

The U.S. Code provides exemptions for workers of various sectors and groups of workers. As in California, the U.S. Code exempts those who work under a collective bargaining contract. Also exempted are emergency and public safety workers. Other exemptions are for professionals, administrators, executives, computer software employees, and public safety workers, which are similar to California's exemptions. FLSA exempts agricultural workers and workers in the fishing industry, and also exempts many other specific industries or types of workers (29 USC § 213a).

Illinois, New Jersey, and Washington have definitions and regulations similar to those of California regarding the 40-hour workweek and an overtime wage of one and one-half times the standard rate. Like California, Illinois and New Jersey also explicitly set aside one day of rest during the workweek. None of the other states in the study regulate workday hours in the manner of California.

The three comparison states in the study also have regulations exempting people employed in an executive, administrative, or professional capacity from the standard 40-hour workweek limit and overtime compensation. Washington exempts these groups of employees by excluding them from the definition of employee (RWC § 49.46.010). While Washington follows similar guidelines as federal and California law regarding public safety workers, Illinois and New Jersey do not make explicit reference to this topic (RWC § 49.46.130, 820 ILCS § 105/4a, NJSA § 34:11-56a4). Illinois, New Jersey, and Washington also do not explicitly cover workers under collective bargaining agreements or agricultural workers in their legislative codes on hours worked.

Illinois law requires a meal break of 20 minutes after five hours of work for employees who are to work seven and one-half continuous hours or more. There is no additional stipulation for rest periods. Washington law requires a half-hour meal period if the work period is more than five consecutive hours, to be given not less than two hours nor more than five hours from the beginning of the shift. This meal period can be counted as working hours if the employee is required to remain on duty, on premises, or at a prescribed worksite. An additional half-hour meal break is required, before or during overtime, for employees working three or more hours beyond regular workday. A paid 10-minute rest period is required for each four-hour work period, scheduled as near as possible to the midpoint of each work period. Employees may not be required to work more than three hours without a rest period. Although agricultural labor is excluded from the general application of these regulations, a separate regulation requires a paid 10-minute rest period in each four-hour period of agricultural employment. New Jersey has no laws specifically addressing these issues. (820 ILCS § 140/3, WAC § 296-126-092)

Part III. Other Regulations

Piece Rates

According to the DLSE, “piece work is defined a work paid for according to the number of units turned out” and “must be based upon an ascertainable figure paid for completing a particular task or making a particular piece of goods.” The wage rate for piecework must be equivalent to or exceed the state’s minimum wage for all of the hours worked. For overtime wages, the piece rate is calculated by taking one and one-half or two times the standard piece rate depending upon how many hours have been worked in excess of the standard workday or workweek.

Piecework has had a mixed history in California. In some cases, companies paying by piecework have run afoul of the federal and state minimum wage standards. The sectors most notable for this activity are the garment and technology (specifically parts assembly) industries. Some of the infractions may result from confusion over how piece rate wages compare to minimum wage standards. In other cases, piecework has the potential to increase the wages of workers well above their standard hourly wage. In one example, a standard hourly wage was maintained but piecework rates were also applied. The workers and employers knew that the minimum wage laws were not being violated, but also it allowed the workers to earn more—in a few cases significantly more—than the standard hourly rate (Reese 1996).

Piecework laws may be unclear to those who must implement them and to those who may benefit from them. While stated in law, the link between piece work rates and the minimum wage is not commonly understood by employers and employees, which results in infractions of the law. A more explicit dual system, in which minimum wage and piece rate were implemented simultaneously would maintain the protection of the minimum wage but would allow workers to reap the benefits of the piece rate system.

Recordkeeping

California law requires that employers keep records regarding their employees’ wages, hours of work, and the working conditions. For piece rate workers, the number of pieces produced and the applicable piece rates must also be recorded. These records must

be kept for at least two years, and are to be made available to staff conducting inspections or investigations. Within the garment industry, the records must be kept for a minimum of three years (CA Labor Code § 1174, 2673).

California law lays out specific penalties for recordkeeping infractions. For infractions of the general code for recordkeeping, the civil penalty is up to \$500. Any person who obstructs an investigation of wage and hours records is subject to a misdemeanor charge (CA Labor Code 1174.5, 1175).

Workers' compensation insurance

Requirements for employers to purchase workers' compensation insurance are set at the state level, with little federal input. California requires employers to purchase insurance to cover potential workers' compensation claims (CA Labor Code § 3700-3709.5), and the state adopted its workers' compensation program in 1911. The California constitution authorizes the legislature to create and enforce a system that requires employers to compensate workers for work-related injuries and illnesses. Injured workers are entitled to receive all medical care that is reasonably required to cure or relieve the effects of the disability. Additionally, workers who are unable to return to work within three days are entitled to receive disability benefits to partially replace lost wages. Injured workers who are permanently disabled or who are unable to return to the same line of work due to the nature of the injury incurred are entitled to receive vocational rehabilitation services and, in some cases, a permanent disability benefit.¹ Vocational rehabilitation services are provided for injured workers who are unable to return to their former type of work if these services can reasonably be expected to return the worker to suitable gainful employment. In exchange for these no-fault insurance benefits, the law designates the limited workers' compensation benefits as the exclusive remedy for injured employees against their employers, even if the injury is due to employer negligence (California State Auditor 2003). Generally, workers' compensation benefits include medical treatment and two-thirds of formerly earned wages up to certain specified limits. Table 2.2 shows worker compensation benefits broken into five major categories, covering a range from minor injuries to fatal injuries, and specifying the benefits for each category of injured worker.

¹ The vocational rehabilitation component of workers' compensation, as described here, will be eliminated when the 2003 workers' compensation reforms are implemented January 1, 2004.

Table 2.2: Overview of Workers’ Compensation Services and Benefits*

	Medical Care	Temporary Disability Benefits	Permanent Disability Benefits	Vocational Rehabilitation Services	Death Benefits
Who	Injured workers	Injured workers unable to return to work within 3 days.	Injured workers who are permanently disabled	Injured workers unable to return to former type of work	Fatally injured workers
Benefits	Receive medical care to cure or relieve injury. No deductibles or co-payments by injured worker. Employer controls treatment for first 30 days. After 30 days employee may select physician or facility.	Receive benefits to replace 2/3 of wages up to \$490 per week.	Receive temporary disability for life if permanently totally disabled. Partial disabilities receive partial permanent benefits, depending upon extent of disability.	Meet with rehabilitation counselor to return worker to “suitable gainful employment.” During rehabilitation the worker may receive benefits of 2/3 of lost earnings up to \$246 per week. Total cost of rehabilitation limited to \$16,000.	Burial expenses up to \$5,000 are paid. Dependents receive benefits up to \$224 per week. General maximum benefit is \$160,000.

* This table describes the California Workers’ Compensation program as it existed prior to reform legislation enacted in 2003. Reforms that significantly change the program go into effect January 1, 2004.

Conclusions

Overall, California has better protections for workers—against abuses and in regards to earnings—than the federal government and the other comparison states in this study. While California has done a better job than the federal government at maintaining the real value of the minimum wage in recent years, California may want to adopt an inflation adjusted minimum wage, as Washington has, instead of relying on period, subjective increases in the rate. California’s laws regarding hours worked and the workday are more restrictive than the other states in this study. Because these workday regulations are not as flexible as those of the federal government or the other states, they trigger California’s overtime regulations more easily. A greater number of restrictions and less regulatory flexibility may result in a greater number of hours and wages law infractions than if those restrictions were not present. This is important because an increased number of infractions imposes a greater cost of investigation upon DLSE. The next section of this report examines key phenomena that are likely to contribute to the violation and enforcement of labor laws in California.

SECTION III: NATURE AND LIKELY MAGNITUDE OF THE PROBLEM

Introduction

To better understand the Department of Industrial Relations' efforts to enforce wage and hour laws it is important to first get an overall picture of the extent of the problem. Violation of labor laws affects all segments of the labor force, but its prevalence is likely to vary significantly across sectors. This section examines three key phenomena that are likely to contribute to the violation and enforcement of labor laws: the underground or informal economy; the relative size and characteristics of the low-wage sector; and firm turnover. These three factors are not the only ones related to the violation and enforcement of labor laws; nonetheless, they are widely recognized as being central to the problem.

Part I of this section addresses data availability issues encountered during the analysis, Part II examines the relative size and characteristics of the low-wage economy; Part III examines the underground or informal economy; Part IV examines firm turnover; and Part V looks at the workers in the underground and low-wage economies. The key points in this section are:

- Labor law violations seem to occur throughout all industries in the low-wage sector, but are likely to be concentrated in the agriculture, manufacturing, and service sectors.
- The underground economy in California is responsible for a significant amount of economic activity and employment in the state.
- Low-wage firms and industries of particular concern to the DIR are less stable than other firms, which could result in more labor law violations and difficulty in enforcement.
- Information on the characteristics that make workers vulnerable to wage and hour law violations can help the DIR better address enforcement problems.
- California's workforce appears to be more "at risk" of wage and hour law violations than comparison states.

Part I. Problematic, Fragmented, Indirect Nature of the Available Data

There is no systematic data on the prevalence of labor law violations and the three factors outlined in this section. To better understand the likely occurrence and magnitude of wage and hour law violations in the low-wage and underground economies, we pieced together data from the following sources:

(a) Self-reported census data: U.S. Census surveys include information on individual earnings and hours of work but these data are self-reported, which means calculations of hourly wage rates are subject to reporting biases.

(b) Literature on the underground economy: Estimates of the size of the underground economy are extremely difficult to make. While organizations exist to track the international underground economy, no such tracking is done on the domestic underground economy. In addition, the underground economy does not collect and report statistics on itself. As a result, there are only estimates of the size and nature of the U.S. and California underground economies. To compile information on the size and scope of the underground economy, a variety of public and private journals and reports were consulted.

(c) Specialized industry surveys: Another source of data on the low-wage and underground economies comes from surveys on specific industries. These surveys provide a more detailed description of the likely magnitude of labor law violations for the specific industries they examine, but do not provide much information on the overall magnitude of the problem.

Despite the paucity of information available, the existing evidence indicates that the problem of labor law violations in the low-wage and underground economies is serious. The remainder of this section elaborates on these findings.

Part II. Low-Wage Economy

Gregory Acs, of The Urban Institute in Washington, DC, states that “there is no generally accepted and widely used definition of the term ‘low-wage worker.’ The term connotes an image of a worker paid far less than the median wage in a job offering little upward mobility; the job offers little in the way of benefits and it may have an irregular schedule” (1999). Classifying a job or industry as low-wage is often done by comparing the wage-rate with the mean or median wage of all industries.

Concentration by sector

Industries and occupations in California that have a relatively high concentration of low-wage workers (those earning \$6.75 per hour or less) are concentrated in the agriculture, manufacturing, and services sectors. These sectors are under intense economic competitive pressure, and are thus likely to seek ways, including illegal ones, to keep labor costs down. Table 3.1 lists the 15 industries with the highest concentration of low-wage workers in California. Table 3.2 lists the 15 occupations with the highest concentration of low-wage workers.

Table 3.1: Top 15 Industries with Low-Wage Workers in California

NAICS	Industry	% Low Wage
811192	Car Washes	48.7%
3159	Apparel Accessories and Other Apparel Mnfct.	48.1%
7212, 7213	Rooming and Boarding houses	44.9%
812111	Barber Shops	44.6%
814	Private Households	44.1%
3152	Cut and Sew Apparel Mnfct.	44.0%
53223	Video Tape and Disk Rental	42.8%
111	Crop Production	42.6%
3132	Fabric Mills	42.1%
4533	Used Merchandise Stores	40.8%
314	Textile Product Mills (Except Carpets and Rugs)	40.3%
812113, 81219	Nail Salons and Other Personal Care	37.6%
722	Restaurants and Other Food Services	37.0%
8123	Drycleaning and Laundry Services	37.0%
7224	Drinking Places	36.0%

Notes: “Low-wage” defined as workers over 18 years old with self-reported hourly wage of \$6.75 or less. List of top 15 industries restricted to industries with at least 1,000 low-wage workers and excludes the armed forces. NAICS stands for the North American Industrial Classification System codes for a particular industry.

Source: 1-Percent Public-Use Microdata Sample (PUMS), Census 2000, U.S. Bureau of the Census.

Table 3.2: Top 15 Occupations with Low-Wage Workers in California

SOC	Occupation	% Low Wage
51-6021	Pressers, Textile, Garment, and Related Material	55.1%
53-6031	Service Station Attendants	54.1%
51-6031	Sewing Machine Operators	53.5%
35-9021	Dishwashers	51.9%
51-7042	Woodworking Machine Setters, Operators/Tenders	50.9%
39-9021	Personal and Home Care Aides	50.7%
35-3021	Combined Food Prep. and Serving Workers	48.0%
35-9031	Hosts and Hostesses	47.4%
37-2012	Maids and Housekeeping Cleaners	47.0%
45-2041	Graders and Sorters, Agr. Products	46.8%
45-2090	Miscellaneous Agricultural Workers	46.8%
35-3022	Counter Attendants, Food Services	46.7%
35-2021	Food Preparation Workers	45.9%
53-7064	Hand Packers and Packagers	45.0%
41-2021	Counter and Rental Clerks, Sales	43.8%

Notes: “Low-wage” defined as workers over 18 years old with self-reported hourly wage of \$6.75 or less. List of top 15 industries restricted to industries with at least 1,000 low-wage workers and excludes the armed forces. SOC stands for the Standard Occupational Classification code for a particular occupation. Source: 1-Percent Public-Use Microdata Sample (PUMS), Census 2000, U.S. Bureau of the Census.

Violations of labor laws

Labor law violations seem to occur throughout all industries in the low-wage economy. A December 2002 report from the UCLA Labor Occupational Safety and Health Program found that people working in six different low-wage industries (as day laborers, restaurant workers, domestic workers, homecare workers, hotel workers, as well as garment workers) worried about safety on the job; a majority of those interviewed had experienced work-related injuries (Brown 2002). In 2000, the Wage and Hour Division of the U.S. Department of Labor (DOL) investigated 136 nursing and other personal care facilities nationwide to determine the level of compliance with the Fair Labor Standards Act. (Some overall findings from this investigation are shown in Table 3.3.) Industry-specific estimates from the DOL on the garment industry speculate that more than half of the 22,000 sewing shops in the United States violate minimum wage and overtime laws. In addition, it is believed that many garment industry employees work in places with dangerous conditions, including blocked fire exits, unsanitary bathrooms, and poor ventilation (Levine 2003). A 2002 survey of raisin workers by the California Rural Legal Assistance Foundation points to the types of violations to be found throughout the agricultural sector. In this survey, workers reported the following labor law violations:

- 28% of the respondents reported that their employer denied them A.M./P.M. rest breaks and 18% reported that they were denied meal breaks;
- 24% reported unexplained deductions on their pay stubs;
- 11% said that drinking water was not available at work; and
- 21% reported that their employer required them to cash their checks at a specific establishment (Schacht 2003).

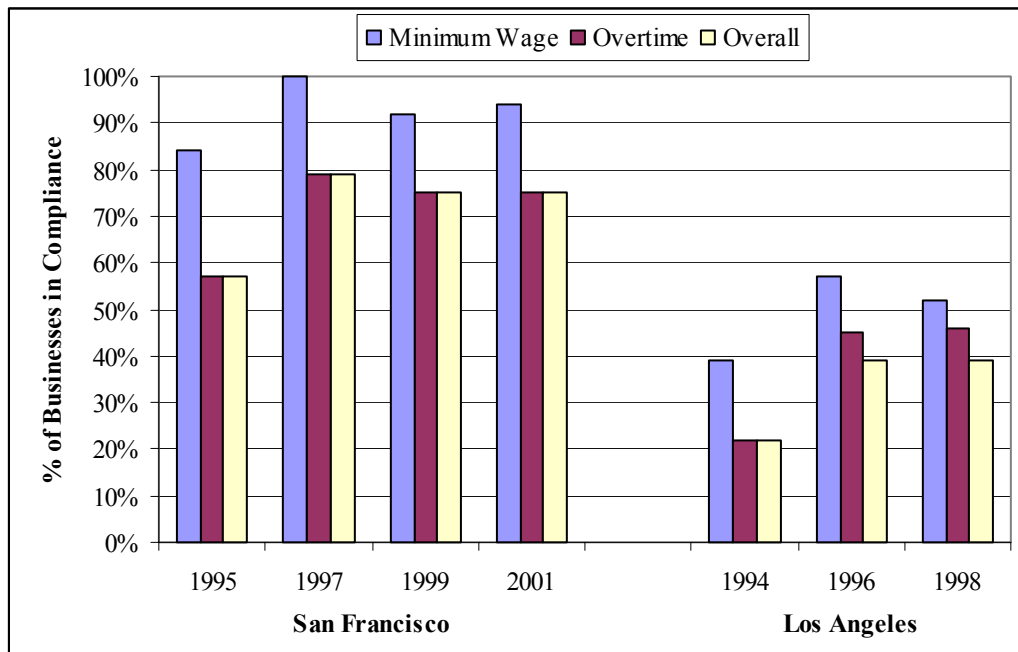
Table 3.3: Labor Law Violations in Nursing Homes, Nationwide

Type of Violation	% of Nursing Homes
Overall Compliance (with minimum wage, overtime and child labor laws)	40%
Overtime Violations (among those with violations)	84%
Minimum Wage Violations	11%
Minimum Wage & Overtime Back Wages Due 1,576 Employees	\$432,000

Source: U.S. Department of Labor, 2000.

Periodic surveys of the garment industry in San Francisco and Los Angeles conducted by the U.S. Department of Labor indicate that compliance with labor laws seems to vary over time and over geography (U.S. Department of Labor, 2002). Figure 3.1 below illustrates these trends. Compliance is higher in San Francisco than in Los Angeles, and appears to be higher in both cities in the late-1990s than in the mid-1990s. These numbers do not necessarily reflect differences in enforcement across geographies and time, but simply highlight that differences in compliance exist.

Figure 3.1: Compliance with Labor Laws in Garment Industry



Source: U.S. Department of Labor, 2002.

Part III. Underground Economy

The California Economic Development Department (EDD) defines the “underground economy” as individuals and businesses that deal in cash and/or use other schemes to conceal their activities and their true tax liability from government licensing, regulatory, and taxing agencies. The underground economy is also referred to as tax evasion, tax fraud, tax gap, payments under-the-table, and off-the books (EDD, n.d.). The Board of Equalization adds that the “underground economy” includes any economic activity that is unreported, and includes both legal and illegal activity (Chiang 1998). A June 2002 report from the International Labor Organization states that while there are criminal activities in the underground economy, such as drug trafficking and money laundering, the majority of goods and services produced are legal (Barber 2003).

While they are not mutually exclusive, the “underground economy” and the “low-wage economy” are not the same thing. For example, a construction company that pays its employees \$20/hour under-the-table to avoid high worker’s compensation insurance payments is certainly underground, but is not low-wage. At the same time, estimates of mean/median hourly earnings for workers in the underground economy are lower than those of workers in the formal economy: mean hourly earnings for informal workers is estimated at between \$9 and \$10, compared to a range of \$16 to \$19 for formal workers (Marcelli 2001).

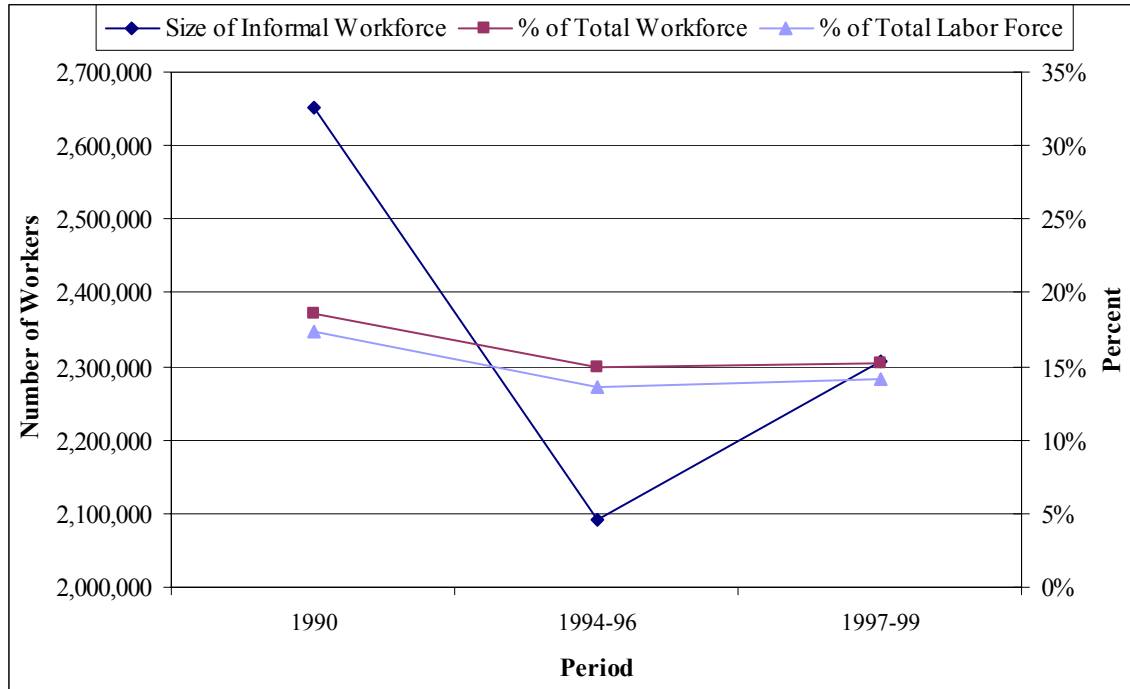
Size of the Underground Economy

Estimates on the size of the underground economy can seem contradictory, depending on the types of evidence used to estimate it. Economists have long estimated that the U.S. underground economy equals about 10% of GDP (Barber 2003), but the range of estimates varies greatly. For example, we identified estimates of the underground economy that range from 3 to 40% of the “aboveground” economy. Based on this range, the underground economy in California represents about \$60 to \$140 billion annually (EDD 2000).

According to the International Monetary Fund (IMF), when examined as a percentage of GDP, the national underground economy has more than doubled over the past three decades (from 4% of GDP in 1970 to 9% in 2000). The National Center for Policy Analysis says that economists estimate that as many as 25 million Americans earn a large part of their income from underground economic activities (Barber 2003). California’s underground economy includes 600,000 independent contractors and illegal workers just in the high-tech, agriculture, construction, apparel, and trade industries, according to the Los Angeles County Economic Development Corporation (Iwata 2003). While in Los Angeles County, it is estimated that 28% of workers are paid in cash (Schlosser in Campbell 2003).

In terms of the overall number of persons employed in California, the underground economy fell from 1990 to 1999, but as a percentage of the labor force, it remained relatively constant. Enrico Marcelli (forthcoming) estimates that “the level of lower-wage informal employment fell during the 1990s... to 14% of the labor force and 15% of all employed persons [in 1997-99].” Figure 3.2 shows the size of the underground economy in California, in terms of number of people employed, as estimated by Marcelli (2001).

Figure 3.2: Employment in the Underground Economy (California)



Source: Marcelli 2001

Marcelli’s study of the underground economy also indicates that the underground economy in California is over-represented in three regions: 53% of all the state’s total informal workers lived in the five-county Los Angeles region; 19% lived in the San Francisco Bay Area; and 28% dispersed throughout the Central Valley. On average, informal workers represented approximately 17% of the state’s workforce in 1997-1999 (Marcelli 2001).

Evidence of labor law violations

Determining the size and extent of the underground economy is a difficult task, and it is equally difficult to determine the size and extent of labor law violations that occur in this part of the economy. Nevertheless, estimates do exist, and further conclusions can be drawn based on past enforcement efforts and results.

An August 2003 article in the *San Francisco Business Times* stated that a Joint Enforcement Strike Force (JESF) on the underground economy, led by the California EDD, identified \$245 million in unreported wages in 2002 (Levine 2003). According to a 2001 newsletter from EDD, since its inception, the JESF has conducted 4,736 payroll tax audits; issued payroll tax assessments totaling \$128.7 million; discovered 69,249 workers and \$768.7 million in wages in the underground economy; and cited 6,251 employers for various labor code violations totaling \$37.3 million (EDD 2001). In 1994, the U.S. DOL reported that, in the previous year, the federal Wage and Hour Division found \$213,392 in back wages for employees of five firms, the California Labor Commissioners found \$154,000 in cash-pay penalties from four employers, and the State Fund uncovered \$450,000 in insurance premiums due from three companies (U.S. DOL 1994).

Part IV. Firm Stability

It is important to consider the stability of firms when examining labor law violations, because several hypotheses can be made about unstable firms. Some firms may purposefully go out of business and re-incorporate under another identity in order to evade taxes or higher workers' compensation insurance premiums. Firm turnover may also leave workers unpaid. It should be noted that while we do not have evidence supporting these hypotheses, the EDD has stated that some firms with high unemployment insurance (UI) tax rates close and reconstitute in order to gain a lower rate.

The California economy is very dynamic, with a large percentage of firms opening and closing each year. Such instability makes it difficult to monitor and enforce labor laws. The low-wage sector is more susceptible to seasonal trends, and experiences a greater level of instability (as measured by entrances/exits of firms in the sector), than do the blue-collar or high-tech sectors. Research on firm dynamics among mid- to large-size firms in California over a six-year period demonstrated that the blue-collar sector was the most stable, with 59% of firms remaining active throughout the entire period, while the low-wage sector was the least stable, with 51% of the firms remaining active. A higher percentage of firms in the low-wage sector went out of business, and a higher percentage of low-wage firms were found to be "unstable," that is, they experienced more than one entrance or exit spell during the period of the study (Rickles and Ong 2003).

Additional analysis of firm data (see the appendix for a description of ES-202 data) indicates that low-wage firms and industries of particular concern to the DIR are less stable than other firms. Table 3.4 reports stability rates, based on two different time frames (the first spanning 1.5 years and the second spanning only one year), for different industry sectors. While 63% of all California firms are stable (i.e., remained in business over a 1.5 year period), only 52% of low-wage firms are stable. Furthermore, farm labor contractors and firms in the garment industry—which are a traditional focus of the DLSE's Bureau of Field Enforcement—are less stable than the average California firm.

Table 3.4: Stability Rates for California Businesses, by Industry Sector

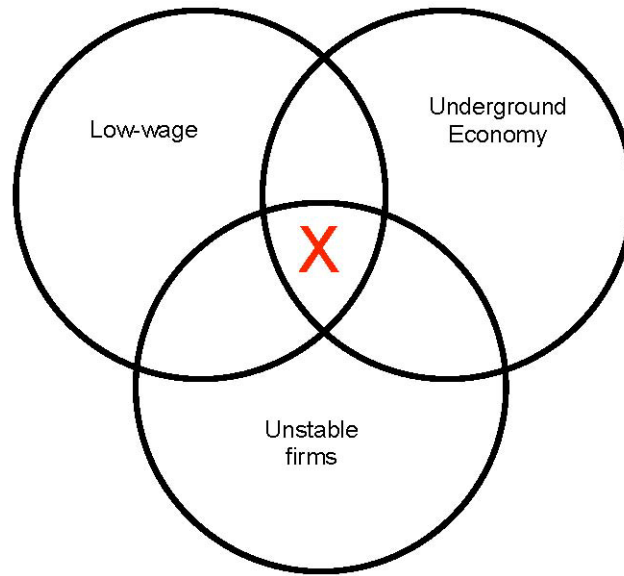
Industry Sector	1.5 Year Stability Rate	1 Year Stability Rate
All Firms	63%	68%
Low Wage Firms	52%	59%
Specific Industries		
Construction	70%	72%
Farm Labor Contractors	59%	56%
Food/Beverage	69%	79%
Garment	56%	68%
General Industry Classifications		
Agr/Mining/Utilities	74%	70%
Construction	70%	72%
Manufacturing	77%	83%
Wholesale Trade	73%	79%
Retail Trade	74%	80%
Transportation	70%	76%
Information	62%	63%
FIRE	73%	77%
Professional Services	68%	72%
Support Services	68%	74%
Education Services	74%	77%
Health Care Services	79%	83%
Accomodations & Food Services	70%	79%
Other Services	51%	55%
Other Industries	38%	44%

Notes: The 1.5-year stability rate is based on the percent of firms active from 2001Q3 to 2003Q1. The 1-year stability rate is based on the percent of firms active from 2001 Q3 to 2002 Q2.

Source: ES-202 file extracts, Employment Development Department.

Part V. Workers at the Juncture

Among all of those working in the low-wage economy, in the underground economy, and for unstable firms, perhaps the most vulnerable are those at the juncture of all three phenomena (see Figure 3.3). The low-wage and underground economies may be more prone to labor law violations not only because of the firms that operate within them, but also because of the type of workers who are employed in these economies. Information on the characteristics that make these workers vulnerable to wage and hour law violations can help the DIR better address enforcement problems.

Figure 3.3: Workers at the Juncture

Unfortunately, no single data source provides information on workers at the juncture. Currently, the most complete and readily available data on these “at risk” workers are from the 2000 U.S. Census. Analysis of census data indicates that the demographic breakdown of minimum-wage workers (those earning \$5.75 per hour² or less) in California shows expected patterns (see Table 3.5). Minimum-wage workers are more likely to be female, under 30 years of age, Hispanic, foreign-born, and have less than a high school education. Depending on the industry, general worker characteristics will vary. Among day laborers, for example, the vast majority of workers are male; in the garment industry or the home healthcare field, the majority of workers are women. Furthermore, undocumented workers (who are likely to be recent immigrants and have limited English proficiency) may tend to gravitate to the underground and low-wage economies for work.

² The minimum wage in California at the time of the 2000 Census.

Table 3.5: Demographics of Minimum-Wage Workers in California

	% of All Workers at Min. Wage	Composition of Min. Wage Workers	Composition of Workers Over Min.
Female	10%	50%	45%
Male	9%	50%	55%
Age			
18 to 29	17%	48%	25%
30 to 44	7%	31%	42%
45 to 64	6%	18%	31%
65 and Over	10%	3%	3%
Race/Ethnicity			
African American	9%	6%	6%
Asian/Pacific Islander	8%	10%	12%
Hispanic	15%	48%	27%
Non-Hispanic White	6%	32%	51%
Other	10%	4%	3%
Educational Attainment			
Less Than HS	20%	39%	16%
High School/GED	12%	25%	19%
Some College	7%	27%	35%
College Graduate	3%	9%	30%
Foreign Born	13.2%	46.8%	31.7%
Recent Immigrant	19.3%	20.6%	8.8%

Notes: Minimum wage defined as workers over 18 years old with self-reported hourly wage of \$5.75 or less.

Source: 1-Percent Public-Use Microdata Sample (PUMS), Census 2000, U.S. Bureau of the Census.

This combination of characteristics may result in a lack of knowledge on the part of the employee about employer obligations on wage and hour laws; or about where to go for help in correcting situations in which an employer is violating labor laws. Vulnerable workers, especially those who are undocumented, may fear exposure if they report their employer; they may simply fear reprisal and remain quiet in order to keep their job. Finally, geographic or cultural isolation may lead to a lack of access to information and resources.

To address the potential information gap among these “at risk” workers, the DLSE translates wage claim forms and Worker Rights flyers (farm workers, garment and janitorial workers) into Spanish and Chinese; puts on rural community meetings with farm worker groups and other public agencies; issues a labor commissioner newsletter for stakeholder organizations; and maintains websites for workers and employers to help and assist them in navigating through labor law (Rodriguez, 2003). In discussions with DLSE staff, they were adamant in their desire to pursue wage and hour violations, but expressed concern about increasing outreach efforts given the resource constraints to pursue even the existing level of complaint activity.

In contrast, Washington's Department of Labor and Industries stresses "compliance through education" and supplied us with information about its outreach program specific to brush picking in the Washington forests as an example of best practices. These outreach efforts include radio broadcasts in Spanish; educational audits on sheds that purchase products from brush pickers; distribution of information to landowners leasing their land to pickers about responsibilities to workers; development and subsequent mailing of fact sheets and checklists with basic information for workers, contractors, sheds, and landowners; and development of a website specific to farm labor (Washington State Division of Employment Standards 2003).

Relative to Illinois, New Jersey, and Washington, California's workforce appears to be more "at risk" of wage and hour law violations (see Table 3.6). We defined the "at risk" workforce as workers over 18 years old earning less than \$6.75 per hour, who have less than a high school education, are foreign-born, and possess limited English proficiency, or work in one of the low-wage industries or occupations identified in Tables 3.1 and 3.2. According to this measure, about 12% of California's workforce is at risk of wage and hour violations, compared to 8% to 9% in the other comparison states.

Table 3.6: Workforce Characteristics of California and Comparison States

	California	Illinois	New Jersey	Washington
Size of Workforce	14,599,426	5,790,596	3,929,911	2,756,265
% "At Risk" Workforce*	12.1%	7.9%	7.8%	9.3%
Estimated Hourly Wage				
less than \$5.15	6.9%	6.2%	4.9%	5.9%
\$5.15 to \$5.74	2.3%	1.9%	1.4%	1.7%
\$5.75 to \$6.74	5.8%	4.9%	4.0%	4.8%
\$6.75 and over	84.9%	87.0%	89.8%	87.6%
Industrial Sector				
Agriculture	1.9%	0.4%	0.1%	2.2%
Mining	0.2%	0.2%	0.1%	0.1%
Utilities	0.9%	0.9%	0.9%	0.9%
Construction	5.9%	5.3%	4.9%	6.6%
Manufacturing	14.3%	17.8%	13.3%	13.8%
Wholesale Trade	4.3%	4.0%	4.5%	4.4%
Retail Trade	10.8%	10.4%	10.5%	11.8%
Transportation	4.1%	5.6%	5.2%	4.9%
Information	4.1%	3.0%	4.7%	3.3%
FIRE	6.5%	7.8%	9.0%	5.7%
Services	41.3%	40.1%	41.7%	39.0%
Public Admin.	4.8%	4.3%	4.9%	5.3%
Armed Forces	1.0%	0.4%	0.3%	1.8%
Occupational Class				
Management/Professional	34.4%	33.3%	37.1%	34.0%
Service	13.9%	13.1%	13.7%	13.6%
Sales/Office	26.7%	27.6%	28.7%	26.0%
Farming/Forestry	1.7%	0.3%	0.2%	1.9%
Construction/Maintenance	8.8%	8.3%	7.2%	9.9%
Production/Transportation	14.2%	17.3%	13.0%	14.0%
Military	0.4%	0.2%	0.1%	0.6%
% Less Than HS Education	18.4%	12.5%	11.5%	9.9%
% Foreign Born	33.1%	15.9%	23.7%	13.6%
% Recent Immigrant	9.9%	6.3%	8.5%	5.3%
% Limited English Proficiency	9.9%	4.7%	5.0%	3.1%

* At-risk workforce defined as workers over 18 years old earning less than \$6.75/hour who have less than a high school education, are foreign born, and possess limited English proficiency, or work in an occupation or industry with a high percentage of low-wage workers.

Note: FIRE stands for Finance, Insurance, and Real Estate.

Source: 1% Public-Use Micro Data Sample, 2000 U.S. Census.

Conclusion

This section examined three key phenomena that have been widely recognized as being central to the problem of labor law violations and enforcement: the underground or informal economy; the relative size and characteristics of the low-wage sector; and firm stability. Enforcement efforts by the DLSE have traditionally been concerned with industries that employ a low-wage workforce—particularly those in the agriculture, manufacturing, and service sectors—and are comprised of relatively unstable businesses. The types of workers who are most likely to be affected by these three factors face numerous barriers to seeking assistance in enforcing labor laws and California’s workforce appears to contain more of these “at risk” workers than the comparison states. The next section provides an overview of how the DIR has been structured to enforce California wage and hour laws.

SECTION IV: MISSION, HISTORY, AND ORGANIZATION OF THE DEPARTMENT OF INDUSTRIAL RELATIONS

Introduction

This section provides background on the mission, history, and internal organization of California's Department of Industrial Relations (DIR). The latter part of the section describes the enforcement divisions of the DIR, with a discussion of the joint enforcement efforts of state and federal agencies. The key points in this section are:

- The DIR has six major program areas, one of which is the enforcement of labor laws;
- The DIR's primary means of dealing with labor law violations is through the Division of Labor Standards Enforcement (DLSE), which administrates the DIR's process for wage claim adjudication and its Bureau of Field Enforcement (BOFE);
- The wage claim adjudication process handles individual worker-initiated claims of wage and hour law violations;
- The BOFE handles multiple worker claims and independently initiates workplace investigations;
- The DIR conducts joint enforcement efforts via cooperative task forces involving other departments and state and federal agencies.

Part I. Mission

The California Legislative Analyst's Office describes the mission of the Department of Industrial Relations (DIR) thusly: "to protect the workforce of California, improve working conditions, and advance opportunities for profitable employment." To achieve these goals, the DIR sets labor standards; disseminates information and conducts educational programs for employees and employers; develops and adopts apprenticeship training standards; collects data and conducts research; manages appeals processes for employers who have been cited; and conducts criminal investigations. These responsibilities are carried out through three major programs: the adjudication of workers' compensation disputes; the prevention of industrial injuries and deaths; and the enforcement of laws relating to wages, hours, and working conditions. In addition, the department regulates self-insured workers' compensation insurance plans, provides workers' compensation payments to injured workers of uninsured employers and other special categories of employees, offers conciliation services in labor disputes, and conducts and disseminates labor force research. (Legislative Analyst's Office 2003)

Part II. History

The DIR was created in 1927 by combining agencies that were the precursors to Cal/OSHA, the divisions of labor statistics and labor standards enforcement, and workers' compensation with the Industrial Welfare Commission and the Industrial Accident Board (Cal-OSHA 2002).

Throughout its history, the DIR has experienced fluctuations in its budget and staffing level. Gallagher shows that these fluctuations correlate with changes in gubernatorial administrations (2001). (Budget and staffing levels are detailed in Section V of this report.) In addition to changing budgets and staffing levels, general environmental

conditions such as the decline in union density, changing industrial composition, and a growing immigrant workforce have all affected the DIR's enforcement efforts. Legislation passed in recent years—such as the application of prevailing wage laws to many more construction projects, and reinstating the eight-hour overtime law, among others—has affected the level of DIR responsibilities.

In July of 2002, the DIR became part of the California Labor and Workforce Development Agency, a newly created cabinet-level state agency. This agency includes the Employment Development Department (EDD), the Workforce Investment Board (WIB), the Agricultural Labor Relations Board (ALRB), the Employment Training Panel (ETP), and the California Unemployment Insurance Appeals Board, in addition to the DIR. The stated goal of this consolidation was to improve the coordination and effectiveness of state workforce development activities, and to create a more comprehensive network of information and data (Riches 2002). Figure 4.1 shows the organization of the California Labor and Workforce Development Agency.

Figure 4.1: California Labor and Workforce Development Agency Organizational Chart



Source: California Labor and Workforce Development Agency.

Part III. Internal Organization and Duties³

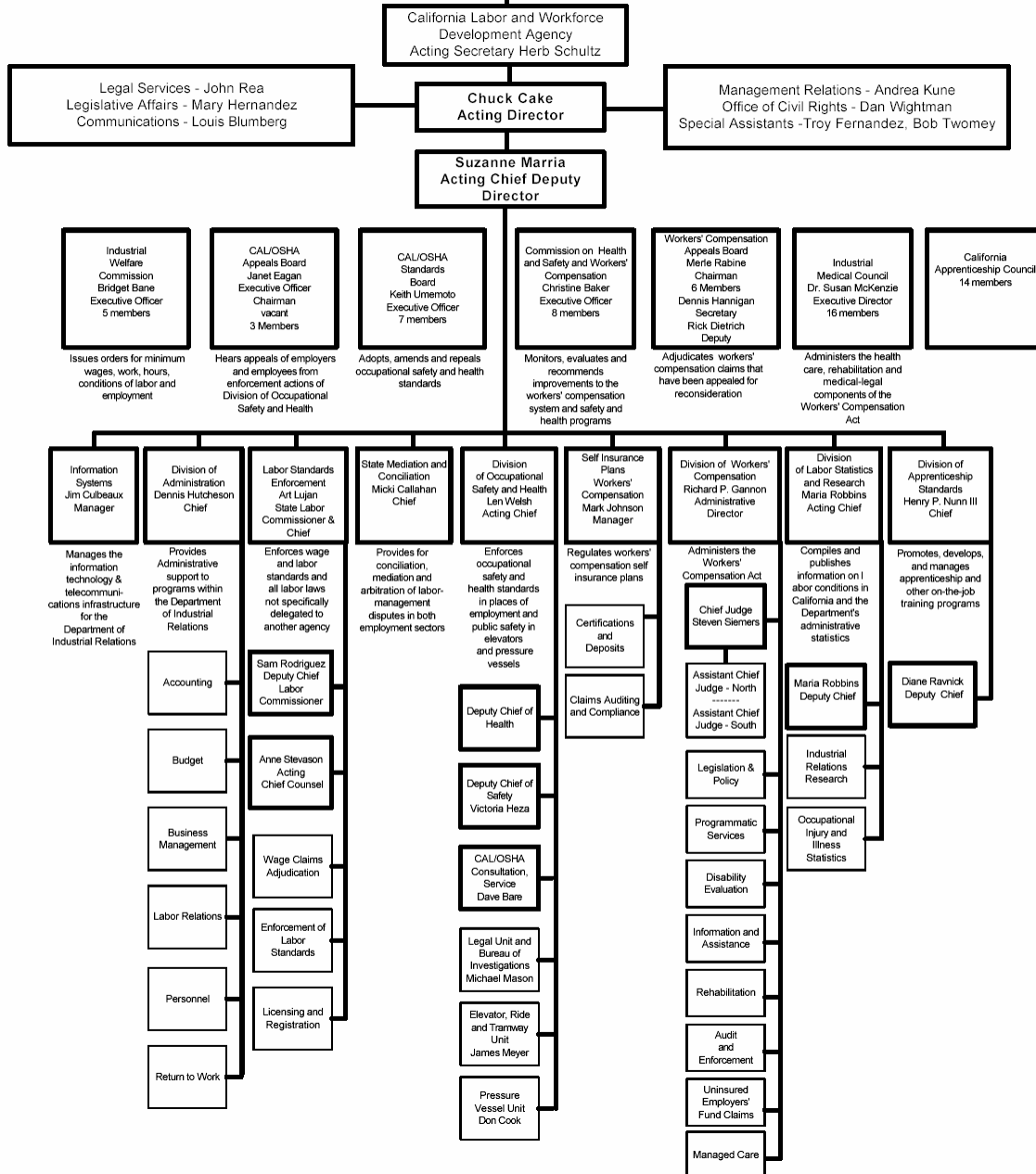
The DIR is organized around six major program areas, which are:

- Workers' Compensation,
- Apprenticeship,
- Mediation & Conciliation,
- Statistics and Research,
- Occupational Safety and Health, and
- Labor Law

³ This overview has been compiled from the DIR website and Bar-Cohen and Carrillo (2002) "Labor Law Enforcement in California" <http://repositories.cdlib.org/ile/sc12002/Bar-CohenCarrillo>.

Each program area has its own division within the DIR. Figure 3.2 shows the organizational structure of the DIR. Although the DIR's primary field enforcement divisions are the Division of Labor Standards Enforcement (DLSE) and the California Occupational Safety and Health Program (Cal/OSHA), the structure and duties of all six program areas are detailed below.

Figure 4.2: Department of Industrial Relations Organizational Chart



Source: Department of Industrial Relations website, September 2003.

Workers' Compensation

The first major program area that the DIR is responsible for is workers' compensation. There are five separate entities that have responsibilities in this area. The first is the *Division of Workers' Compensation*, which is responsible for the administration of the workers' compensation program, and assists in resolving disputes that arise in connection with claims for workers' compensation benefits.

The *Commission on Health and Safety and Workers' Compensation* is a joint labor-management body created by the workers' compensation reform legislation of 1993. It was formed to oversee the health and safety and workers' compensation systems in California and recommend administrative or legislative modifications to improve their operation.

The *Industrial Medical Council* examines and appoints physicians to be qualified medical evaluators (QMEs). QMEs perform the examinations of injured workers that help determine the level of benefits to be received by a worker. The Industrial Medical Council is a semi-autonomous body, consisting of 20 voting members.⁴

The *Workers' Compensation Appeals Board*, a seven-member judicial body appointed by the Governor and confirmed by the Senate, exercises all judicial powers vested in it by the Labor Code. Its major functions include the review of appeals of decisions by Division of Workers' Compensation administrative law judges, and regulation of the adjudication process through the adoption of rules of practice and procedure.

Self Insurance Plans (SIP) is a program within the DIR that authorizes qualified employers to provide their own coverage for workers' compensation liabilities. The DIR is responsible for certification of public and private self-insured employers, third-party administrative agencies that oversee self-insurance programs, and individual claims adjusters.

Apprenticeship

The second major program area that the DIR is responsible for is apprenticeship, defined as worksite job training to help meet the skill needs of industry and the career goals of workers. There are two major entities that address these responsibilities. The first is the *Division of Apprenticeship Standards* (DAS), which administers California apprenticeship law and enforces apprenticeship standards for wages, hours, working conditions, and the specific skills required for state certification as a journeyman in an apprenticeable occupation. DAS promotes apprenticeship training, consults with program sponsors, and monitors programs to ensure high standards for on-the-job training and supplemental classroom instruction. The second body that deals with apprenticeship issues is the *California Apprenticeship Council*, which provides policy advice on apprenticeship matters to the DIR, issues rules and regulations on specific apprenticeship subjects, and conducts appeals hearings.

Mediation and Conciliation

The third major program area under the DIR is mediation and conciliation, which is handled by the *State Mediation & Conciliation Service* (SMCS). SMCS investigates and

⁴ Effective January 2, 2004, this Council will be abolished, with Industrial Medical Council duties transferred to the Division of Workers' Compensation.

mediates labor disputes between employers and employee organizations, and offers mediation services. Labor mediation is a non-binding process in which a neutral third party helps a union and employer resolve their dispute over a contract, a grievance, or other labor relations matter. SMCS also maintains a statewide panel of private labor arbitrators who are available to make advisory or binding determinations on issues in dispute. SMCS also offers representation services, meaning that they conduct elections for certification and decertification of labor organizations, agency shop elections, card checks for recognition, and other types of elections related to labor relations.

Statistics and Research

The fourth major program area under the DIR is statistics and research, which are the responsibility of the *Division of Labor Statistics and Research* (DLSR). DLSR collects, compiles, and presents statistics and research relating to the condition of labor in California. DLSR also conducts research and publishes information on economic, employment, and work-place safety and health statistics. Publications include the Director's General Prevailing Wage Determinations and the California Consumer Price Index.

Occupational Safety and Health

One of the largest program areas under the DIR addresses issues of occupational safety and health for California's workers. The *Division of Occupational Safety and Health* (DOSH) enforces the state's occupational and public safety laws (Cal/OSHA), and provides information and consultation to employers, workers and the public about workplace and public safety matters.

The *Cal/OSHA Consultation Service* provides consultative assistance to employers and workers through on-site visits, telephone support, and outreach efforts. The *Occupational Safety and Health Standards Board* is responsible for setting and reviewing the workplace safety standards for DOSH. The *Occupational Safety and Health Appeals Board* handles appeals from employers regarding citations issued by DOSH for violations of workplace safety and health regulations.

One of the most important entities under DOSH is the *Cal/OSHA Enforcement Unit*, which conducts inspections of workplaces based on worker complaints and accident reports. The Enforcement Unit also targets high hazard industries for workplace inspections. There are 22 Cal/OSHA Enforcement Unit district offices located throughout California.

Labor Law

The final program area that the DIR is responsible for is the development and enforcement of labor law. The *Industrial Welfare Commission* (IWC) determines wages, hours, and working conditions of employees in California, and publishes the IWC wage orders. Every employer is required to keep a copy of the appropriate wage orders posted in their place of business or make it available to employees upon request.

The *Division of Labor Standards Enforcement* (DLSE) oversees the IWC's wage orders and other labor regulations. The DLSE has 18 offices across California that are organized into three groups, each under the supervision of a field office. DLSE consists of five major units:

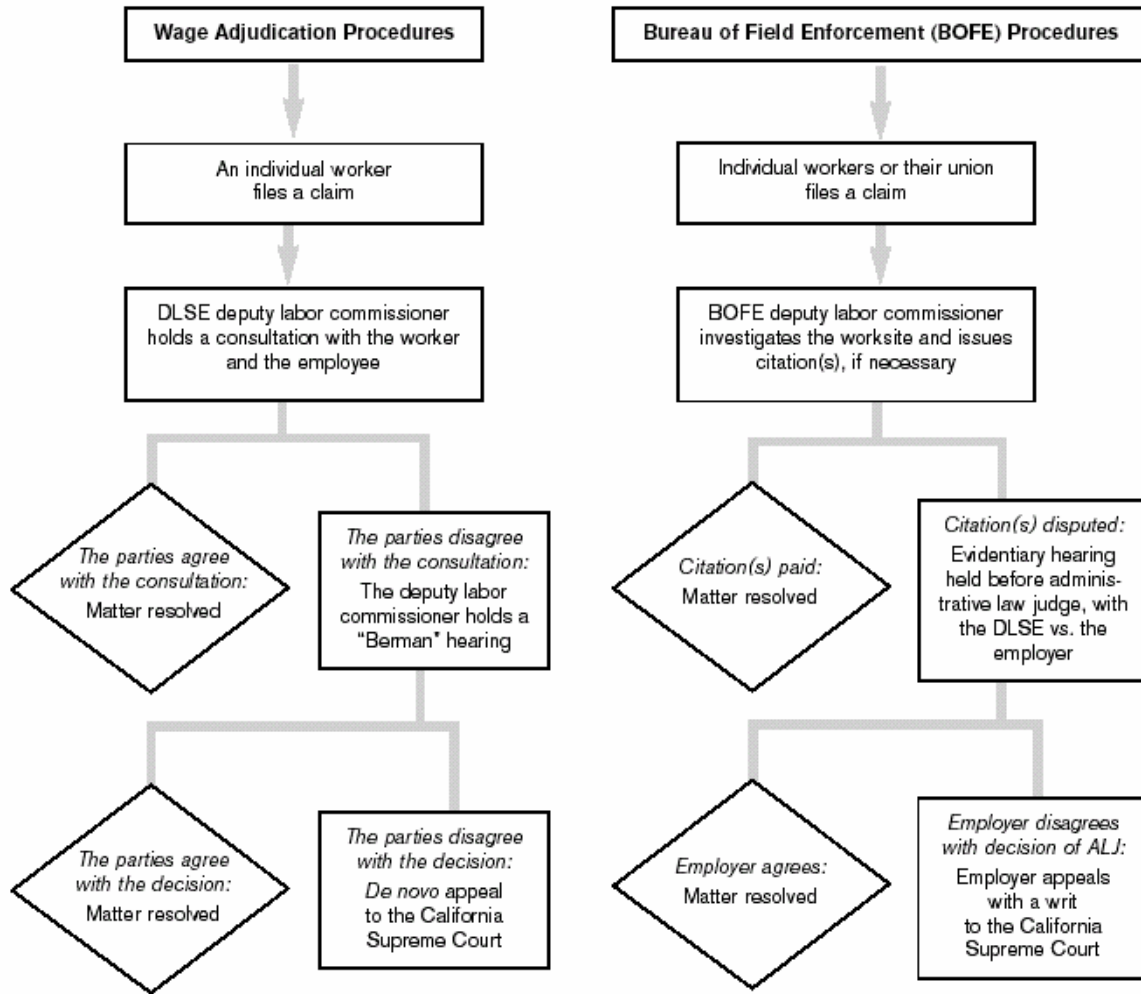
- Wage Claim Adjudication: DLSE is responsible for adjudicating wage claims on the behalf of workers who file claims for nonpayment of wages, overtime, or vacation pay. DLSE deputies hold informal conferences between employers and employees to resolve wage disputes. If a matter cannot be resolved at the informal conference, an administrative hearing is held to make a final determination on the matter.
- Bureau of Field Enforcement (BOFE): DLSE is responsible for the investigation and enforcement of statutes covering workers' compensation insurance coverage, child labor, cash pay, unlicensed contractors, public works, and IWC orders, as well as group claims involving minimum wage and overtime claims. BOFE also handles criminal investigations involving these group claims.
- Discrimination Complaint Investigation (DCI): DLSE is responsible for investigating complaints alleging discrimination and/or retaliation in the workplace on the basis of various Labor Code sections.
- Licensing and Registration: DLSE issues licenses to farm labor contractors, talent agents, employers, garment industry firms, transporters and supervisors of minors involved in door-to-door sales, and industrial homeworkers. DLSE also approves permits for the payment of less than the minimum wage to employees with a disability and to sheltered workshops.
- Legal: DLSE's attorneys present civil cases at both the trial and appellate level. The majority of cases involve issues of unpaid wages that have arisen as a result of an appeal taken from an order, decision, or award of the Labor Commissioner. DLSE attorneys also pursue cases involving violations of the prevailing wage provisions of the public works laws.

The DIR's wage and hour enforcement efforts, coordinated through the DLSE, will be the focus of the remainder of this, and the following, sections.

Part IV. Internal Procedures at DIR

The DLSE has two primary ways of dealing with wage and hour law violations: through its process for wage claim adjudication, and through its Bureau of Field Enforcement (BOFE). Figure 4.3 shows these two means of enforcement.

Figure 4.3: Wage Claim Adjudication and BOFE Procedures

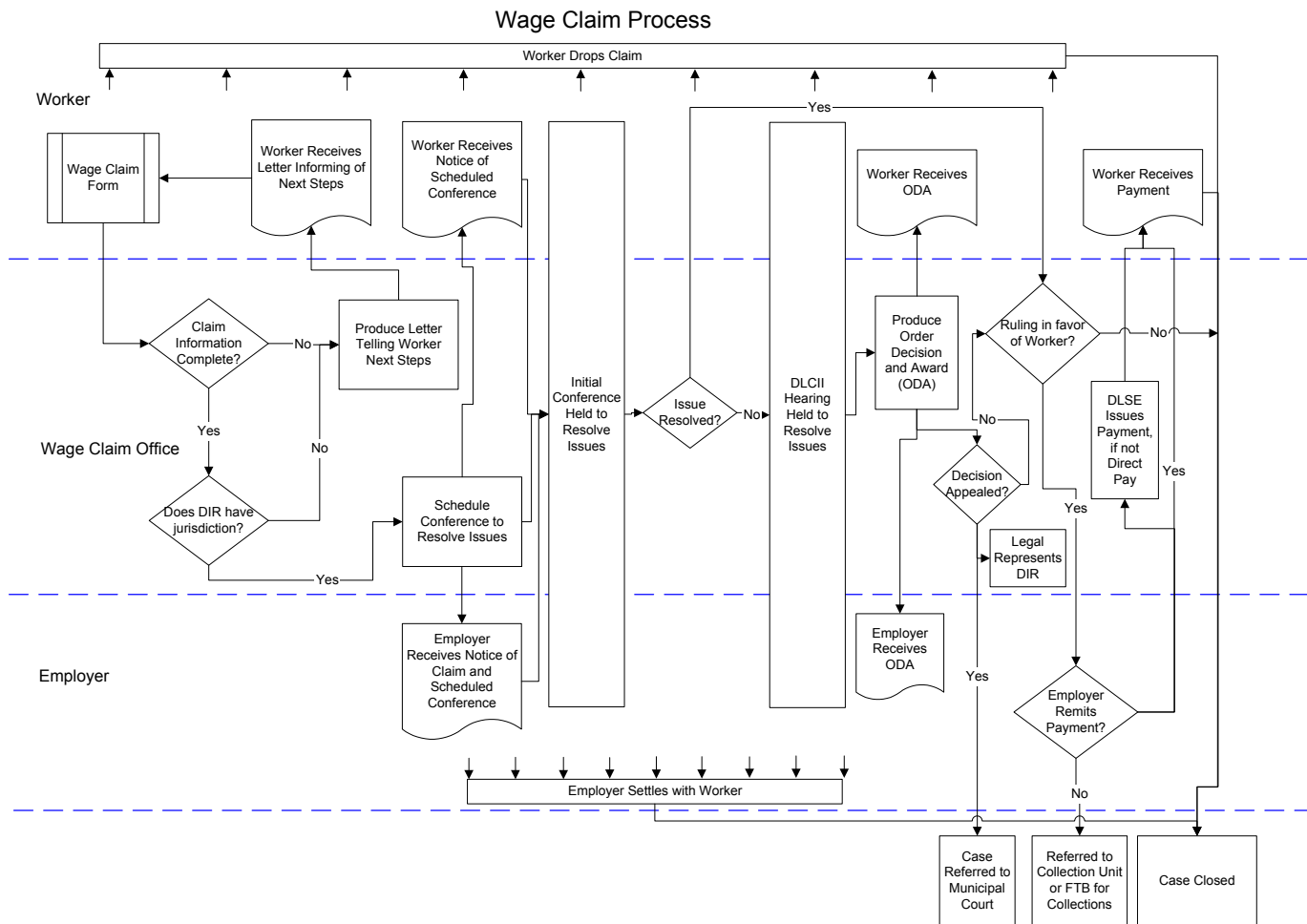


Source: Bar-Cohen & Carrillo, 2002

Wage Claim Adjudication

Employees who believe they have not been paid the wages due them under the law can file a complaint with DLSE. The Wage Claim Adjudication Unit investigates these claims and holds conferences and hearings to resolve the issues. The DIR established this 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 hearings are binding unless appealed within 15 days. These hearings provide the worker and the employer a neutral forum for dispute resolution by deputy labor commissioners. Reliance on these hearings has resulted in lower user costs for the agency (in both time and money) and lower law enforcement costs for taxpayers (Bar-Cohen & Carrillo 2002). Figure 4.4 shows this process of adjudication.

Figure 4.4: The Wage Claim Adjudication Process



Source: Gartner Consulting, 2001.

Employers and workers can appeal a wage claim adjudication hearing decision in the courts. If a case goes to court, DLSE attorneys may represent worker claimants who could not otherwise afford counsel. The claimants do not necessarily have an automatic right to counsel; DLSE provides representation based on DLSE attorneys' judgment about the merits of each case, and within the limits of the resources available. The court

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 the attorneys' costs for all parties.

Bureau of Field Enforcement (BOFE) Claims

A BOFE claim is generally filed against an employer for violations that are applicable to all or a group of employees. The BOFE also independently initiates workplace investigations and responds to multiple complaints with industry “sweeps.” According to DIR staff, the BOFE conducts 40 to 50 sweeps per year, targeting various industries in various areas. Sweeps can be initiated internally, or by outside leads such as advocacy or community groups and others; in 2003, a media “expose” on the car wash industry resulted in the BOFE targeting that industry, first in Los Angeles and then the Bay Area and Central Valley.

When the BOFE issues a citation, an employer can choose to appeal the citation through a hearing before an administrative law judge, with the DLSE as one party and the employer as the other. Employers have the right to appeal these decisions further in California Supreme Court (Bar-Cohen and Carrillo 2002).

Part VII. Relationship with Other Departments and Agencies (State and Federal)

The California Labor and Workforce Development Agency (of which the DIR is a part) is part of the state government's executive branch, and the Labor Secretary is a member of the Governor's cabinet. Other California departments and agencies concerned with enforcement in the underground economy and workforce and labor protection include the following:

- The Employment Development Department (EDD) Tax Branch Organization (within the California Labor and Workforce Development Agency) investigates businesses that avoid paying payroll taxes, many of which are part of the underground economy.
- The Franchise Tax Board (FTB) investigates businesses that fail to file tax returns or that file false returns.
- The Board of Equalization (BOE) investigates various tax programs administered by the Board (fuel tax, cigarette tax, sales tax), and attempts to identify tax evasion problems and new fraud schemes.

As with all state labor agencies, the duties of the California Labor and Workforce Development Agency sometimes overlap with those of the federal Department of Labor (DOL). Due to this overlap and the involvement of different state agencies in aspects of labor law enforcement, several cross-departmental, cooperative programs have been created to combat violations of labor laws in California. These programs are cooperative efforts among several distinct government agencies that target industries identified as having a history of noncompliance. The cooperative effort allows the departments to combine their individual strengths. For example, the EDD's experience using its large employment data system helps the DIR identify potential targets. The joint enforcement programs in which the DIR is involved include: the Targeted Industry Partnership Program, the Employment Enforcement Task Force, and the Joint Enforcement Strike Force.

Table 4.1 reports the level of operations for the Targeted Industry Partnership Program (TIPP) and the Employment Enforcement Task Force (EETF) in 2002. The combined efforts of the TIPP and EETF enforcement activities in 2002 resulted in almost 800 inspections and over \$118 million in unreported wages. A description of each joint enforcement program follows.

Table 4.1: Level of Joint Enforcement Operations in 2002

	TIPP	EETF
Joint Inspections	158	635
Previously Unreported Employees	4,232	4,098
Unreported Wages	\$43,993,530	\$74,716,097
Labor Code Citation Amounts	NA	\$3,371,050

Source: Underground Economy Operation, Employment Development Department (website).

Targeted Industry Partnership Program

The Targeted Industry Partnership Program (TIPP) was established in 1992 to focus on industries that have a history of labor law and payroll tax violations. TIPP currently targets the garment manufacturing, agricultural, and janitorial industries. Partners involved in the TIPP are the DOL, the DLSE, Cal/OSHA, and the EDD. The enforcement responsibilities of the various agencies are as follows:

- DOL – Investigates minimum wage and overtime violations under federal law
- DLSE – Investigates minimum wage and overtime violations under state law
- Cal/OSHA – Investigates workplace safety and health regulations under state law
- EDD – Collects and accounts for the following taxes from each employer:
 - Unemployment Insurance—paid by the employer
 - Employment Training Tax—paid by the employer
 - State Disability Insurance—withheld from employees’ wages
 - California Personal Income Tax—withheld from employees’ wages

Joint Enforcement Strike Force

The Joint Enforcement Strike Force (JESF) was established in 1993, and was developed to combat the underground economy through coordinating enforcement activities and resources. The JESF targets auto body repair shops, bars, and construction companies. Partners in the JESF include EDD (as the lead agency), DLSE, Department of Consumer Affairs, Office of Criminal Justice Planning, Franchise Tax Board, Board of Equalization, and the U.S. Department of Justice. The program is administered by the EDD’s Underground Economy Operations organization, and the Director of EDD is the chair. The JESF is empowered to form joint enforcement teams when appropriate. The first joint enforcement project created has been the Employment Enforcement Task Force.

Employment Enforcement Task Force

The Employment Enforcement Task Force (EETF) was created in 1994, and the participating agencies include EDD, DIR, and the Contractor's State License Board and the Bureau of Automotive Repair (both divisions of the Department of Consumer Affairs). The goal of EETF is to identify and bring into compliance those individuals and businesses in the underground economy and in violation of payroll tax, labor, and licensing laws. Targeted industries include construction, automotive repair, garment manufacturing, bars, restaurants, nightclubs, furniture manufacturers, adult entertainment establishments, bakeries, produce markets, car washes, pallet repair businesses, cabinet manufacturers, and the janitorial and building maintenance industry. Although EETF focuses on industries known to have a high degree of noncompliance, investigations of businesses not included in the target group are also investigated when underground economy activity is suspected.

Conclusion

The Labor Agency, and the DIR in particular, oversees numerous programs related to state labor and employment issues. One of the DIR's major program areas is the enforcement of labor laws. The DLSE carries out the task of enforcing wage and hour laws primarily through its wage adjudication process and the BOFE. The DIR conducts joint enforcement efforts via cooperative task forces involving other departments and state and federal agencies. These joint enforcement efforts appear to produce complementary effects that allow the DIR to effectively accomplish some of its enforcement activities with shared resources. The next section of the report discusses the resources, in terms of budget and staff, the DIR has been allocated to run its enforcement programs.

SECTION V: FUNDING AND STAFFING LEVELS AT THE DEPARTMENT OF INDUSTRIAL RELATIONS

Introduction

As the previous section of this report mentioned, budget and staffing levels at the Department of Industrial Relations (DIR) have fluctuated over the years. For our analysis of wage and hour enforcement efforts in California, it is important to examine how these budget and staffing levels compare to the state's growing workforce (Gallagher, 2001). This section will analyze the budget and staffing levels for both the DIR and its enforcement unit, the Division of Labor Standards Enforcement (DLSE), for the 10-year period from fiscal year 1994-95 through fiscal year 2003-04. The key points of this section are:

- On a constant-dollar basis, and per-worker basis, budget and staffing levels for the DIR generally decreased over the 10-year period, while budget and staffing levels for the DLSE generally increased;
- As a result, the DLSE budget comprised a greater proportion of the overall DIR budget in 2003 than in 1994;
- The overall DLSE staffing level in 2000 was similar to the level in 1990 and 1980, but when normalized by the size of the workforce, the 2000 staffing level is 7% lower than in 1990 and 36% lower than in 1980.
- California allocates similar, if not more, resources to wage and hour enforcement efforts than comparison states. However, these comparisons may reflect somewhat different enforcement programs between the states.

Part I. DIR Funding and Staffing Levels

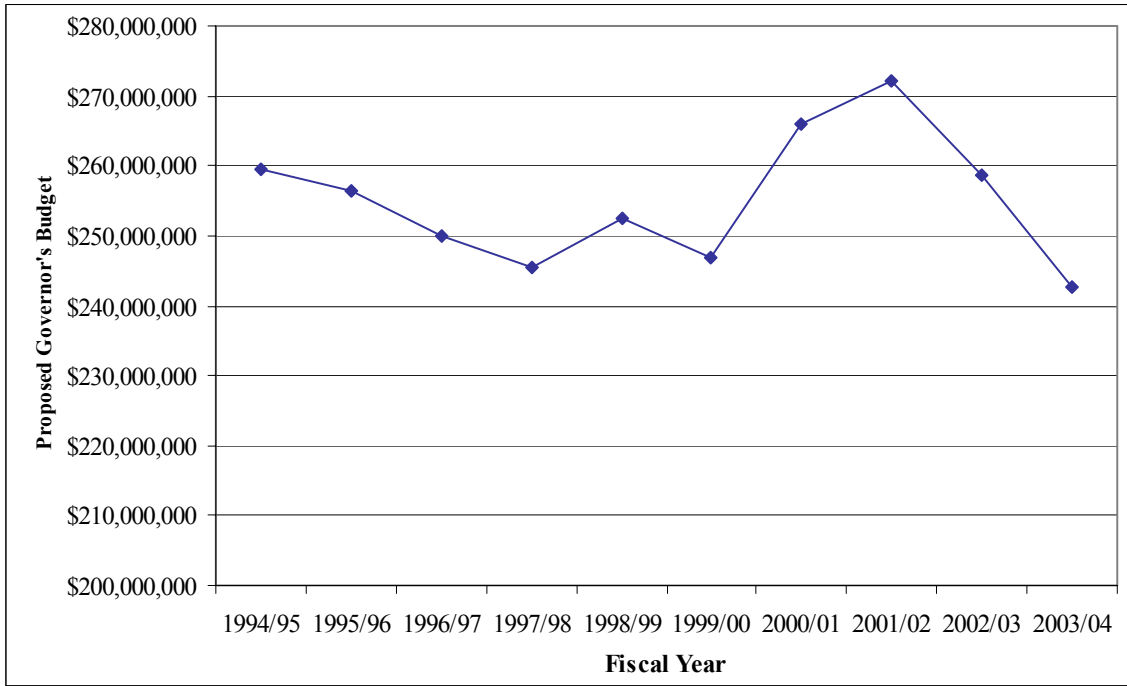
In 2003, the budget for the California Labor and Workforce Development Agency (including all of its sub-departments and boards) totaled \$21 billion, which funded approximately 13,500 staff throughout California. Of this total budget, \$247.6 million and 2,533 staff were allocated to DIR activities. Thus, in 2003, DIR allocations represent slightly over 1% of the budget and 19% of the staff of the California Labor and Workforce Development Agency.

An examination of the DIR's annual budget shows a general decline through the 1990s, and then a rapid increase from 1999-00 to 2001-02, when the state economy was strong. Budget levels then declined in the final two years of the 10-year period, as the state economy cooled. Figure 5.1 displays this trend.⁵

DIR staffing levels over the 10-year period averaged 2,615 positions per year, and echo the trend of the organization's budget—general decline in the 1990s, followed by an increase in the late 1990s and early 2000 budget years, and then declining again, as Figure 5.2 shows.

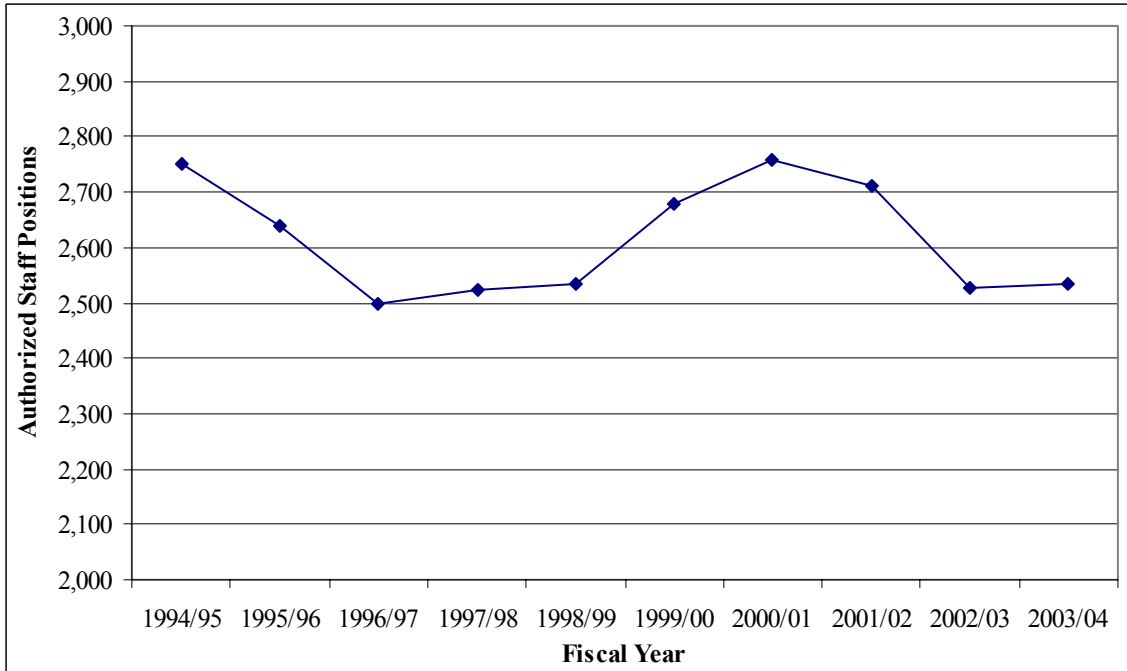
⁵ Amounts shown in all figures are based on the amount submitted in the Governor's Budget each year, and have been adjusted to 2003 constant dollar amounts. The budgets are based on the fiscal year starting in FY1994/95.

Figure 5.1: Department of Industrial Relations 10-Year Budget History (2002 Constant Dollars)



Source: California Division of Labor Standards Enforcement

Figure 5.2: Department of Industrial Relations 10-Year Staffing History



Source: California Division of Labor Standards Enforcement

Part II. DLSE Funding and Staffing Levels

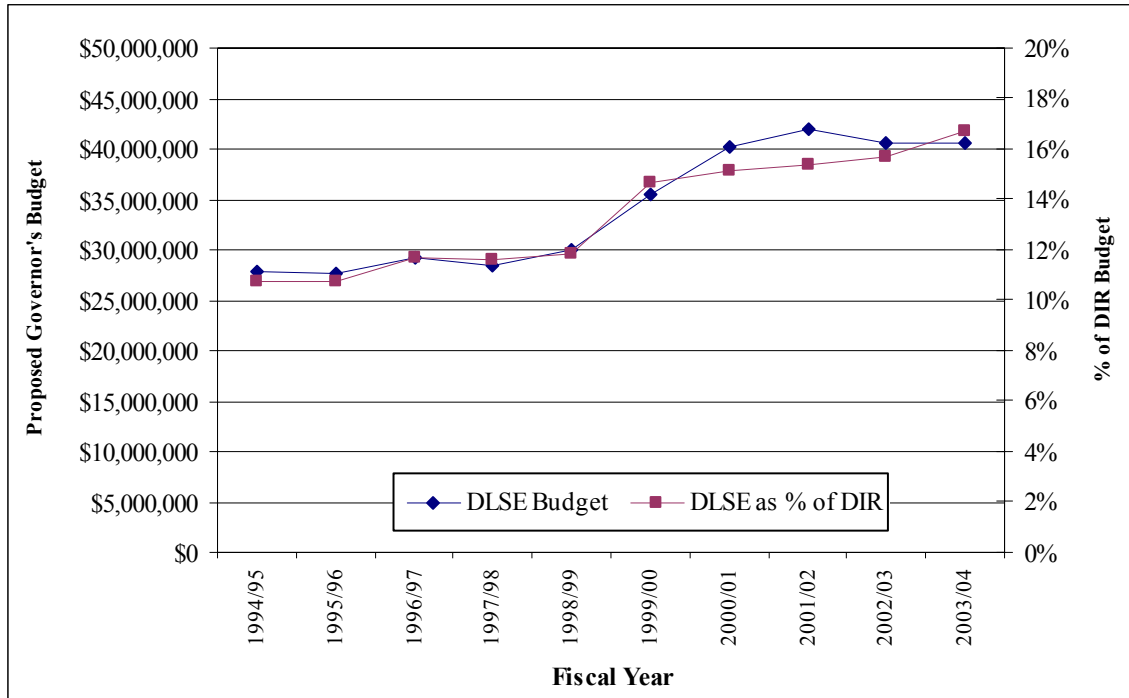
In the 2003-04 budget year, the DLSE had a budget of approximately 40 million dollars, of which almost 90% came from the General Fund. The remaining 10% of the budget came from five other funds: Construction Industry Enforcement Fund, Federal Trust Fund, Industrial Relations Unpaid Wage Fund, Reimbursements, and Garment Industry Regulations Fund. All moneys in the Industrial Relations Unpaid Wage Fund—which accounted for about 2.5% of the DLSE budget—are remitted to the unpaid worker, and therefore cannot get used for enforcement purposes.

Generally speaking, fines, fees, and penalties collected as a result of DLSE activities are deposited into the General Fund. The only self-funding revenue sources for DLSE enforcement activities are the Industrial Relations Construction Industry Enforcement Fund (only about 0.1% of the total DLSE budget) and the Garment Industry Regulations Fund (about 5.7% of the total DLSE budget). This is somewhat different from the funding sources for the Employment Development Department (EDD), where fees, fines, and penalties paid by employers and claimants are deposited into a special state fund (the Contingent Fund) instead of the General Fund. The EDD is then allocated funding annually from the Contingent Fund for collection activities.

The budget and staffing trends within the DLSE differ from those of the DIR itself. The DLSE's portion of the DIR budget has grown over the past 10 years. As the DIR budget has declined, it appears that the department's resources have been allocated to the DLSE at an increasing rate. Budget levels in the DLSE increased gradually during the 1990s, sharply increased from the 1998 to the 2000 budget year, and remained level in the early 2000s (see Figure 5.3). As a percentage of the DIR budget, DLSE budgets grew steadily over the 10-year period. The DLSE budget represented 11% of the total DIR budget in 1994-95, and grew to 16% in 2003-04.

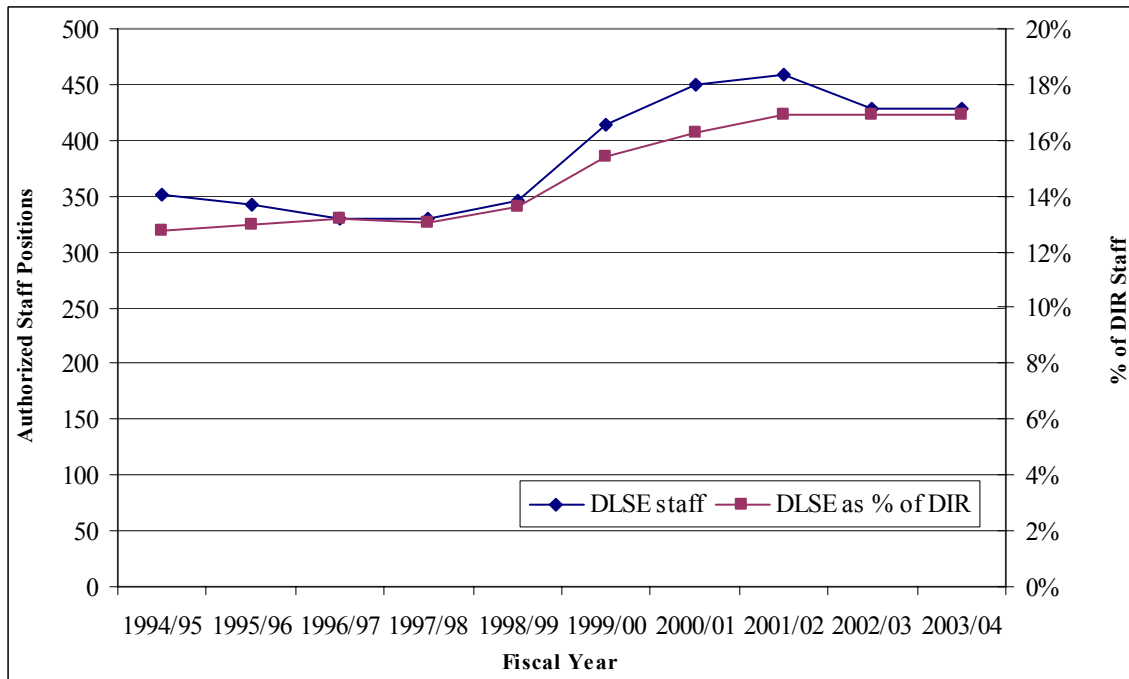
DLSE staffing levels mirrored the budgeting trend for the division (see Figure 5.4). Over the 10-year period, the average number of staff positions was 388. Similarly, DLSE staff represented 13% of the overall DIR staff numbers in 1994-95, and grew to 17% in 2003-04. While the 10-year trend shows a general increase in DLSE staff, looking at a 40-year trend (Figure 5.5) shows that staffing levels have remained fairly steady over the past 30 years, following a substantial increase from 1970 to 1980.

Figure 5.3: DLSE 10-Year Budget History (2002 Constant Dollars)



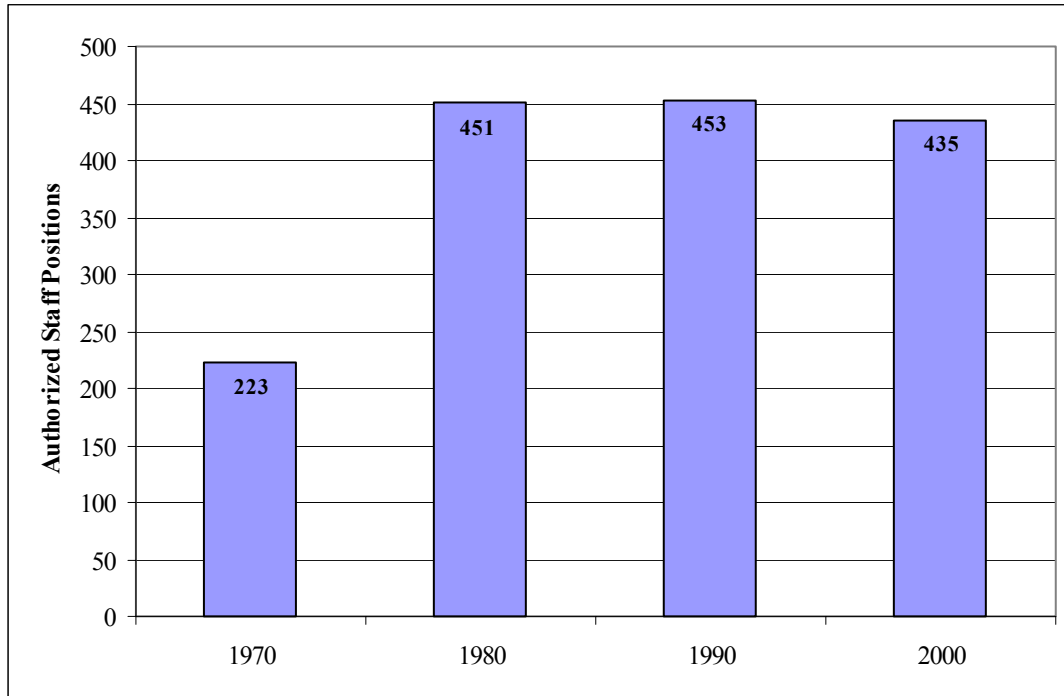
Source: California Division of Labor Standards Enforcement

Figure 5.4: DLSE 10-Year Staffing History



Source: California Division of Labor Standards Enforcement

Figure 5.5: DLSE 40-Year Staffing History



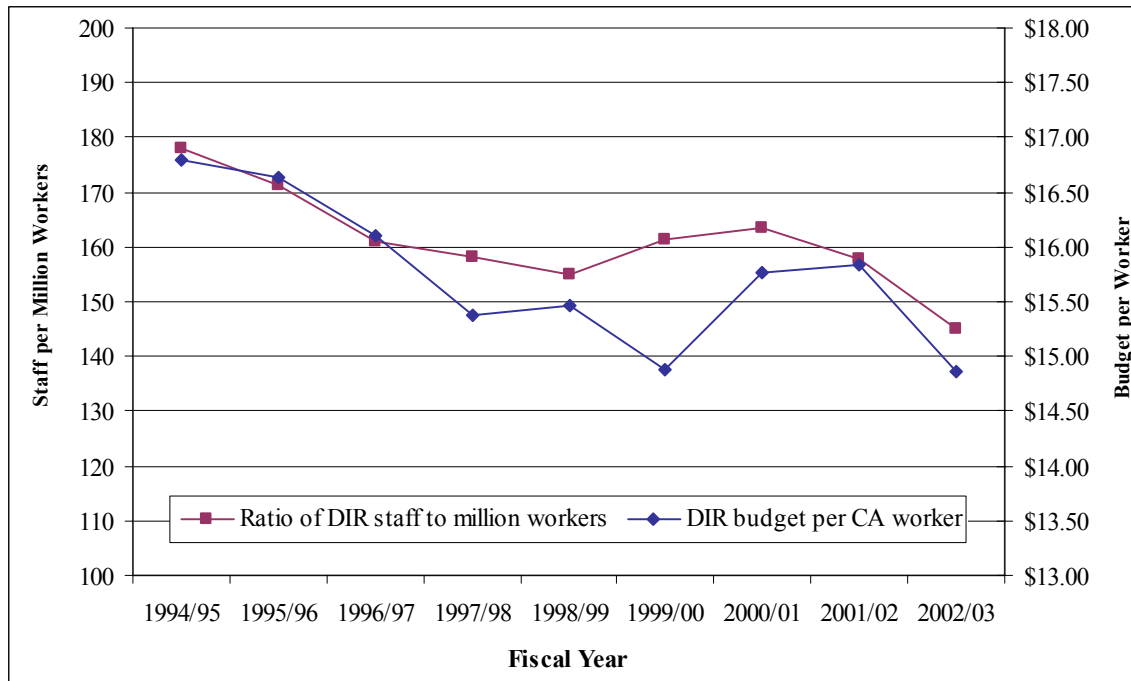
Source: Gallagher, 2001

Part III. Funding and Staffing Levels per California Worker

While staffing levels at both DIR and DLSE have fluctuated over the past 10 years, the number of staff measured against the size of the California workforce has remained relatively constant, with a slightly decreasing trend for the DIR. The ratio of DIR staff to workers averaged 161 staff members for every million California workers over the past 10 years, with a high of 178 staff members per million California workers in 1994-95, and a low of 145 DIR staff members per million California workers in 2002-03 (see Figure 5.6).

The overall DIR budget per California worker averaged \$15.71 for the period 1994-95 through 2002-03 (in constant dollars). Generally, the 10-year trend shows a decreasing dollar amount spent per California worker, from a high in 1994-95 of \$16.79 to a low in 1999-00 of \$14.55. The amount increased sharply in the 2000-01 budget year, and decreased again in the most recent budget.

Figure 5.6: Ratio of DIR Budget and Staff to California Workers



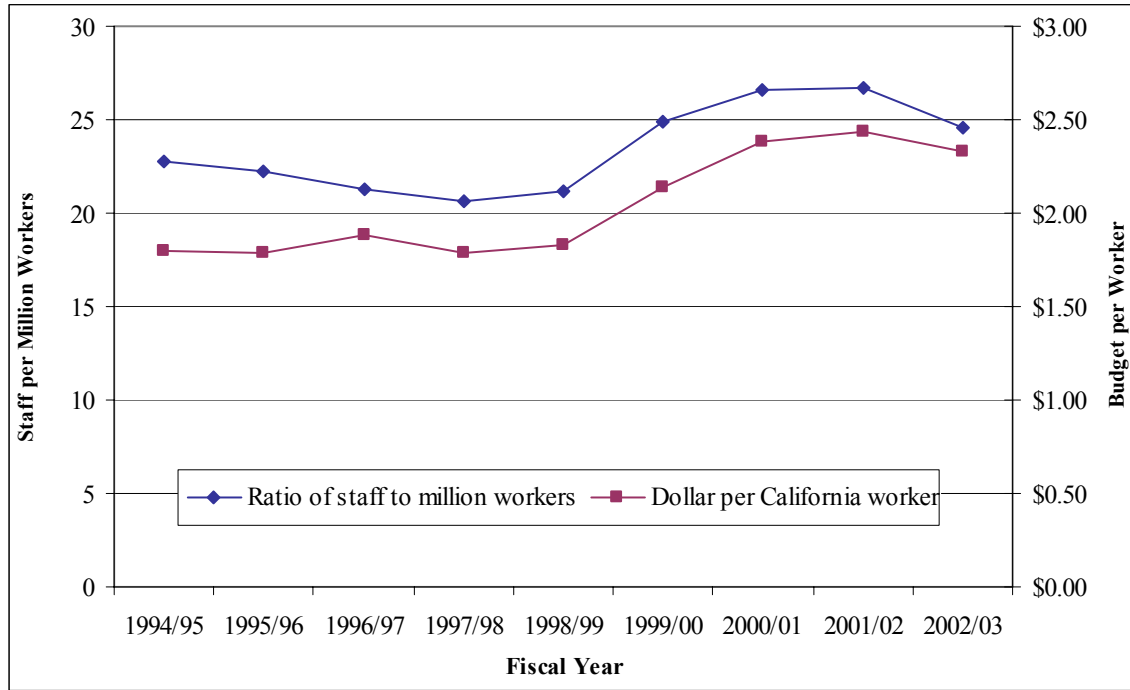
Source: California Division of Labor Standards Enforcement

Notes: Number of workers is based on published average annual civilian employment estimates by the California Employment Development Department. Budget amounts are adjusted to 2002 constant dollars.

Within the DLSE, the ratio of staff to California workers (in millions) averaged 23.4 over the past 10 years, with a low of 20.1 DLSE staff members per million workers in 1997-98, a high of 26.7 staff members per million workers in 2001-02, and, most recently, a decrease to the current level of 24.6 staff per million workers.

The DLSE budget exhibits a different trend than the overall DIR budget. Unlike the overall DIR budget, the DLSE saw an increase in recent years in the amount spent on enforcement efforts per California worker (see Figure 5.7). The amount spent on enforcement per California worker averaged \$2.02 over the 10-year period; this amount increased from \$1.80 in 1994 to a high of \$2.45 in 2002.

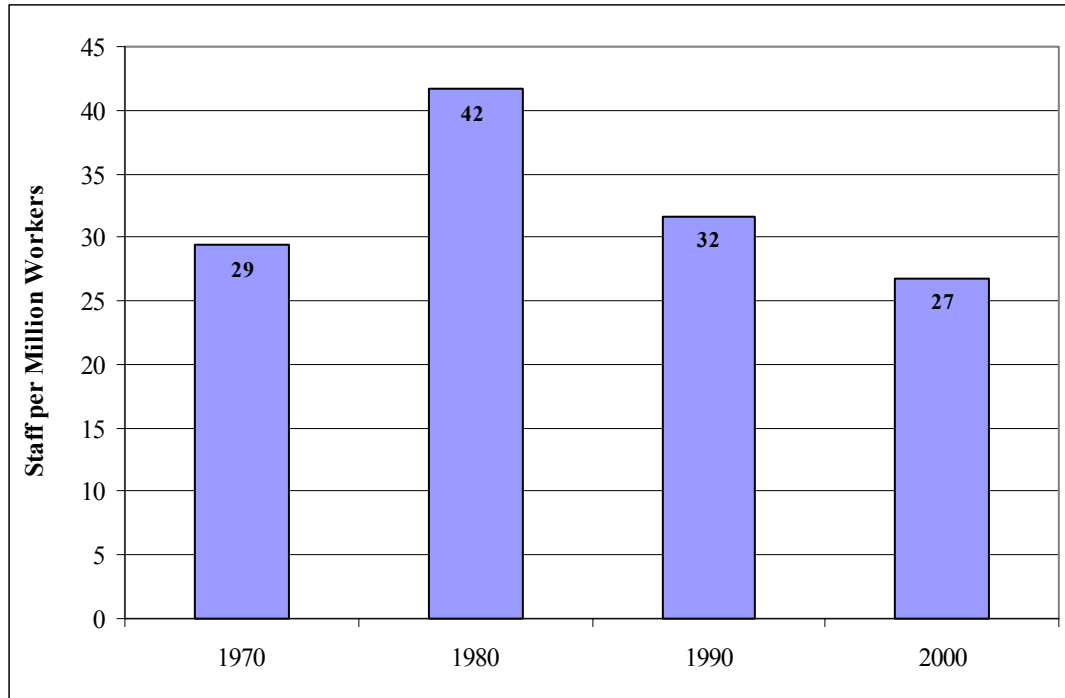
Figure 5.7: Ratios of DLSE Budget and Staff to California Workers



Source: California Division of Labor Standards Enforcement

Notes: Number of workers is based on published average annual civilian employment estimates by the California Employment Development Department. Budget amounts are adjusted to 2002 constant dollars.

Although staffing levels in the DLSE generally increased during the late 1990s, the longer-term trend shows workforce growth has outpaced enforcement agency staffing levels. Figure 5.8 displays the number of DLSE staff for every million California workers over 40 years. From 1970, when there were 29.41 DLSE staff members per million California workers, the ratio peaked in 1980 at 41.76, and then decreased to 26.78 in 2000.

Figure 5.8: DLSE 40-Year Trend of Staffing per Million California Workers

Source: Gallagher, 2001

Part IV. Funding and Staffing Levels Relative to Comparison States

In order to further analyze DLSE resource levels, we compared the amounts budgeted for wage and hour law enforcement in California to the amounts in Washington and New Jersey. We also compared staffing levels at wage and hour enforcement agencies across the three states.⁶

Figure 5.9 shows the comparison for the amount budgeted per worker and Figure 5.10 shows the comparison for the number of staff per million workers in the state. For California, two ratios are reported: one for all DLSE operations and one only for DLSE enforcement efforts. For Washington, two ratios are also reported: one that reflects the actual amount spent (or staff employed) and one that reflects the amount (or staff) budgeted. Note that for Washington the actual amount is greater than the budgeted amount, but the California Labor Agency indicated that for California the actual amount in recent years (while not provided to us for this study) is likely lower than the budgeted amount due to unexpectedly lower state revenue (Harris, 2003b).

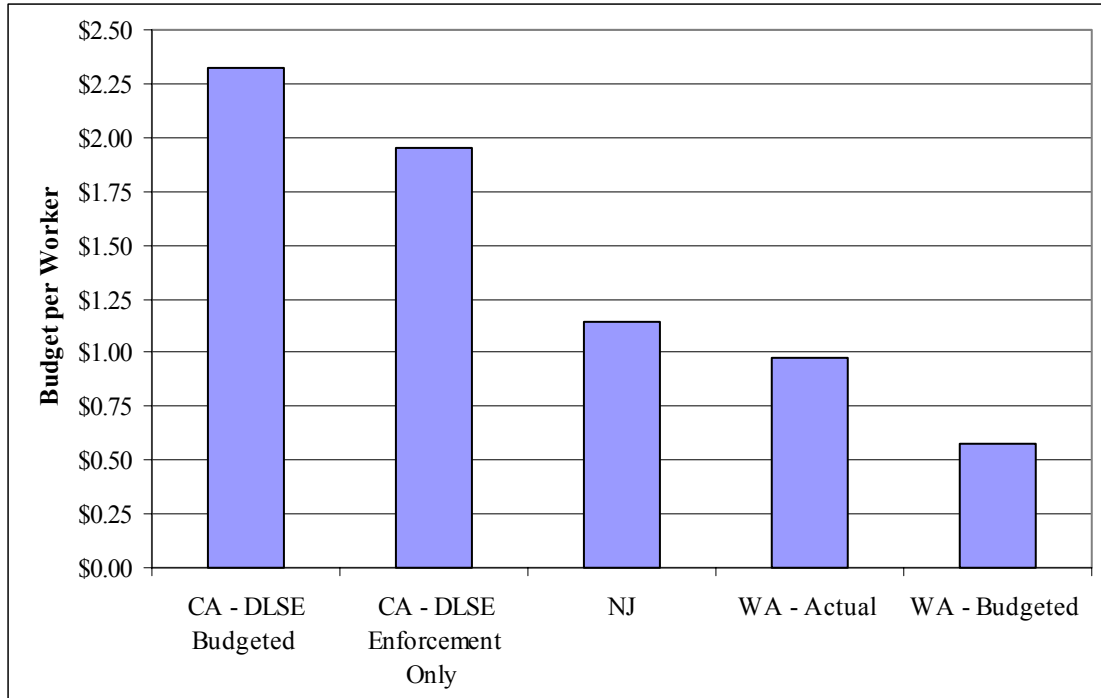
In 2002, California budgeted \$2.33 per worker in California, and had a ratio of almost 25 staff members per million workers. New Jersey budgeted a lower amount per worker (\$1.14), but had a similar staff-to-worker ratio, at 23. Washington budgeted \$0.58 per worker and 9 staff members per million workers, but actually spent \$0.98 per worker and had 16 staff members per worker dedicated to enforcement activities.

While this comparison seems to indicate that California spends a greater amount per worker than the two comparison states, it is not clear whether the numbers reported for each state represent the same types of activities. For example, we know that California's

⁶ We sought to include Illinois in our comparison, but the budget and staffing information were not made available to us for this report.

DLSE includes licensing and registration, wage claim adjudication, field enforcement, and a legal unit, but it is not clear whether the budget numbers from the comparison states represent these same programs. Another issue in our comparison is that the DLSE budget is almost entirely devoted to enforcement activities (approximately 90%); the remaining 10% is allocated to licensing, central office operations, and clerical duties (Harris 2003). Given the uncertainty of what the budget figures of other states cover, one should be cautious not to draw strong conclusions from these comparisons.

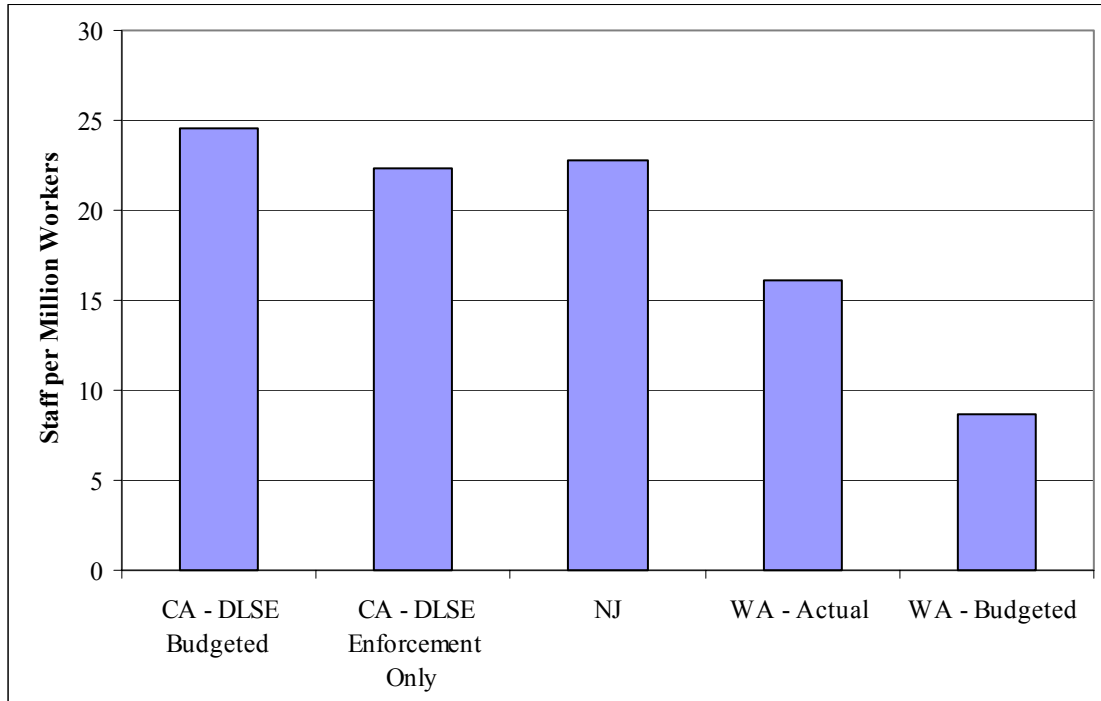
Figure 5.9: Enforcement Budget per Worker in California, Washington, and New Jersey (2002)



Source: California Division of Labor Standards Enforcement.

Notes: Number of workers in each state is based on all employees in unemployment insurance covered businesses from the U.S. Bureau of Labor Statistics.

Figure 5.10: Enforcement Staff per Worker in California, Washington, and New Jersey (2002)



Source: California Division of Labor Standards Enforcement

Notes: Number of workers in each state is based on all employees in unemployment insurance covered businesses from the U.S. Bureau of Labor Statistics.

Conclusion

While the DIR budget has decreased in real terms over the past 10 years, the DLSE budget has increased, and thus comprises a greater proportion of the overall DIR budget today than it did in 1994. Staffing at the DLSE has grown in absolute numbers over the past 10 years, and has generally kept pace with growth in the California workforce over this recent 10 year period. However, when compared to levels over the past 40 years, staffing levels have lagged behind the growth in the state’s workforce. Relative to New Jersey and Washington, California appears to have similar, if not more, resources allocated to wage and hour law enforcement.

Since about 90% of the DLSE budget comes from the General Fund, wage and hour enforcement activity is influenced by annual fluctuations in General Fund allocations. To help stabilize funding, the state could consider additional funding mechanisms, such as establishing a special fund—like the EDD Contingent Fund—where fines, fees, and penalties collected as a result of DLSE activities are held for future DLSE activities. The next two sections of this report examine the enforcement activities conducted by the DLSE wage claim adjudication process and the Bureau of Field Enforcement.

SECTION VI: WAGE CLAIM ADJUDICATION

Introduction

This section examines the Division of Labor Standards Enforcement (DLSE) worker claims/complaints filed in 2001 and 2002 in California. (For a discussion of the wage claim adjudication process and general activities of DLSE, refer to section IV of this report.) Because of incomplete data, limited ability to link data sets, and other types of errors, the results are subject to numerous biases. Nonetheless, the results provide insights into the types of workers making claims and the ways in which the DLSE data can be used to better examine wage claims. The key points stemming from our analysis of the DLSE wage claim data are:

- The number of wage complaints filed with the DLSE has fluctuated, and this fluctuation is affected by, but not fully due to, changes in the business cycle and in the Division's budget;
- Compared to other states, California processed more wage claims in 2002 relative to the size of its workforce;
- Few worker complaints are related to minimum wage or overtime violations;
- Rates of monetary recovery vary across DLSE regional offices, but some of this variation is likely due to differences in data reporting;
- The DIR wage claim adjudication program serves a more disadvantaged population relative to the overall population. Wage claims, however, do not appear to be overwhelmingly concentrated in particular industries or earnings classifications;
- A disproportionate number of these complaints come from smaller firms, firms with lower per-worker payroll, and less established firms. A disproportionately high number of claims came from supportive services, and a disproportionately low number of claims came from educational services; and
- There is a potential problem with firms making systematic wage and hour infractions affecting more than one worker and a potential benefit from identifying firms with multiple claims.

Part I. 2001/2002 DLSE Wage Claims

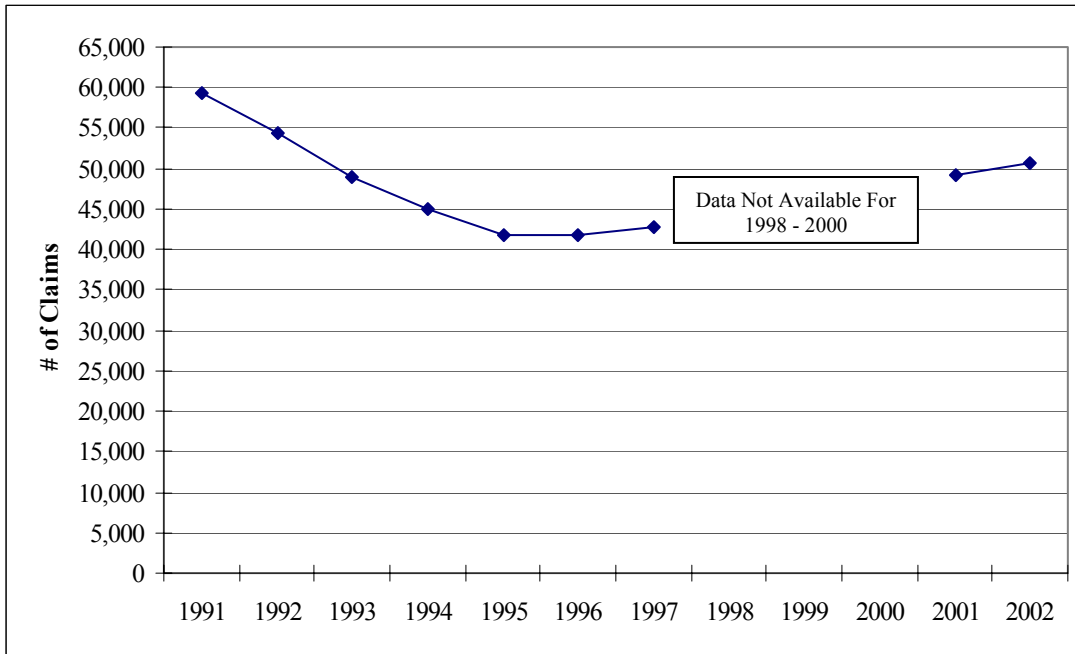
In 2001 and 2002 almost 100,000 wage complaints were filed with the DLSE. The most recent annual number is lower than the level in the early 1990s but higher than the number in the mid-1990s (See Figure 6.1). The fluctuation in the number of claims over time is affected by, but not fully due to, changes in the business cycle and in the Division's budget. (See Figure A.1 in the appendix for the trend in wage claims when normalized by the size of the workforce and the DLSE budget.) Of the complaints filed in 2001 and 2002, about 15% involved a ruling for the claimants, and the total amount recovered was about \$3 million.

Compared to other states, California processed more wage claims in 2002 relative to the size of its workforce. Figure 6.2 reports the number of wage claims processed in 2002 for every 1,000 workers in California, New Jersey, and Washington.⁷ The higher rate for

⁷ Again, we sought to include Illinois in the comparison, but wage claim data were not made available to us for this report.

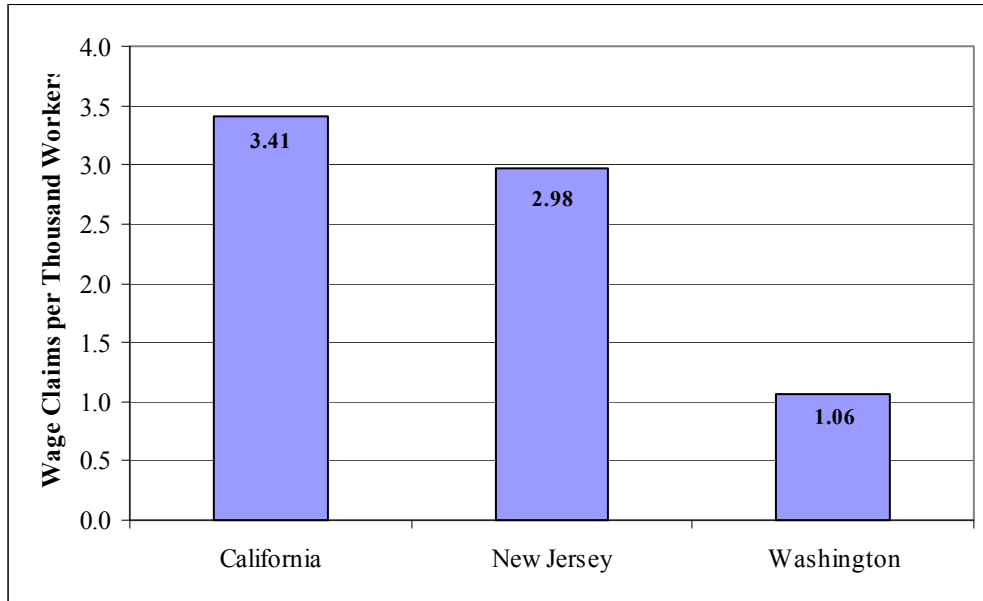
California can be at least partially attributed to a higher rate of labor law violations (see the discussion in Section III) and to the higher amount of money California allocates for enforcement (see the discussion in Section V). When the number of wage claims is normalized by the department’s budget/expenditures (Figure 6.3) and the department’s staff size (Figure 6.4), however, California does not appear to be more productive than the comparison states.

Figure 6.1: Annual Number of Wage Complaints Filed with the DLSE



Source: California Division of Labor Standards Enforcement

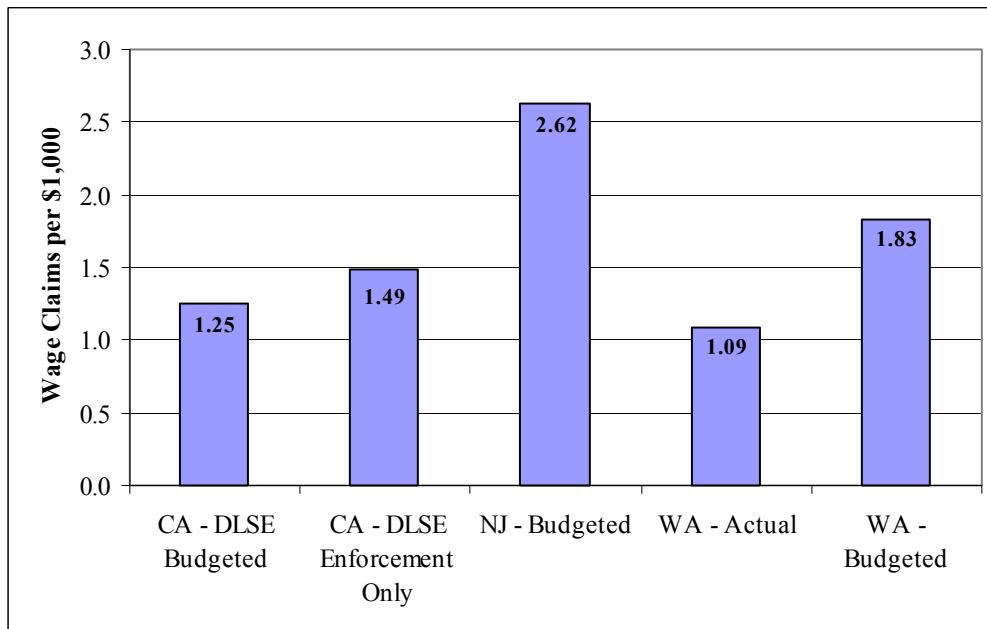
Figure 6.2: Wage Claims Normalized by Size of Workforce, California vs. Comparison States (2002)



Source: California Division of Labor Standards Enforcement.

Notes: Number of workers in each state is based on all employees in unemployment insurance covered businesses from the U.S. Bureau of Labor Statistics. Wage claims for New Jersey are for 2001 because the number of claims in 2002 was not available.

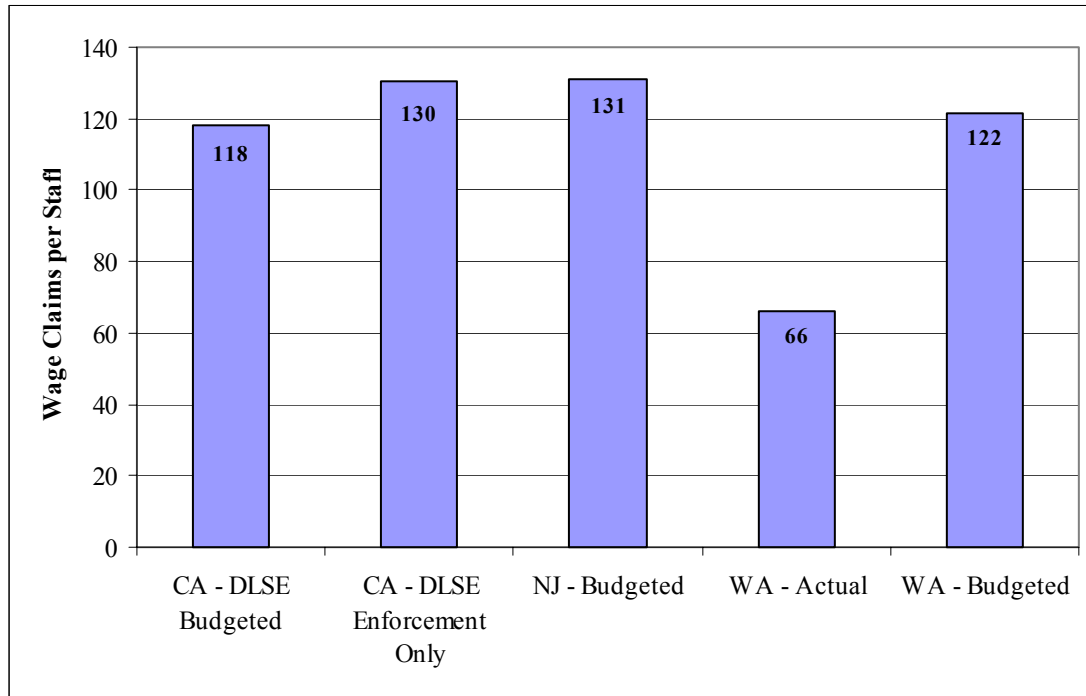
Figure 6.3: Wage Claims Normalized by Department Budget/Expenditures, California vs. Comparison States (2002)



Source: California Division of Labor Standards Enforcement.

Notes: Number of workers in each state is based on all employees in unemployment insurance covered businesses from the U.S. Bureau of Labor Statistics. Wage claims for New Jersey are for 2001 because the number of claims in 2002 was not available.

Figure 6.4: Wage Claims Normalized by Department Staff Size, California vs. Comparison States (2002)



Source: California Division of Labor Standards Enforcement.

Notes: Number of workers in each state is based on all employees in unemployment insurance covered businesses from the U.S. Bureau of Labor Statistics. Wage claims for New Jersey are for 2001 because the number of claims in 2002 was not available.

Our investigation of the DLSE wage claim database reveals relatively few worker complaints related to violations of minimum wage and hours regulation (e.g., overtime pay). Table 6.1 presents the basic characteristics of the wage claims made in 2001 and 2002 based on information from the DLSE database. Care should be taken when drawing conclusions or generalizations because some of the data had to be imprecisely extracted. (For further discussion of data analysis issues encountered, please see section VIII of this report.)

Unfortunately, DLSE does not systematically collect the specific type of complaint made. To get a sense of the magnitude of different types of complaints, we based our analysis on the occurrence of specific words in the DLSE data “issue” field. The single most common complaint is for “unpaid” forms of compensation (mostly wages, but also some vacation time, bonuses, etc.). The “other” category includes disputes not specifically identified as “unpaid,” “minimum wage,” or “overtime,” including claims over wages, commissions, wait-time violations, and rest/meal period violations. Only a small proportion of the claims contained information on hourly wages, and a small percent of those indicate a rate of \$6.75 (the minimum wage in California) or lower. Our computer-based attempt to identify the type of complaint based on word occurrences in the “issue” field most likely underestimates the percent of complaints over unpaid wages. A visual inspection of 281 randomly selected cases indicates that about half of the claims

involve unpaid wages, while overtime, vacation, and wait-time disputes each account for about 12% of the claims.

Of the over 99,000 claims made in 2001 and 2002, less than 15% had information indicating a “recovery” ruling. Less than half of these rulings had information on the recovery amount. Some of these results may be due to incomplete information. Table 6.2 reports the percent of claims with a “recovery” ruling for each DLSE regional office and the average recovery amount for all claims in each region. The findings reveal considerable variations in both statistics. For example, one in five claims initiated in the Van Nuys office resulted in a recovery ruling, while less than one in 10 claims initiated in the Santa Barbara office resulted in a recovery ruling. It is not clear, however, whether the variations across offices are due to real differences in effectiveness or simply differences in data collection.

Table 6.1: Profile of Wage Claims by Ruling (2001 and 2002 Claims)

	All Claims	Ruling		
		Recover	Nothing	Unknown
Number of Claims	99,896	14,582	2,776	82,538
Year Filed				
2001	49.3%	54.6%	53.2%	48.2%
2002	50.7%	45.4%	46.8%	51.8%
Type of Claim				
Minimum Wage	0.5%	0.5%	0.9%	0.5%
Overtime	8.5%	9.2%	11.5%	8.3%
Unpaid Wages	23.6%	28.0%	28.5%	22.7%
Other	55.2%	60.6%	55.1%	54.3%
Unknown	12.2%	1.7%	4.0%	14.3%
Issue Identifies Hourly Rate	13,272	2,125	348	10,799
# Less Than \$6.75	13.5%	12.2%	13.8%	13.8%
Mean Hourly Rate	\$13.52	\$14.15	\$17.83	\$13.26
Median Hourly Rate	\$10.00	\$10.35	\$12.00	\$10.00
Recovery Amount Identified	3,968	3,714	25	229
Mean Amount	\$1,089.41	\$1,106.07	\$1,515.10	\$772.65
Median Amount	\$500.00	\$512.00	\$363.63	\$388.20
Industry*				
Order 1 (Manufacturing)	5.8%	4.6%	6.8%	5.9%
Order 3 (Ag. - Canning)	2.4%	2.0%	2.3%	2.5%
Order 4 (Professional Services)	8.9%	10.0%	8.7%	8.8%
Order 5 (Travel and Personal Service)	2.2%	1.7%	1.6%	2.3%
Order 7 (Wholesale and Retail Trade)	26.0%	29.8%	26.1%	25.3%
Order 8 (Ag. - Packing)	15.8%	14.4%	14.4%	16.1%
Order 9 (Transportation)	13.6%	13.5%	14.3%	13.6%
Order 14 (Ag. - On Farm Lands)	7.5%	7.6%	8.5%	7.5%
Order 16 (Construction & Mining)	10.9%	9.5%	9.1%	11.2%
Other	6.9%	6.9%	8.2%	6.8%

* Industrial orders based on DLSE-defined classifications. See Table A.3 in the appendix for a more detailed definition of each order.

Source: Wage Claim files, DLSE, DIR.

Table 6.2: Profile of Wage Claim Recoveries by Regional Office (2001 and 2002)

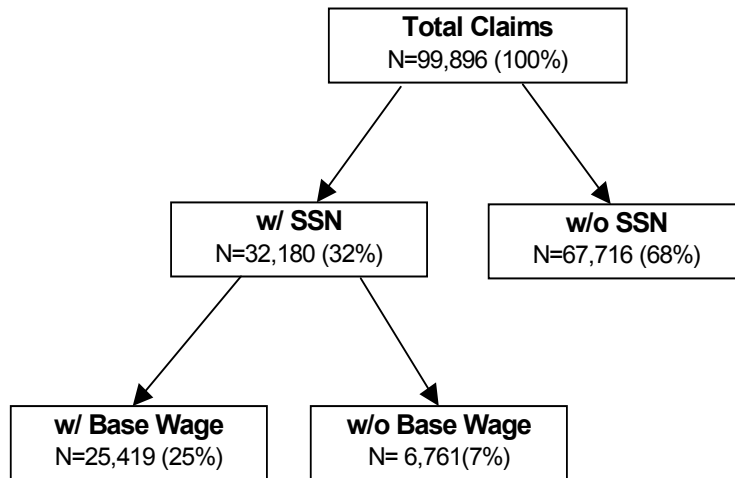
DLSE Regional Office	All Claims	Recover Rate	Rate w/ Amount	Mean Recovery Per Claim
Bakersfield	4,474	13.9%	5.7%	\$21.68
Fresno	5,272	13.3%	3.0%	\$9.81
Long Beach	6,680	16.4%	2.1%	\$6.31
Los Angeles	10,960	13.5%	1.9%	\$5.68
Oakland	6,483	14.7%	2.1%	\$6.63
Sacramento	6,724	12.2%	4.4%	\$17.08
San Bernadino	7,482	17.9%	15.6%	\$445.84
San Diego	8,203	12.2%	5.1%	\$21.20
San Francisco	4,382	17.8%	5.8%	\$28.81
San Jose/Salina	9,290	14.3%	1.1%	\$0.50
Santa Barbara	4,922	7.2%	1.3%	\$3.33
Stockton	2,538	12.5%	0.0%	\$0.00
Redding/Eureka	3,025	14.1%	1.4%	\$0.77
Van Nuys	7,102	20.0%	8.4%	\$34.56
Santa Ana	9,329	16.6%	1.0%	\$0.47
Santa Rosa	3,027	13.1%	1.5%	\$0.85
Unknown	3	0.0%	0.0%	\$0.00
Total	99,896	14.6%	4.0%	\$43.27

Source: Wage Claim files, DLSE, DIR.

Part II. Characteristics of Workers with Wage Claims

By examining the characteristics of workers making wage claims, one can gain a better understanding of the population using the services provided by DLSE. This analysis can also be used to identify ways in which DLSE efforts can be targeted to provide more effective service. We estimated the characteristics of workers making wage claims by matching the DLSE claims file with Base Wage data from the California Employment Development Department (EDD) (for a description of the Base Wage data see the appendix). Figure 6.5 provides information on the match rate. Of the claims with social security numbers (SSNs), over three-quarters were in the Base Wage files.

Figure 6.5: Match between DLSE Claims Data and EDD Base Wage Data



The cases without a match may be due to a number of factors. For example, the firm involved in an alleged violation may not have completed the hiring of the worker, and that worker had no other employment. Another possibility is that the job was a part of the informal economy, and the workers had no other employment in the formal economy, or the job is not covered by the unemployment insurance system. Finally, the social security number could have been recorded incorrectly or is invalid. Section VIII of this report discusses the issues related to matching DIR data with other data systems in further detail.

Table 6.3 presents the results for the 25,000 claimants in the EDD Base Wage files. Relative to all workers, those filing a compliant are more likely to have less stable employment (as indicated by the percent with two or more employers), earn less, and are more likely to be employed in retailing and supportive services. Some of these differences also hold when compared to low-earnings workers (those who worked all four quarters between 2001 Q3 and 2002 Q2 and earned less than \$12,500 during that period). This suggests that, on average, the DIR wage claim adjudication program serves a more disadvantaged population relative to the overall population. Wage claims, however, do not appear to be overwhelmingly concentrated in particular industries or earnings classifications.

We also developed additional characteristics of the claimants by designating an ethnicity based on surname and by examining the distribution by geographic location. The results based on surname indicate that Hispanics and Asians are under-represented among claimants. Because surname matches have potential biases, this finding should be treated with caution; nonetheless, the differences are large enough to suggest that under-representation is a real problem.

The geographic analysis is based on zip-code areas. U.S. Census 2000 data were used to assign each area to one of three categories by the percent of the workforce that is comprised of low-wage workers: high-risk areas with at least 20% low-wage workers, moderate-risk areas with 10% to 20% low-wage workers, and low-risk areas with less than 10% low-wage workers. A low-wage worker is defined as a person working full-time for the full year but earning less than \$12,500 per year. The results indicate that relative to the distribution of all workers, claimants are more likely to live in a high-risk area. On the other hand, relative to low-wage workers, claimants are less likely to come from such areas.

Table 6.3: Profile of Wage Claimants based on EDD Base Wage Data

	Wage Claimants	All Workers	Low Wage Workers
Number of Workers	25,419	884,244	85,934
Number of Employers			
One	40.0%	68.3%	51.3%
Two	30.4%	20.7%	24.6%
Three	15.3%	6.7%	12.6%
More than Three	14.3%	4.4%	11.5%
Total Annual Earnings			
less than \$10,000	30.4%	31.3%	69.9%
\$10,000 to \$12,500	6.5%	4.6%	30.1%
\$12,500 to \$15,000	6.0%	4.5%	0.0%
\$15,000 to \$20,000	11.1%	8.3%	0.0%
\$20,000 to \$30,000	17.2%	13.1%	0.0%
\$30,000 to \$50,000	17.0%	17.5%	0.0%
\$50,000 to \$100,000	9.3%	15.8%	0.0%
at least \$100,000	2.5%	5.0%	0.0%
Mean	\$26,490	\$34,246	\$7,795
Median	\$18,059	\$20,864	\$8,146
Employed All Four Quarters	61.7%	67.4%	100%
Low Wage (lt \$12,500)	16.7%	14.4%	100%
Industry of Primary Employment			
Agr/Mining/Utilities	2.3%	4.4%	4.2%
Construction	8.2%	5.8%	2.7%
Manufacturing	8.8%	11.4%	5.6%
Wholesale Trade	4.7%	4.2%	2.1%
Retail Trade	10.8%	8.8%	13.5%
Transportation	5.4%	3.9%	3.7%
Information	3.9%	3.5%	2.5%
FIRE	5.3%	5.4%	4.0%
Professional Services	7.7%	6.8%	3.8%
Support Services	12.8%	7.0%	7.5%
Education Services	2.0%	7.2%	8.1%
Health Care Services	7.5%	7.5%	6.4%
Accommodations & Food Services	8.6%	7.3%	16.9%
Other Services	7.3%	8.0%	12.9%
Other Industries	4.7%	8.7%	6.4%

Source: Wage Claim files, DLSE, DIR; Base Wage, Employment Development Department.

Notes: Number of wage claimants represents the number of wage claimants in 2001/2002 we were able to match with the EDD Base Wage files in 2001 Q3 through 2002 Q2. The number of all workers represents the number of workers in a five-percent random sample of all workers in the EDD Base Wage files. The number of low-wage workers represents the number of workers in the five-percent sample who worked each quarter from 2001 Q3 to 2002 Q4 and earned less than \$12,500. Industry classifications based on the NAICS.

Table 6.4: Profile of Wage Claimants based on Census Data (2000)

	Wage Claimants	All Workers	Low Wage Workers
Race/Ethnicity			
Asian	4.4%	12.3%	11.6%
Hispanic	32.5%	29.8%	39.0%
Other	63.1%	57.9%	49.4%
Reside in "At Risk" Zip Code			
Low Risk Zip Code	50.4%	59.0%	34.5%
Moderate Risk Zip Code	37.1%	31.4%	41.6%
High Risk Zip Code	12.5%	9.6%	23.9%

Source: Wage Claim files, DLSE, DIR; Zip Code Tabulation Files, Census 2000, Bureau of the Census.

Notes: Low-wage workers are defined as full-time workers that earned less than \$12,500 in 1999. "At Risk" zip codes are defined by the percentage of low-wage workers residing in the zip code. The low risk zip code category represents zip codes where less than 10% of the workers were low-wage workers; the moderate risk category represents zip codes where 10% to 20% of the workers were low-wage workers; the high risk category represents zip codes where more than 20% of the workers were low-wage workers. The race/ethnicity of wage claimants is based on each claimant's surname, while the race/ethnicity of all workers and low-wage workers is based on self-reported census data.

Part III. Relative Prevalence of Claims by Economic Sectors

One can also examine the relative frequency of worker claims by economic sector, which is defined by firm size (average number of employees), average earnings within firms, firm stability, and industry. This is done by comparing the complaints against all employment reported in the ES-202 files from EDD (see the appendix for more detail). The characteristics of the firms employing the claimants come from an effort to match the records in the DLSE files with ES-202 data.

As reported above, only a quarter of the claims had a SSN that could be matched with the Base Wage files. Those matches yield a list of Employer Account Numbers (EANs) that was matched with the ES-202 data. The results of that effort are reported in Figure 6.6. About two-fifth of the claims had only one employer. The rest had two or more matches with ES-202 data. To get a better understanding of the claimants with multiple employers, we manually reviewed a sample of 1,000 claimants. In part, this is to identify any potential problems with matching the firms identified in complaints with the employers in ES-202 data. The exercise yielded a low proportion of firms (36%) in the complaints that are captured through the match with Base Wage (to initially identify the EANs) and ES-202 data. This means that many of the matches are with firms not involved in a complaint. Given this limitation, our analysis of wage claims by economic sector provides a first approximation of the sectors generating complaints.

The statistics in Table 6.5 and Table 6.6 are based on the claimants with only a single employer.⁸ The results indicate that a disproportionate number of these complaints come from smaller firms, firms with lower per-worker payroll, and less-established firms. A

⁸ We hoped to include information on those with multiple employers in the analysis but limitations in time and resources—in conjunction with the difficulties in matching the DIR data with the EDD data—precluded us from doing so.

disproportionately high number of claims came from supportive services, and a disproportionately low number of claims came from educational services.

Figure 6.6: Secondary Match between DLSE Claims Data and EDD Firm Data

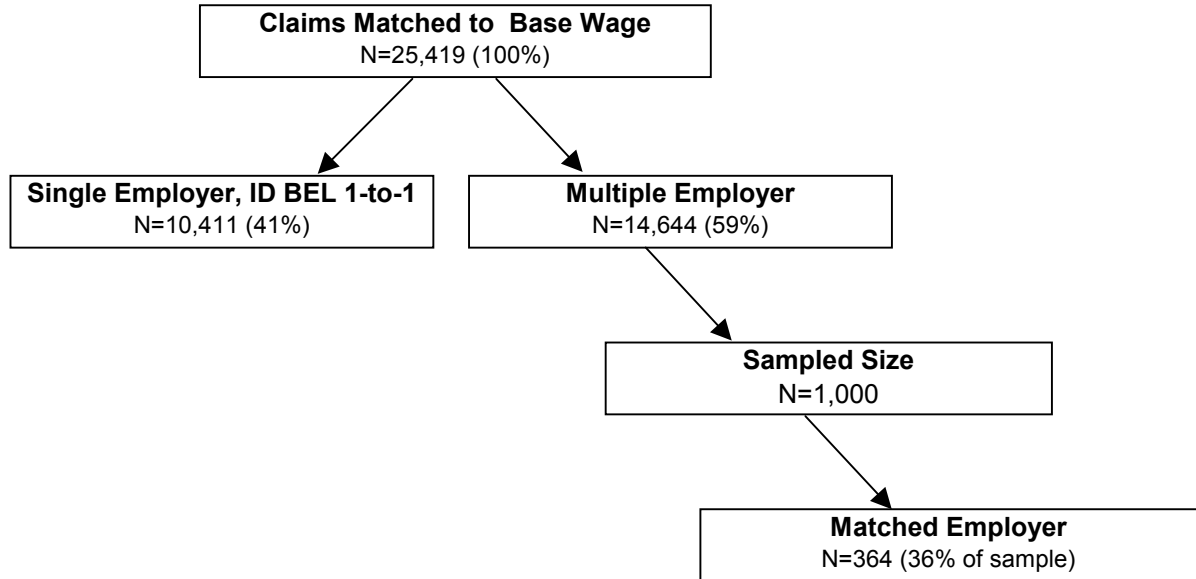


Table 6.5: Prevalence of Claims/Complaints by Firm Characteristics

Firm Characteristics	Wage Claim Firms	All Workers by Firms Type	Claims Per 10K Workers
Total	10,227	15,643,020	6.54
Average Number of Employees			
less than 5	973	1,192,512	8.16
5 to 10	992	846,689	11.72
10 to 20	1,247	1,090,663	11.43
20 to 50	1,611	1,682,658	9.57
50 to 100	1,072	1,369,867	7.83
at least 100	4,332	9,460,632	4.58
Mean	1,991.2	5,590.0	
Median	58.5	234.8	
Average Quarterly Wage			
less than \$2,500	603	965,825	6.24
\$2,500 to \$5,000	2,619	3,017,868	8.68
\$5,000 to \$7,500	2,307	2,803,711	8.23
\$7,500 to \$10,000	1,683	2,773,188	6.07
\$10,000 to \$15,000	1,666	3,587,050	4.64
at least \$15,000	1,349	2,495,379	5.41
Mean	\$8,886	\$10,215	
Median	\$6,998	\$8,462	
Year First Established			
prior to 1995	5,893	9,907,138	5.95
1995 to 2000	3,289	4,367,368	7.53
after 2000	1,045	1,368,515	7.64
Operated in 2003Q1	8,621	14,421,815	5.98

Source: Wage Claim files, DLSE, DIR; ES-202, Employment Development Department.

Notes: Tabulations based on firms that employed at least one worker during the 2001 Q3 to 2002 Q2 period. The number of wage claim firms is based on the number of firms in the wage claim files that we were able to identify in the ES-202 data.

Table 6.6: Prevalence of Claims/Complaints by Industry

Industry	Wage Claim Firms	All Workers by Firms Type	Claims Per 10K Workers
Agr/Mining/Utilities	223	524,262	4.25
Construction	745	808,563	9.21
Manufacturing	991	1,798,033	5.51
Wholesale Trade	567	649,136	8.73
Retail Trade	1,117	1,296,114	8.62
Transportation	585	691,008	8.47
Information	431	508,751	8.47
FIRE	566	845,784	6.69
Professional Services	814	1,018,704	7.99
Support Services	1,197	981,129	12.20
Education Services	217	1,341,588	1.62
Health Care Services	738	1,339,938	5.51
Accommodations & Food Services	927	1,156,719	8.01
Other Services	768	1,289,025	5.96
Other Industries	341	1,394,267	2.45
Total	10,227	15,643,020	6.54

Source: Wage Claim files, DLSE, DIR; ES-202, Employment Development Department.

Notes: Tabulations based on firms that employed at least one worker during the 2001 Q3 to 2002 Q2 period. The number of wage claim firms is based on the number of firms in the wage claim files that we were able to identify in the ES-202 data. Industry classifications based on NAICS code.

Part IV. Potential Connection between DLSE Wage Claims and the BOFE

According to information from the DIR, a wage complaint is passed to the BOFE if it involves more than one worker. For example, when a worker complains that the firm does not offer breaks, it is assumed that the practice affects all workers. Another way of determining if a multi-worker problem exists is to determine if a firm has two or more complaints made against them using the DLSE wage claim database. However, a feasibility study of the DIR's information system conducted in 2001 by Gartner Consulting found that "the capability to track repeat offenses is severely challenged by the current situation" (Gartner Consulting, 2001, p. 22). Our experience with the DLSE wage claim data reveals the potential benefit of identifying firms with multiple claims, but also reiterates the challenges embedded in the current data system.

Since a standardized, unique employer identification number is not systematically recorded in the DLSE wage claim data, simple data matching is not possible. We attempted to estimate the prevalence of firms with multiple claims by matching wage complaints based on the name of firms. This process is imperfect because different firms can possess nearly identical firm names; also, differences in data entry can make the same firm appear to be different across separate entries (for example, "15th St. Café" vs. "The Fifteenth Street Cafe"). The firm-name match was initially done by computer, based on the first 10 characters in the firm's name. Because the names are not entered consistently, using more characters would falsely exclude real matches. However, using fewer characters generates some false matches. To improve the match rate, we only

consider that a match exists when it involves two or more complaints within a single regional office.

Because of the ambiguity in the match, a second step was done by manually reviewing a sample of computer-based matches. The results are listed in Table 6.7, which indicates a surprising proportion of firms with two or more complaints, and a sizeable proportion of claims against firms with two or more complaints. The results are not conclusive given the limitations of the data; nonetheless, the analysis indicates a potentially serious problem with firms making systematic wage and hours infractions affecting more than one worker.

Table 6.7: DLSE Wage Claims per Firm (2001/2002)

Number of Claims per Firm	% of Firms	% of Claims
One	83.2%	58.3%
Two	10.0%	14.0%
Three	3.2%	6.7%
More than Three	3.6%	20.9%

Source: Wage Claim files, DLSE, DIR.

It is not known how many of the complaints are forwarded to BOFE, and there is no systematically recorded information in the DIR data sets that allows us to link wage complaints with BOFE inspections. We attempted to gain insights into this potential link by comparing the firms associated with a sample of wage complaints against the firms in the BOFE data files. Because of a lack of a common and standardized employer identification number, the match was based on comparing firm names only. These matches are problematic because of the same data entry and naming problems mentioned above. The initial matches were based on a computer-based comparison of the initial 5 to 10 characters of the firm names. Because of the potential for false matches, the initial matches were then manually reviewed. Even when the firm names matched exactly, some involved firms that are a part of a chain or a franchise. Those types of matches are identified separately (One-to-Many match). Table 6.8 presents the results, which indicates that only 2% of the claims are against firms that are inspected by the BOFE. Again, the findings should not be seen as conclusive given the limitations of the data; nonetheless, the estimate percentage is low relative to the findings in Table 6.7, where over 15% of the firms had more than one claim made against them.

Table 6.8: Number of Firms with a Wage Claim Identified in the BOFE Data Files

Type	Chain	Non-chain	Grand Total
One To Many	24	76	100
One To One	22	95	117
Total	46	168	217
N=			10,169

Source: Wage Claim files, DLSE, DIR; Bureau of Field Enforcement extract file, DLSE, DIR.

Conclusion

Our examination of the DLSE wage claim data indicates that only a small percentage of wage claims are related to minimum wage or overtime violations. Despite numerous problems with incomplete data and non-standardized identification fields, analysis of the wage claim data provides useful information on the types of workers disproportionately served by the DLSE. Furthermore, attempts to match the wage claim data with the BOFE data on inspections suggests that there is a potentially under-identified problem with multi-claim firms not being identified by the wage claim process. The next section of the report focuses on businesses inspected by the BOFE.

SECTION VII: BUREAU OF FIELD ENFORCEMENT INSPECTIONS

Introduction

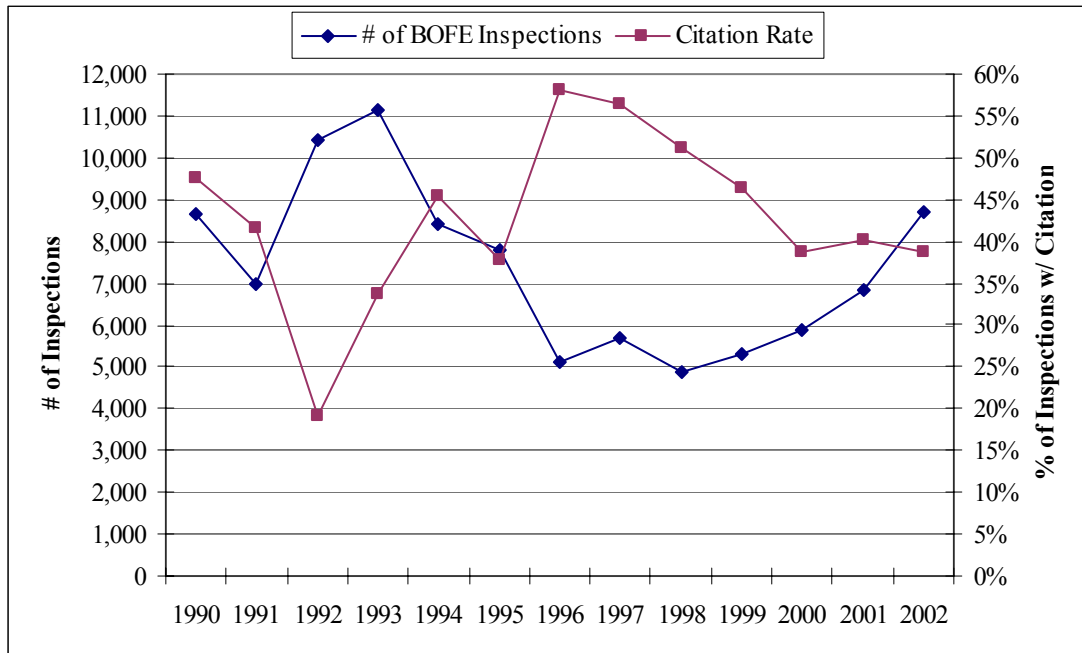
This section examines the Bureau of Field Enforcement (BOFE) actions initiated in 2001, with a focus on the garment industry and farm labor contractors (FLC) in California. The garment and FLC industries are two sectors of the economy that have been specifically identified as targets of labor law enforcement activities because of historical violations of wage and hours laws. While other sectors of the economy are also specifically targeted for enforcement, we selected these two industries for our assessment of the BOFE data because all the businesses (contractors) in these two sectors must register with (or be licensed by) the California Department of Industrial Relations (DIR). The registration data serve as a universe of all firms, thus we have data on both those subjected to enforcement/inspections and those not. This enabled us to determine if the firms subjected to enforcement/inspections have characteristics that differentiate them from other firms in the industry. The key points stemming from our analysis of the BOFE data are:

- The number of inspections fluctuated over time, but the number of citations issued remained relatively stable. In recent years, the number of inspections appears to be tied to the size of the DLSE budget;
- Inspected garment industry firms are more likely to be cited for a violation and FLC firms are less likely to be cited, compared to firms in other industries;
- Minimum wage and overtime citations account for a relatively small percentage of all citations, but are more prevalent among garment industry businesses than other businesses;
- Characteristics of garment and FLC industry firms suggest that they are more likely to experience problems with wage and hours laws, while characteristics of workers in these industry suggest that they are less likely to use the DIR's services;
- Within the garment industry, the BOFE inspects contractors and larger firms at a higher rate than manufacturers and smaller firms, but contractors do not appear to be any more likely to have a citation and larger firms are less likely than small firms to have a citation; and
- Within the FLC industry, the BOFE inspects firms in the Central Valley and newly established firms at a lower rate than firms located elsewhere and more established firms.

Part I. Overview of Bureau of Field Enforcement Cases

In 2001 and 2002 the BOFE conducted almost 16,000 inspections. The most recent annual number of inspections is higher than the level in the mid-1990s but lower than the peak rates in the early-1990s (See Figure 7.1). Conversely, the percent of inspections with a citation (the citation rate) peaked in the mid-1990s and has declined as the overall number of inspections has increased. As a result, the overall number of citations resulting from inspections remained relatively stable over this period despite rather dramatic changes in the number of inspections. The fluctuation in the number of inspections over time is affected by, but not fully due to, changes in the business cycle and in the DLSE’s budget. (See Figure A.2 in the appendix for the trend in wage claims when normalized by the size of the workforce and the DLSE budget.) At least in the more recent years, however, the number of inspections appears to be tied to the size of the DLSE budget.

Figure 7.1: Annual Number of BOFE Inspections and Citation Rate (1990-2002)



Source: California Division of Labor Standards Enforcement

Approximately 8,000 firms in California were associated with an investigation initiated by the BOFE in 2001. Of those firms, 956 were in the garment industry and 596 were in the FLC industry. Table 7.1 compares the outcomes of the BOFE cases on garment and FLC industry firms to the outcomes for firms in other industries targeted by the BOFE.

Most firms only had one BOFE case initiated in 2001. However, investigated firms in the garment and FLC industries were more likely to have multiple BOFE cases initiated in 2001 than other investigated firms. While about 85% of garment industry firms only had one BOFE case, over 90% of firms in the other industries only had one case. Over half of all the firms inspected were not cited for a violation, but garment industry firms—at 39%—were more likely to be cited than firms in other industries; FLC industry firms—at 6%—were much less likely to be cited than firms in other industries.

Of garment firms cited, almost three-quarters of the firms were cited for garment industry violation (i.e., they were not registered with DIR or violated record-keeping requirements) and about one-quarter were cited for a cash payment violation (i.e., no record of payroll deductions or paying workers “under the table”). Relative to other firms with a citation, garment industry firms were more likely to be cited for minimum wage and overtime violations. It should be noted, however, that only a small percentage of all the violations involved these two types. Of FLC firms cited, about half of the firms were cited for a child labor violation and about 44% were cited for a worker’s compensation insurance violation. In industries other than garment and FLC, the majority of citations were for violations of Workers’ Compensation Insurance coverage requirements.

One should note that data coding/entry appears to be a problem in the BOFE data. For example, the data indicate that 4% of agricultural growers with a citation were cited for a garment industry violation and 0.5% of garment industry firms were cited for an unlicensed FLC violation. Furthermore, the data indicate that 4% of garment industry firms were cited for being an unlicensed contractor but this citation category should only be for construction companies. In these instances, either the firm’s industry classification was miscoded or the type of citation was miscoded.

Most citations result in a fine but cited FLC industry firms are fined at a lower rate (about 60%) than other cited firms (around 90%). The amount of the fine varies across firms and industries, with garment and FLC industry firms fined less than other firms, on average. Garment industry firms were fined \$6,448 in 2001, on average, while FLC industry firms were fined \$4,500. Of firms with a fine, about three-quarters of garment firms paid at least some portion of the fine in 2001—a rate higher than in any other industry—while only about half of FLC firms paid at least some portion—a rate lower than in any other industry. About 55% of the garment industry firms with a fine paid the entire fine amount in 2001 and about 44% of the FLC firms paid the entire fine amount.

Table 7.1: Description of BOFE Cases for Firms with a Case Initiated in 2001, by Industry

	Garment	Ag. FLC	Ag. Growers	Restaurant	Construction	Other
Number of Firms	956	596	226	1,086	730	4,444
BOFE Cases per Firm						
One	84.7%	93.6%	96.9%	97.2%	97.8%	97.4%
Two	10.3%	5.9%	2.7%	2.4%	1.9%	2.1%
Three or more	4.9%	0.5%	0.4%	0.5%	0.3%	0.5%
With Citation	39.3%	6.0%	10.2%	37.1%	13.0%	24.3%
Citation Type						
Cash Pay	26.1%	5.6%	13.0%	16.6%	20.0%	16.8%
Child Labor	1.6%	52.8%	13.0%	23.6%	22.1%	10.9%
Garment Industry	74.5%	0.0%	4.4%	0.0%	0.0%	3.6%
Minimum Wage	5.6%	0.0%	0.0%	3.5%	2.1%	1.9%
Unlicensed Contractor	4.0%	0.0%	0.0%	0.0%	19.0%	1.0%
Unlicensed FLC	0.5%	0.0%	0.0%	0.0%	0.0%	0.2%
Worker's Comp. Insurance	17.0%	44.4%	78.3%	73.0%	57.9%	76.9%
Overtime	5.6%	0.0%	0.0%	1.2%	1.1%	2.4%
With Fine (w/Citation)	91.2%	61.1%	78.3%	92.3%	90.5%	94.9%
Fine Amount (w/Fine)						
less than \$1,000	39.1%	72.2%	43.5%	26.3%	31.6%	15.1%
\$1,000 to \$2,500	18.6%	5.6%	0.0%	24.3%	20.0%	33.6%
\$2,500 to \$5,000	17.3%	5.6%	13.0%	18.9%	19.0%	19.4%
at least \$5,000	25.0%	16.7%	43.5%	30.5%	29.5%	31.9%
Mean	\$6,448	\$4,511	\$8,539	\$10,568	\$8,366	\$10,409
Median	\$2,000	\$1,000	\$6,000	\$3,000	\$2,900	\$3,000
With Payment (w/Fine)	75.3%	51.9%	63.2%	72.6%	57.1%	60.0%
Payment Amount (w/Fine)						
zero	24.7%	48.2%	36.8%	27.4%	42.9%	40.1%
\$1 to \$1,000	40.3%	37.0%	31.6%	23.4%	20.4%	16.5%
\$1,000 to \$2,000	14.6%	3.7%	5.3%	12.9%	17.4%	15.0%
at least \$2,000	20.4%	11.1%	26.3%	36.3%	19.4%	28.5%
Mean	\$1,182	\$962	\$2,101	\$2,286	\$2,069	\$2,185
Median	\$500	\$50	\$500	\$750	\$500	\$500
Payment as % of Fine (w/Fine)						
zero	24.7%	48.2%	36.8%	27.4%	42.9%	40.1%
1% to 25%	9.8%	3.7%	5.3%	5.4%	6.1%	5.5%
25% to 50%	4.0%	3.7%	10.5%	2.6%	4.1%	3.4%
50% to 99%	5.5%	0.0%	5.3%	5.6%	4.1%	4.9%
100%	55.9%	44.4%	42.1%	59.0%	42.9%	46.1%
Mean	63.3%	47.3%	49.6%	65.1%	47.9%	63.0%
Median	100%	57.1%	33.7%	100%	33.2%	50.8%

Source: 2001 Bureau of Field Enforcement extract file, Department of Industrial Relations.

Notes: Industry classifications based on "type of industry" field in the BOFE data.

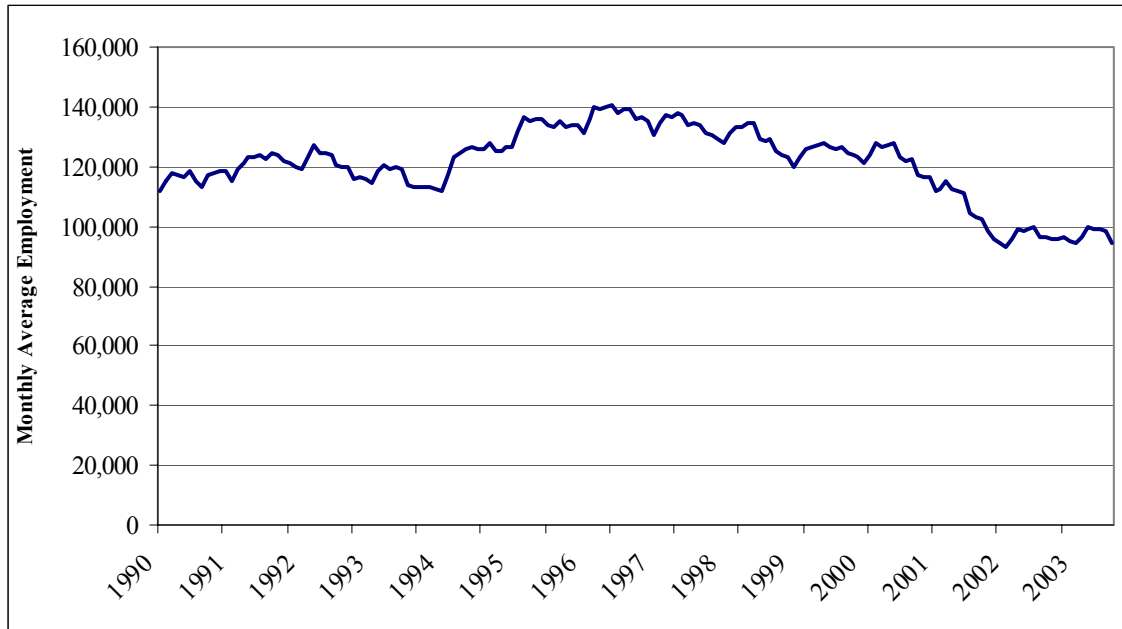
Part II. Overview of the Garment and Farm Labor Contractor Industries

Since the garment and FLC industries are two sectors of the economy that have been singled out for special labor law enforcement attention by specific legislation, it is important to gain better insight into the characteristics of these industries. According to Employment Development Department (EDD) published statistics, the California garment industry in 2001 employed approximately 106,000 workers in an average month—accounting for almost 1% of all California workers—and the FLC industry employed approximately 225,000 workers—accounting for almost half of all California agricultural services workers.⁹ There were about 5,500 firms in the garment industry, accounting for about 0.5% of all firms. Within manufacturing, the garment industry accounted for almost 6% of workers and roughly 10% of firms. There were about 1,100 firms in the FLC industry, accounting for about 0.1% of all California firms and roughly 10% of all firms in the California agricultural industry.

Figure 7.2 tracks the trends in garment industry employment from 1990 to 2003. Employment grew moderately between 1994 until mid-1996, and since then experienced a decline. The drop was particularly noticeable in 2001. Similar monthly employment statistics were not readily available for the FLC industry, but annual average employment for 1991, 1996, and 2001 indicated that employment in the FLC industry grew moderately during this period (Figure 7.3).

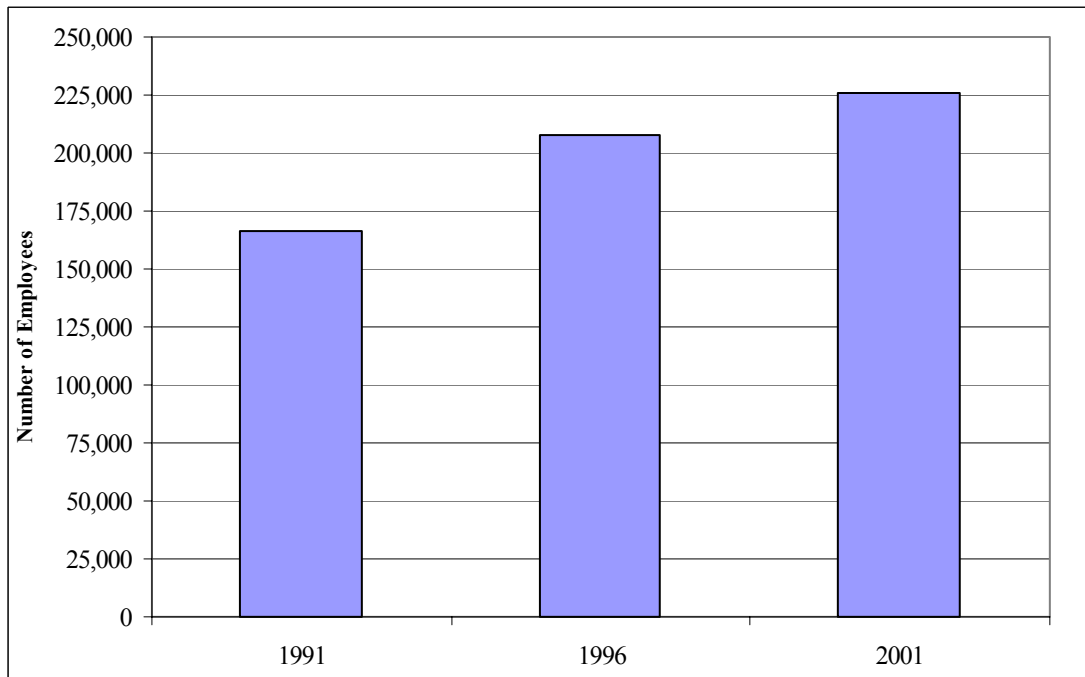
⁹ The garment industry is defined as firms (and their employees) in the apparel manufacturing industry, which is identified as all NAICS industry codes beginning with 315. The farm labor contractor (FLC) industry is defined as firms (and their employees) in the farm labor contractors and crew leaders industry, which is identified as NAICS industry code 115115.

Figure 7.2: Monthly Average Employment in the California Garment Industry, Jan. 1990 to July 2003



Source: Published statistics from the Labor Market Information Division, Employment Development Department.

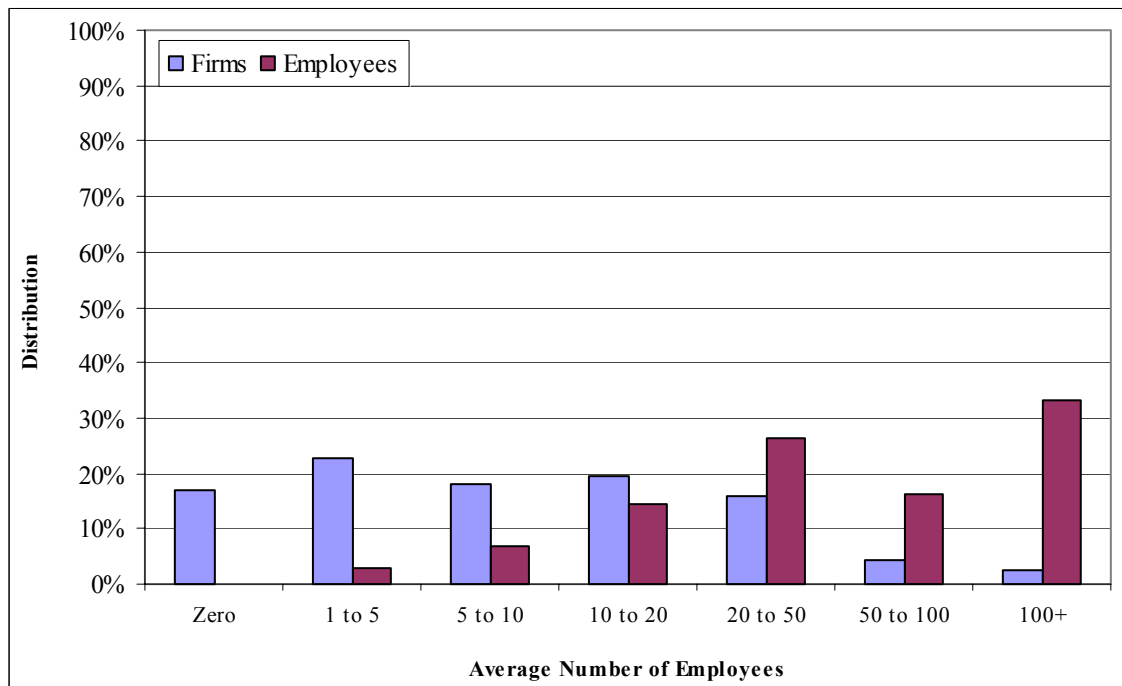
Figure 7.3: Number of Workers in California Farm Labor Contractor Industry, 1991, 1996, and 2001



Source: Khan, 2003.

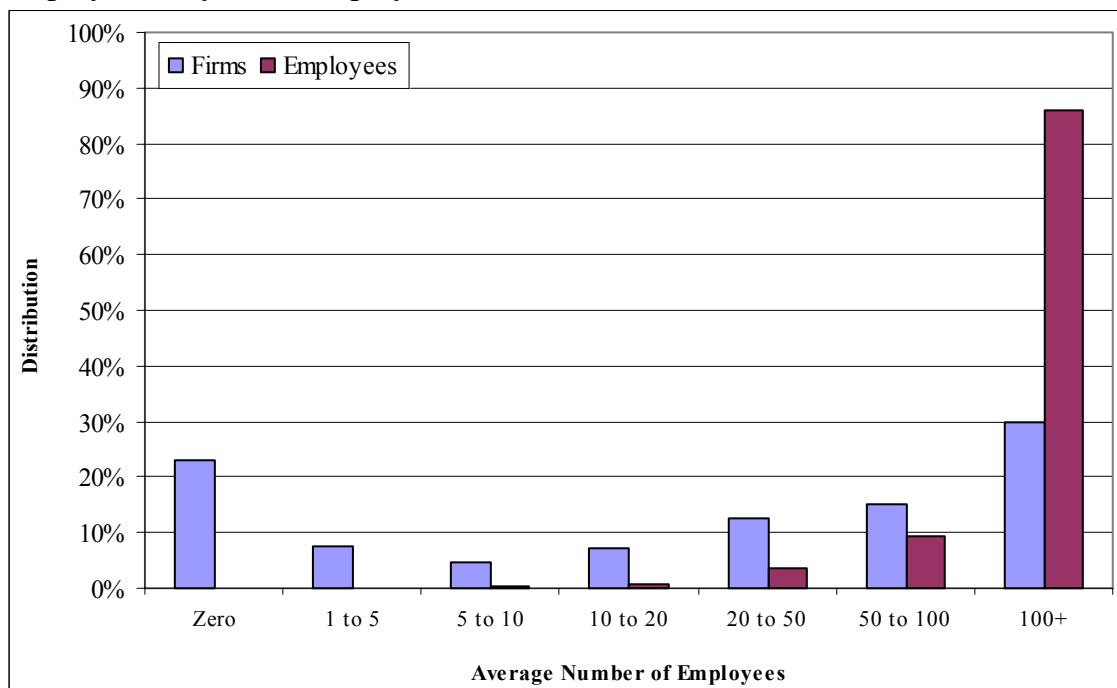
Small firms characterize the garment industry, whereas larger establishments characterize the FLC industry. Figures 7.4 and 7.5 present the distribution of firms and jobs by firm employment size for garment and FLC industry firms respectively. Among garment industry firms, about three-fourths of the firms employ less than 20 workers, while about three-fourths of FLC industry firms employ more than 20 workers. In both the garment and FLC industries, employees disproportionately work in large firms. For example, garment industry firms employing over 100 workers account for about 3% of garment firms, but over 30% of garment industry employees. FLC industry firms employing over 100 workers account for 30% of FLC firms, but over 85% of FLC industry employees.

Figure 7.4: Distribution of California Garment Industry Firms and Employment by Firm Employment



Source: 2001 Q3 ES-202, Employment Development Department.

Figure 7.5: Distribution of California Farm Labor Contractor Industry Firms and Employment by Firm Employment



Source: 2001 Q3 ES-202, Employment Development Department.

Further assessment of the garment and FLC industries suggests that the characteristics of these industries make them more likely to experience problems with wage and hours laws. Table 7.2 provides some general statistics on the type of firms within the garment and FLC industries based on EDD ES-202 data for the third quarter of 2001.

The garment industry is highly concentrated in Southern California (particularly in Los Angeles County). Compared to other industries, firms in the garment industry have more employees, on average, than other firms. As stated above, however, most garment industry firms are not substantially large—only 7% employ 50 or more workers. Garment industry firms also tend to have a lower average payroll, be younger than other firms (41% are less than three years old) and less stable (about one-quarter of the garment firms operating in the third quarter of 2001 were no longer operating by the first quarter of 2003).

The FLC industry, on the other hand, is highly concentrated in the Central Valley. Compared to the garment industry and other industries, firms in the FLC industry have more employees, on average, than other firms—almost half employ more than 50 workers. FLC industry firms have a low average payroll compared to the garment industry. However, FLC firms tend to be slightly more established than other firms (74% are at least three years old) but less stable (about one-fifth of the FLC firms operating in the third quarter of 2001 were no longer operating by the first quarter of 2003).

While the characteristics of the garment and FLC industry firms make these industries more likely to experience problems with wage and hours laws, the characteristics of the workers may hinder their use of the DIR's services. An examination of garment and FLC industry worker characteristics (Table 7.3) indicates that these workers are more disadvantaged, on average, than workers in other industries. Compared to other

California workers, garment workers are more likely to be female, of Hispanic or Asian ethnicity, foreign-born, and less educated. While FLC workers are more likely to be male, they are also more likely to be Hispanic, foreign-born, and less educated. Not surprisingly, garment and FLC industry workers earn less on average than other workers. Furthermore, analysis of wage claim data from DIR suggests that garment workers filed about 2% of the worker-initiated wage claim complaints in 2001, but 12% of the BOFE cases involved garment firms in 2001. Similarly, FLC workers filed about 2% of the worker-initiated wage claim complaints in 2001, but 7% of the BOFE cases involved FLC firms in 2001.

Table 7.2: Profile of Garment and FLC Industry Firms in California (2001)

	Garment Firms	FLC Firms	All Other Firms
Number of Firms	5,460	1,143	980,238
Region			
Southern California	89.2%	13.6%	52.2%
Bay Area	7.9%	0.6%	18.4%
Central Valley	0.6%	66.1%	8.0%
North Valley	0.4%	5.3%	4.8%
Central Coast	0.7%	10.1%	3.7%
Other	1.3%	4.3%	12.9%
# of Employees			
zero	16.9%	23.2%	18.4%
less than 5	22.7%	7.4%	49.6%
5 to 10	18.1%	4.6%	13.0%
10 to 20	19.5%	7.1%	8.4%
20 to 50	15.9%	12.5%	6.1%
50 to 100	4.3%	15.1%	2.4%
at least 100	2.7%	30.0%	2.0%
Mean (excludes zeros)	22.1	150.5	18.5
Median (excludes zeros)	10.0	65.5	3.0
Ave. Quarterly Wage			
zero	17.4%	23.9%	20.7%
less than \$1,500	8.9%	16.1%	10.5%
\$1,500 to \$3,000	31.0%	18.6%	16.6%
\$3,000 to \$4,500	20.0%	19.2%	12.0%
at least \$4,500	22.7%	22.3%	40.1%
Mean (excludes zeros)	\$4,211	\$5,162	\$8,028
Median (excludes zeros)	\$3,068	\$3,297	\$4,808
Tenure			
less than 3 years-old	40.6%	26.4%	33.9%
at least 3 years-old	59.5%	73.6%	66.1%
Stability			
Operating in 2003Q1	74.3%	79.9%	86.0%
Not operating in 2003Q1	25.7%	20.1%	14.0%

Source: 2001 Q3 ES-202, Employment Development Department.

Notes: Garment industry firms identified as all firms with a NAICS industry code starting in 315.

Table 7.3: Profile of Garment and FLC Industry Workers in California (2000)

	Garment Industry Workers	Agricultural Support Workers	All Other Workers
Number of Workers	123,771	10,494	15,286,664
% Female	59.7%	36.7%	46.0%
Age			
under 18	0.7%	6.2%	1.7%
18 to 29	26.4%	34.7%	28.1%
30 to 44	46.5%	30.4%	39.3%
45 to 64	25.1%	23.0%	28.1%
65 and Over	1.3%	5.7%	2.8%
Mean	37.5	36.6	38.1
Median	37	35.0	37.0
Race/Ethnicity			
African American	1.5%	0.0%	6.4%
Asian/Pacific Islander	20.6%	3.1%	11.5%
Hispanic	65.7%	87.1%	28.8%
Non-Hispanic White	10.0%	9.8%	49.7%
Other	2.2%	0.0%	3.6%
Educational Attainment			
Less Than HS	64.7%	78.1%	19.9%
High School/GED	14.7%	16.1%	19.7%
Some College	12.9%	5.8%	33.5%
College Graduate	7.8%	0.0%	27.0%
% Foreign Born	83.7%	79.6%	32.1%
% Recent Immigrant	35.0%	31.5%	9.8%
Estimated Hourly Wage			
less than \$6.00	36.6%	41.1%	12.9%
\$6.00 to \$8.00	22.7%	20.7%	10.6%
\$8.00 to \$10.00	9.6%	9.7%	9.6%
\$10.00-\$15.00	12.2%	16.9%	21.0%
at least \$15.00	18.8%	11.6%	45.9%
Mean	\$11.35	\$9.32	\$18.38
Median	\$7.12	\$6.67	\$13.94

Source: 1-Percent Public-Use Microdata Sample, Census 2000, U.S. Bureau of the Census.

Notes: Garment industry workers identified as all workers with a NAICS industry code starting in 315.

FLC industry workers identified as all workers with a Standard Occupation Code (SOC) of "Misc.

Agricultural Workers" (SOC 45-2090) and NAICS industry code of "Support Activities for Agriculture and Forestry" (NAICS 115).

Part III. Characteristics of Garment Industry Firms with a BOFE Case

To better understand which types of garment firms are inspected and cited by the BOFE, we compared the firms inspected/cited by the BOFE to other firms within the garment industry. To conduct this comparison we had to identify the universe of garment firms, as well as the firm-specific characteristics of those firms. Firm characteristics come from two sources. The first is the garment industry registry files maintained by the DIR. The second is the ES-202 data maintained by the EDD. In our attempt to match the BOFE data with the garment registry and ES-202 data a number of data issues emerged (see Section VIII of this report for a discussion of these issues). We were not able to match all the BOFE garment industry firms with the garment registry or the ES-202 data, so the profile of garment industry firms is separated by data source. Table 7.4 presents a breakdown of characteristics from the garment registry files and Table 7.5 presents a breakdown of characteristics from the ES-202 data. Because of variations in the match rate across the data sources, the number of firms with available data from each source also varies.

For the most part, garment firms inspected by the BOFE in 2001 mirror the universe of garment firms in 2001. The regional distribution and the ownership type composition of inspected firms are similar to that of all garment firms (see Table 7.4). However, relative to the universe of garment firms, contractors were more likely to be inspected and manufacturers were less likely to be inspected. Overall, contractors account for 42% of garment firms but 58% of inspected garment firms. Manufacturers account for 30% of garment firms but only 18% of inspected garment firms. Firms cited/fined and firms that paid at least some portion of their fine did not significantly differ from inspected firms based on region, business type, or ownership type. This suggests that the BOFE inspects contractors at a higher rate than manufacturers, but among those inspected the data do not suggest that contractors are more likely than manufacturers to have a citation.

Based on ES-202 data, the BOFE inspects larger firms (more employees) at a higher rate than smaller firms, but smaller firms are more likely to be cited/fined (see Table 7.5). On average, garment firms employ about 18 people, but inspected firms employed about 28 people while cited/fined firms only employed 22 people. However, less established firms are inspected at a higher rate than more established firms and more likely to be cited/fined. Inspected and cited firms are no different from the universe of garment firms when it comes to firm stability. Furthermore, firms that pay at least part of their fine do not appear to be significantly different from firms that were cited/fined.

Table 7.4: Profile of Garment Industry Firms with a BOFE Case Initiated in 2001, Based on Garment Registry Files

	Inspected	Cited/Fined	Paid	Universe
Region (N)	(768)	(339)	(242)	(5636)
L.A. County	76.7%	75.8%	71.9%	78.4%
Rest of So. Cal.	10.3%	12.7%	14.9%	13.2%
Bay Area	11.9%	10.3%	11.6%	7.0%
Rest of Cal.	1.2%	1.2%	1.7%	1.5%
Business Type (N)	(768)	(339)	(242)	(5656)
Manufacturer	18.2%	18.6%	18.6%	30.3%
Contractor	58.3%	55.5%	58.3%	41.8%
Subcontractor	17.7%	18.9%	15.7%	13.0%
Other	5.7%	7.1%	7.4%	14.9%
Ownership Type (N)	(768)	(339)	(242)	(5656)
Corporation	55.2%	52.2%	49.2%	61.2%
Individual/Partnership	43.6%	46.9%	50.0%	37.1%
Other	1.2%	0.9%	0.8%	1.7%

Sources: 2001 Bureau of Field Enforcement extract file, Department of Industrial Relations; 2001 Garment Registry File, Department of Industrial Relations.

Table 7.5: Profile of Garment Industry Firms with a BOFE Case Initiated in 2001, Based on 2001 Q3 ES-202 File

	Inspected	Cited/Fined	Paid	Universe
# of Employees (N)	(646)	(295)	(212)	(5472)
less than 5	29.9%	31.5%	28.8%	42.0%
5 to 10	18.1%	20.3%	19.8%	17.5%
10 to 20	22.9%	23.7%	28.3%	18.6%
20 to 50	17.2%	15.3%	14.2%	15.3%
at least 50	11.9%	9.2%	9.0%	6.7%
Mean	27.7	22.8	22.1	17.8
Median	10.0	9.0	10.0	7.0
Ave. Quarterly Wage (N)	(646)	(295)	(212)	(5438)
less than \$1,500	26.0%	26.8%	25.9%	28.6%
\$1,500 to \$3,000	33.6%	36.3%	36.8%	29.6%
\$3,000 to \$4,500	24.9%	21.7%	22.2%	19.5%
at least \$4,500	15.5%	15.3%	15.1%	22.3%
Mean	\$2,858	\$2,783	\$2,786	\$3,402
Median	\$2,562	\$2,466	\$2,506	\$2,603
Tenure (N)	(646)	(295)	(212)	(5472)
less than 3 years-old	44.4%	50.9%	46.2%	40.9%
at least 3 years-old	55.6%	49.2%	53.8%	59.1%
Stability (N)	(646)	(295)	(212)	(5472)
Operating in 2003Q1	74.9%	73.2%	76.4%	74.6%
Not Operating in 2003Q1	25.1%	26.8%	23.6%	25.4%

Sources: 2001 Bureau of Field Enforcement extract file, Department of Industrial Relations; 2001 Q3 ES-202, Employment Development Department.

Part IV. Characteristics of Farm Labor Contractors with a BOFE Case

As with the above discussion of garment industry firms inspected by the BOFE, we compare the FLC firms inspected/cited by the BOFE to other firms within the FLC industry. Again, to conduct this comparison we had to identify the universe of FLC firms and firm-specific characteristics of those firms. Firm characteristics come from two sources. The first is the FLC industry licensing files maintained by the DIR. The second is the ES-202 data maintained by the EDD. We did not attempt to match the BOFE FLC firms with the ES-202 because neither the BOFE nor licensing files contained the firm's California tax identification number (used to identify firms in the ES-202). In our attempt to match the BOFE data with the FLC licensing files a number of data issues emerged (see Section VIII of this report for a discussion of these issues). We were not able to match all the BOFE FLC industry firms with the FLC licensing files, so the number of firms included in the profile differs from the overall number of firms. Table 7.6 presents a breakdown of characteristics from the FLC licensing files.

For the most part, FLC firms inspected by the BOFE in 2001 mirror the universe of FLC firms in 2001. The ownership-type composition of inspected firms and the use of

farm labor vehicles¹⁰ are similar to that of all FLC firms (see Table 7.6). However, relative to the universe of FLC firms, firms in the Central Valley (63% of all firms vs. 52% of inspected firms) and newly established firms (15% of all firms vs. 5% of inspected firms) were less likely to be inspected. This suggests that the BOFE inspects FLC firms in the Central Valley at a lower rate than firms located elsewhere in California and inspects newly established firms at a lower rate than more established firms. The number of FLC firms cited/fined is too small to make any general conclusions, but a profile of these firms is included in the last column for reference.

Table 7.6: Profile of Farm Labor Contractors with a BOFE Case Initiated in 2001, Based on Farm Labor Contractor Licensing Files

	2001 Universe	Inspected	Cited/Fined
Region (N)	(1052)	(384)	(30)
Central Valley	63.0%	52.3%	60.0%
North Valley	5.3%	9.6%	13.3%
Central Coast	12.9%	14.8%	16.7%
Southern California	12.7%	13.8%	6.7%
Other	6.0%	9.4%	3.3%
Ownership Type (N)	(1052)	(388)	(30)
Corporation	22.5%	24.0%	13.3%
Individual/Partnership	75.0%	72.4%	83.3%
Other	2.5%	3.6%	3.3%
Number of Vehicles (N)	(1052)	(375)	(28)
None	86.9%	83.2%	89.3%
1 to 5	4.9%	5.9%	7.1%
6 or more	8.3%	10.9%	3.6%
Tenure (N)	(1052)	(285)	(20)
New	14.8%	5.3%	20.0%
1 year-old	14.0%	13.7%	10.0%
2 years-old	12.5%	12.3%	10.0%
3 years-old	58.8%	68.8%	60.0%
Stability (N)	(1052)	(285)	(20)
Licensed in 2002	77.5%	83.2%	85.0%
Not Licensed in 2002	22.5%	16.8%	15.0%

Sources: 2001 Bureau of Field Enforcement extract file, Department of Industrial Relations; 2001 Farm Labor Contractor Licensing File, Department of Industrial Relations.

¹⁰ The number of vehicles represents the number of vehicles the contractor has registered with the state to transport farm laborers to and from job sites. Contractors with a registered vehicle are more likely to work across a larger geographic area than contractors without a vehicle. We would like to see how this is related to the number of workers employed by a contractor and the probability of citation/payment, but since we were not able to match the FLC licensing files with the ES-202 data we could not measure the number of workers each contractor employs.

Conclusion

As with the examination of the DLSE wage claims in Section VI, the BOFE data indicate that minimum wage and overtime violations account for a small percent of all citations. While the number of inspections appears to be highly correlated with the DLSE budget, our experience with the BOFE data indicates that there may be ways to strategically allocate limited resources based on analysis of the data. For example, by comparing the characteristics of firms inspected and cited by the BOFE to firms not inspected, one can determine if certain firms are disproportionately being inspected; and if so, whether those firms are more likely to be cited. However, the current condition of the DIR data system makes such analyses difficult and resource intensive. The next section discusses in more detail the DIR data system and the potential benefits of an improved system.

SECTION VIII: DATA AND INFORMATION SYSTEM ASSESSMENT

Introduction

The analysis for this report used data from the California Department of Industrial Relations (DIR), the California Employment Development Department (EDD), and the 2000 Census. The DIR data sets are the Division of Labor Standards Enforcement (DLSE) claims/complaints files and the Bureau of Field Enforcement (BOFE) inspection files. The EDD data sets are the Base Wage files (which contain information on worker employment history, and earnings for 2001 Q3 to 2002 Q2) and ES-202 data (which contains information on firm size, payroll, industrial sector, and establishment date). The appendix discusses these data files in more detail. This section describes some of the data issues that arose during the course of our study and the ways in which an improved DIR data system could allow for more effective analysis of DIR's operations.

Most of the data issues we came across were discussed in the 2001 feasibility study of the DIR information technology system conducted by Gartner Consulting. While the feasibility study report discussed the problems related to case management, they are also relevant to the analysis of DIR operations. Some of the problems with the current DIR data system identified in that feasibility study report that also hinders analysis of wage and hour law enforcement are:

- More than 90% of applications are missing information and more than 80% of these fields could be filled in by the system;
- Inaccurate, unreliable data entry (no automated cross-referencing capability, non-standardized data abbreviations);
- Information tracked by document type, not case;
- Information tracked manually or in separate data sets;
- Internal and external interfacing is not accomplished through electronically linked, automated systems;
- Scope of information is too small to track outcomes and collections; and
- No current mechanism to evaluate the overall effectiveness of sweeps.

Part I. Experience While Conducting the Study

In conducting our analysis, four major data issues came up. The first is the extreme difficulty in linking the data sets. The second is a high rate of incomplete information. The third is the lack of coding of key information. The fourth is the lack of key information. (As with all data systems, there are also problems that appear to be associated with data entry errors.)

Common index variables—such as social security numbers (SSN) and employer account numbers (EAN)—are either not currently an integral part of the DIR's files or not collected/recorded consistently. In the absence of relatively unambiguous linking variables, the alternative is using the names of workers and firms. These are not good indexing variables because the names are often recorded differently in different data sets, and different workers and firms have very similar names. This leads to a serious problem of having false matches (i.e., attributing a match to two separate entities) and false negatives (i.e., not being able to match records that are for a single entity). Moreover, the data problems severely limit the ability to use computer matching. Manual inspection and coding improve the matches but require considerable time and resources.

Even when DIR's data system calls for the collection and entry of key pieces of information, the system appears to be plagued by inconsistencies in collecting and recording that data. A primary example is the SSNs for the DLSE claims/complaints files. The majority of the claims had no affiliated social security number, so there is no match with EDD files. The match rate for 2002 claims is higher than the match rate for 2001 (53% versus 10%), due partly to a greater effort by DIR to collect the information. Nonetheless, a significant number of 2002 claims do not have SSNs recorded. Table 8.1 provides a description of wage claims by our ability to identify/match key pieces of information.

Similar problems arose when we tried to match BOFE data on garment industry firms and farm labor contractor (FLC) firms with the DIR-maintained registry/licensing files for these firms and the EDD-maintained ES-202 files. Table 8.2 documents the data-matching results between the garment firms in the BOFE data and the other data files. Of the 956 garment industry firms with a BOFE case initiated in 2001, 629 were matched with the 2001 garment industry registry and an additional 139 were matched with the 1999 or 2000 garment registry file. About one-fifth (188) of the inspected firms did not match with the registry files. We were able to match 65 of those 188 firms with the 2001 Q3 ES-202 file, but could not match the remaining 123. A preliminary web search of the 123 unmatched firms revealed that 30 firms were in operation. Table 8.3 documents the data-matching results between the FLC firms in the BOFE data and the FLC licensing files. Of the 596 FLC industry firms with a BOFE case initiated in 2001, 285 were matched with the 2001 licensing file and an additional 89 were matched with a licensing file from a different year. A little more than one-third (222) of the inspected firms did not match with the licensing files.

Table 8.1: Profile of DLSE Wage Claims by Data Availability

	All Claims	With SSN	With Wage Data	With ES-202 Data
Number of Claims	99,896	32,180	25,419	10,775
Year Filed				
2001	49,229	5,132	3,080	975
2002	50,667	27,048	22,339	9,800
DLSE Regional Office				
Bakersfield	4,474	665	581	285
Fresno	5,272	1	1	0
Long Beach	6,680	2,888	2,458	1,136
Los Angeles	10,960	3,374	2,679	1,306
Oakland	6,483	1,824	1,537	594
Sacramento	6,724	5,459	4,769	1,511
San Bernadino	7,482	2,292	1,910	851
San Diego	8,203	4	0	0
San Francisco	4,382	1,267	986	468
San Jose/Salina	9,290	2,905	2,471	1,175
Santa Barbara	4,922	3,895	1,711	754
Stockton	2,538	2,239	1,867	655
Redding/Eureka	3,025	1,251	1,111	488
Van Nuys	7,102	2,353	1,873	854
Santa Ana	9,329	898	739	369
Santa Rosa	3,027	864	725	329
Unknown	3	1	1	0
Industry				
Order 1 (Manufacturing)	5,766	2,098	1,586	920
Order 3 (Agricultural Manufacturing)	2,405	503	363	135
Order 4 (Professional Service)	8,940	2,911	2,108	791
Order 5 (Travel and Personal Service)	2,230	64	52	27
Order 7 (Wholesale and Retail)	25,930	10,457	8,603	3,649
Order 8 (Agricultural Manufacturing)	15,777	5,134	3,971	1,628
Order 9 (Transportation-related)	13,598	5,119	4,152	1,700
Order 14 (Agricultural Manufacturing)	7,536	233	155	67
Order 16 (On-site Construction & Mining)	10,850	3,675	2,933	1,222
Others	6,864	1,986	1,496	636
Ruling				
Recover	14,582	3,897	2,899	1,281
Nothing	2,776	835	691	341
Unknown	82,538	27,448	21,829	9,153

Source: Wage Claim files, DLSE, DIR; Base Wage and ES-202, Employment Development Department.

Table 8.2: Data Match Results for Garment Industry Firms with a BOFE Case Initiated in 2001

	# Inspected	(% of Univ)	# Cited	# Fined	# Paid	Universe
Current 2001 Registry	629	(11.1%)	241	256	206	5,656
1999/2000 Registry	139	(4.9%)	54	53	36	2,824
Registry Sub-Total	768	(9.1%)	295	309	242	8,480
2001Q3 ES202 (EDD)	65	(3.6%)	28	29	19	1,813
Unknown	123	(NA)	53	59	39	NA
Total	956	(NA)	376	397	300	NA

Sources: 2001 Bureau of Field Enforcement extract file, Department of Industrial Relations; 2001 Garment Registry File, Department of Industrial Relations; 2001 Q3 ES-202, Employment Development Department.

Table 8.3: Data Match Results for Farm Labor Contractors with a BOFE Case Initiated in 2001

	# Inspected	(% of Univ)	# Cited	# Fined	Universe
2001 Licensing File	285	(27.1%)	18	8	1,052
Pre-2001 Licensing File	86	(10.4%)	8	5	825
2002 Licensing File	3	(1.7%)	0	0	175
Licensing File Sub-Total	374	(18.2%)	26	13	2,052
2001Q3 ES202 (EDD)	NA	(NA)	NA	NA	1,143
Unknown	222	(NA)	16	14	NA
Total	596	(NA)	42	27	NA

Sources: 2001 Bureau of Field Enforcement extract file, Department of Industrial Relations; 2001 Farm Labor Contractor Licensing File, Department of Industrial Relations; 2001 Q3 ES-202, Employment Development Department.

The third problem with the data is the lack of coding of key information in the DLSE claims/complaints files. For example, the information on type of claim and hourly rate comes from text lines. Ideally, there should be variables with defined, standardized categories for this type of information. Extracting information by computer from text lines is further complicated by a lack of consistency in gathering and entering information. Because of these problems, a sample of 281 claims were manually inspected and coded. The results of the hand coding are not consistent with the results from the computer extraction.

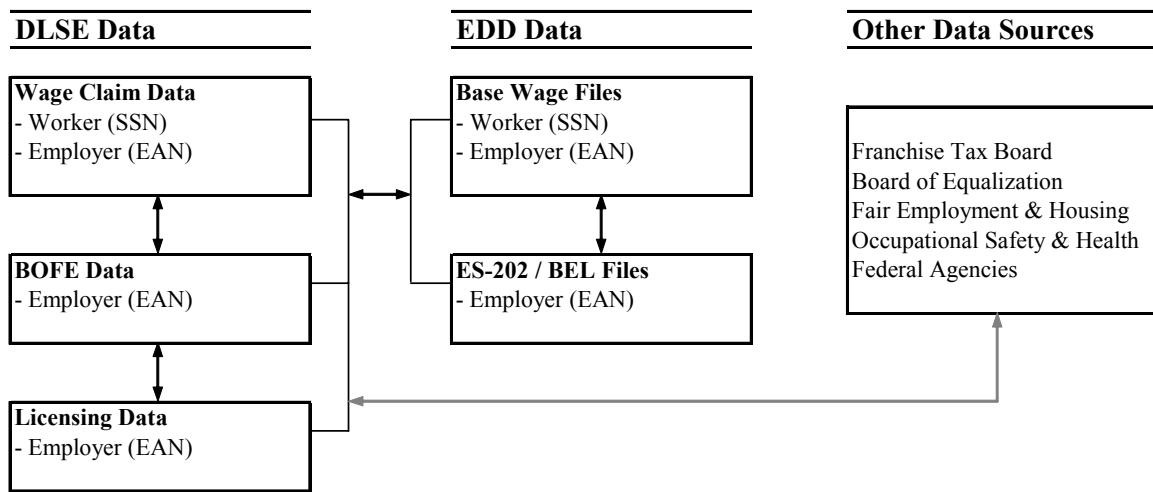
The final problem is that the DIR files do not contain key pieces of information that would be useful in comparing the claimants to the entire labor force and to the segment of the labor force most likely to be adversely affected by violations of wage and hours standards. For example, U.S. Census data indicate that immigrant groups are disproportionately concentrated at the bottom end of the pay scale, but the DLSE claims/complaints files do not contain data on ethnicity or immigration status. One

alternative to collecting data on ethnicity is to rely on surname matches. For this report, this was initially done by using a master list of Hispanic and Asian surnames developed by the Lewis Center. A second step was done by manually reviewing a sample of names not on the master list.

It is important to note that in addition to the absence of key pieces of information in the DIR data files, the EDD Base Wage data also lacks a key piece of information that could significantly improve the analysis of wage and hour law violations. As part of the Unemployment Insurance/Disability Insurance (UI/DI) program, the EDD requires employers to report the total earnings of each employee on a quarterly basis, but employers do not report the number of hours each employee worked in a given quarter. As a result, it is not possible to identify the hourly wage rate each employee receives. If the EDD collected quarterly hours of work, in addition to quarterly earnings, for all employees eligible for UI/DI—as some states currently do—it would be possible to identify businesses where workers were likely to have earned less than the minimum wage and/or worked more than a standard work week.

Part II. Potential Benefits of an Improved Data System

In an ideal data system, data sets can be linked through common index variables (see Figure 8.1). For example, any data set with workers should have the social security number (SSN), and any data set with firms/employers should have the state's tax number, or employer account number (EAN). Both the DLSE and BOFE files contain firms, so having the EAN recorded would facilitate linking the two data sets, as well as linking records within each individual data set to identify multiple complaints or inspections against a firm. Moreover, having the EAN would enable the DIR to link its firm data with data from the EDD's ES-202 files. The DLSE files contain workers, so having the SSN recorded would facilitate identifying multiple complaints by a worker and enable the DIR records to be linked to the EDD's Base Wage files. Furthermore, the DLSE files should contain the EAN for the employer that a worker is making a claim against. Finally, to the extent that other agency data contain the same common index variables, the DIR data could be linked with other agency data (such as, Franchise Tax Board data). Of course, the Labor and Workforce Development Agency may need to address a number of legal and regulatory issues when sharing data between agencies.

Figure 8.1: Ideal Data System for Matching Across Databases

The analysis presented in sections VI and VII of this report show the ways in which strategic analysis of linked data sets can help understand and target DIR operations. Unfortunately, the analyses we were able to conduct were limited by the data problems addressed above. An improved DIR data system would facilitate more efficient and effective analysis of the DIR. For example, if the DIR collected the common index variables discussed above, it would be possible to easily do the following:

- Identify employers with multiple wage claims by summarizing the wage claim data by the unique employer identifier (EAN);
- Identify employers with citations through the wage claim adjudication process and BOFE inspections by linking the files based on the unique employer identifier (EAN);
- Identify types of businesses that are “under-targeted” or “over-targeted” by the BOFE by matching the BOFE data with the licensing data and the EDD-maintained ES-202 data to compare the characteristics of employers targeted by the BOFE to the universe of firms in those particular industries; and
- Identify types of workers and businesses that are “under-represented” or “over-represented” in wage-claim adjudications by matching the wage-claim data with the EDD-maintained Base Wage and ES-202 data to compare the characteristics of workers and employers represented in the wage claim adjudications to the universe of workers and firms.

Conclusion

The current data system used to track wage and hour law enforcement activities conducted by the DIR contains a number of flaws that hinder analysis of the data. Despite these problems, our experience with the data indicates that strategic analysis of the DIR data can help identify potential ways in which the DIR can more effectively and efficiently enforce wage and hour laws. This is particularly true when the different DIR data files are matched with each other, and with data from other departments. The DLSE Case Management IT project that is currently underway should address most of the data issues mentioned in this section when fully implemented. An improved DIR data system

will allow for such analysis to be done with minimal resources and facilitate data sharing with other departments.

SECTION IX: RECOMMENDATIONS

Our study of the California Labor and Workforce Agency's enforcement of wage and hour laws provides an example of how the development of background information on the low-wage sector of the labor market, background information on the state's enforcement efforts, and the analysis of business and worker characteristics associated with these enforcement efforts can be used together to better inform future enforcement activities. By combining the knowledge generated from such analyses with on-the-job experience of Labor Agency staff, the state can find ways to more effectively and efficiently enforce wage and hour laws. Therefore, the primary recommendation to come out of this study is that the Labor Agency should systematically analyze the environment of California's workforce and the agency's enforcement operations on a regular basis to help prioritize wage and hour law enforcement resources. More specifically, the recommendations stemming from our study are divided into the five categories discussed below.

Improve Information Systems and Data Sharing

Such analyses need not be resource intensive and time consuming. While the current data system used to track wage and hour law enforcement activities conducted by the DIR contains a number of flaws that hinder analysis of the data, simple improvements in the data system and data collection will allow for fairly automated computer-based quantitative analyses. As discussed in section VIII, the data system should require the collection of common index variables (such as social security numbers and employer account numbers) to facilitate linking information across data sources. When key information is included in the data system (such as common index variables and case outcomes), it is important to make sure this information is consistently and accurately recorded. For example, the data sources generally contain fields for social security number and case outcomes, but this information was not recorded for a substantial number of cases, or if recorded was not done in a consistent manner conducive to computer-based analysis. It is important to move forward with the DLSE Case Management IT project that is currently underway and address any additional data problems identified in this report through the project; which if fully implemented will allow for more effective data analysis and sharing.

Conduct Strategic Analysis of Existing Data

Even in the absence of an improved information system, the Labor Agency can proactively focus outreach and enforcement by strategically analyzing existing data. With data from the Labor Market Information Division, the U.S. Bureau of Labor Statistics, and the U.S. Census, the agency can identify areas of the California economy and workforce that are "at risk" of wage and hour violations. Then the agency can analyze DLSE and BOFE data to see if current enforcement activities account for these "at risk" areas. For example, recent media reports highlighted violations of labor laws among car wash employees in California, which resulted in a DLSE investigation into car washes. However, an analysis of industries with a high concentration of low-wage workers based on U.S. census data indicates that car washes are likely to have wage violations (see Section III) and could have alerted DLSE to potential problems prior to media reports.

The potential benefits of strategic data analysis are particularly great when the different DIR data files are matched with each other, and with data from other departments. The types of information that could be generated by linking data files are discussed in section VIII, and include the identification of businesses with multiple labor law violations and types of businesses “under-targeted” by the BOFE. However, the Labor Agency must take existing legal and regulatory issues into account before sharing data across departments and agencies. Even if inter-department data sharing is not possible, the DIR can utilize the DLSE wage claim and BOFE data to better target enforcement efforts on employers with a history of wage and hours violations and/or industries with relatively high rates of non-compliance.

Interviews conducted by the Employment Development Department of Franchise Tax Board, EDD, and DIR personnel indicated that the staff believes more “data mining” would help identify potential labor law violators. The staff interviewed also indicated that their current hotlines provide more leads than they can follow-up on, but strategic analysis can help the Labor Agency prioritize its enforcement resources—given limited resources—in addition to identifying additional enforcement needs. Furthermore, the U.S. Department of Labor recently indicated that it was better able to protect workers by “targeting enforcement at bad actors and providing tools to employers that help them better comply with the law” (U.S. Department of Labor, 2003).

Improve Outreach and Educational Efforts

By identifying areas of the California economy and workforce that are “at risk” of wage and hour violations, the Labor Agency can better target its outreach activities to improve employer and employee knowledge of California labor laws and the Labor Agency’s enforcement activities. Washington’s Department of Labor and Industries stresses “compliance through education.” While the California DLSE has a number of informational programs in place, the DLSE should expand its outreach and educational efforts. Expanded efforts should seek to provide businesses and workers with information and tools that clarify wage and hour requirements and facilitate compliance.

Rather than increase outreach across the board, the agency should coordinate its outreach efforts with data analysis findings to target outreach efforts towards the types of businesses and workers most likely to encounter wage and hour law violations. For example, our analysis indicates that garment and farm labor contractor workers are under-represented in the worker-initiated wage claim data relative to the number of garment and farm labor contractor businesses with BOFE cases. While the Labor Agency’s outreach efforts do currently contain an emphasis on garment and farm workers, the DIR could use more active outreach techniques, such as radio and mailing efforts, in their targeted outreach efforts, in addition to the current, more passive forms (such as flyers and website information).

Improve Upon Existing External Relations Practices

The DIR’s relationship with other state and federal departments facilitates itself through joint enforcement partnerships (as discussed in section IV). These joint enforcement efforts appear to reduce duplicate effects. Equally important, collaboration produces complementary effects that allow the DIR to effectively accomplish some of its enforcement activities with shared resources. The Labor Agency can leverage the

resources allocated to wage and hour enforcement through more consistent use of inter-department collaboration. One of the major benefits of collaboration for the DIR is the greater ability of other departments to identify problematic industries and businesses, thus improving the DIR's use of scarce resources. With more of an emphasis on creating relationships across departments and agencies, however, the DIR must address differences in departmental jurisdiction and priorities. In addition to joint enforcement efforts, the DIR should work with other state and federal departments to identify "best practices" related to enforcement, collection, and outreach.

Conduct Additional Analysis of Effective Funding Sources and Programs

California has higher wage and hour standards and its workforce is more "at risk" of labor law violations, so more funding would have to be allocated for enforcement to provide the same level of enforcement as other states. Relative to New Jersey and Washington, California appears to have similar, if not more, resources allocated to the enforcement of wage and hour laws. The analyses conducted for this study are not sufficient enough to make any recommendations on a specific, desirable level of funding for the Labor Agency's enforcement of wage and hour laws. To determine an appropriate level of funding for specific enforcement activities, the Labor Agency must conduct a thorough cost-effectiveness analysis, which is beyond the scope of this study. Our assessment of the DIR budget fluctuations over time indicates a strong connection between the level of support and the level of enforcement activities—particularly in recent years.

Since about 90% of the DLSE budget comes from the General Fund, wage and hour enforcement activity is influenced by annual fluctuations in General Fund allocations. To help stabilize funding, the state could consider additional funding mechanisms, such as establishing a special fund—like the EDD Contingent Fund—where fines, fees, and penalties collected as a result of DLSE activities are held for future DLSE activities. The Labor Agency could also consider providing the DLSE with a mechanism to recoup costs associated with investigations of labor laws that directly benefit programs and departments outside of the DLSE. For example, the majority of BOFE citations are for violations of Workers' Compensation Insurance laws, so partial funding for these investigations could come from Workers' Compensation program "user funding" (which is outside of the General Fund).

With its culturally diverse population and large workforce, California faces many challenges to enforcement of wage and hour laws. Our recommendations focus on improving efficiency in enforcement operations by better identification of problem areas, coordination and collaboration, and public education. While these suggestions are likely to produce positive outcomes, it is important for the DIR, and the state, to implement continual assessments and evaluations of wage and hour law enforcement so it can identify effective practices and areas that need to be modified. Continual assessment is particularly important because the economy and labor market are dynamic, and changes in workforce conditions will affect how wage and hour standards are best enforced.

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APPENDIX

Data Sources

To conduct our analysis of the Department of Industrial Relations (DIR) we used both qualitative and quantitative data. The qualitative data came from the collection of agency documents/reports and the synthesis of information on agency operations collected by the Labor and Workforce Development Agency (Labor Agency). The Labor Agency collected information from the following such sources as: the Deputy Chief Labor Commissioner at the DLSE; the Assistant Chief Labor Commissioner at the BOFE; the Deputy Labor Commissioner at the BOFE; the New Jersey Department of Labor; and the Washington State Department of Labor and Industries.

The quantitative data come from published statistics (primarily from the California Labor Market Information Division and the U.S. Bureau of Labor Statistics), data compiled by the Labor Agency, U.S. Census 2000 data, the California Employment Development Department (EDD), and the DIR. Table A.1 describes the data we received from the DIR and Table A.2 describes the data we received from the EDD.

Table A.1: Department of Industrial Relations Data Sources

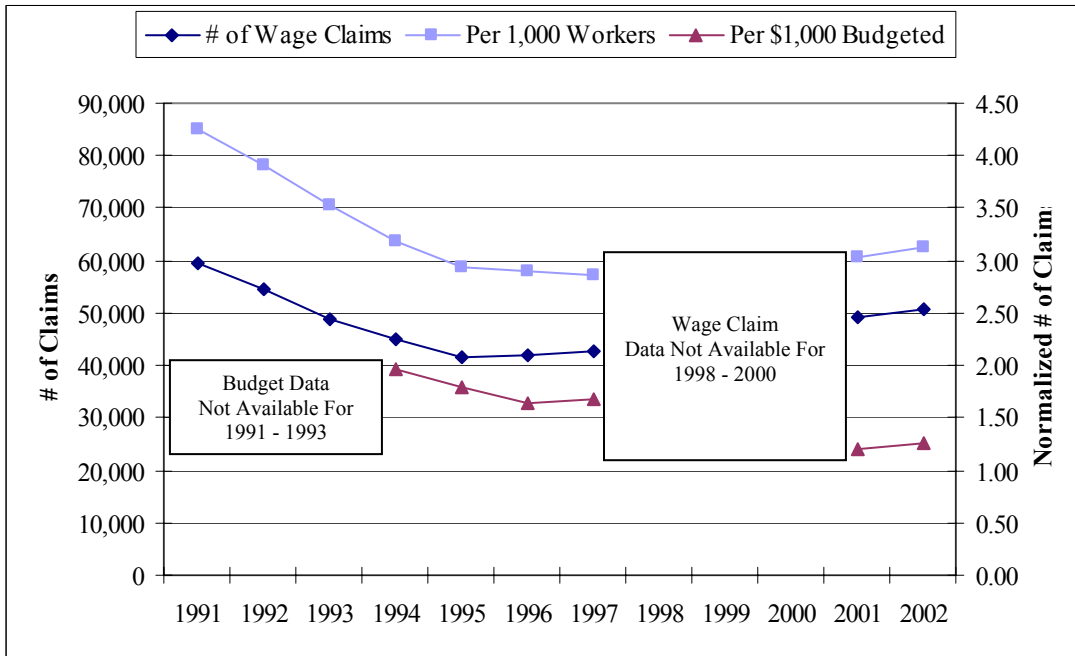
Data Source	Time Period	Description
DLSE 98(a) Wage Claim Files	2001 and 2002 extracts, and current backup	Contains information on worker initiated wage claims processed by the DLSE wage claim adjudication unit.
Bureau of Field Enforcement (BOFE) Files	2000, 2001, and 2002 extracts, and current backup	Contains information on businesses inspected by the BOFE, including type of citation.
Garment Manufacturing Registration Files	1999, 2000, 2001, and 2002 extracts	Contains information on businesses registered with the DLSE as garment manufacturers in California.
Farm Labor Contractor Licensing Files	1999, 2000, 2001, and 2002 extracts	Contains information on businesses licensed with the DLSE as farm labor contractors in California.

Table A.2: Employment Development Department Data Sources

Data Source	Time Period	Description
Base Wage Files	2001Q3, 2001Q4, 2002Q1, and 2002Q2 extracts	Contains quarterly earnings information for all California workers in the unemployment insurance (UI) program, which covers approximately 95 percent of all paid workers in the private sector. The data do not include self-employment, employment in firms not in the UI Program, and some governmental agencies.
ES-202 / BEL Files	2001Q3, 2001Q4, 2002Q1, 2002Q2 and 2003Q1 extracts	Contains quarterly information for all California businesses in the unemployment insurance (UI) program.

Additional Figures

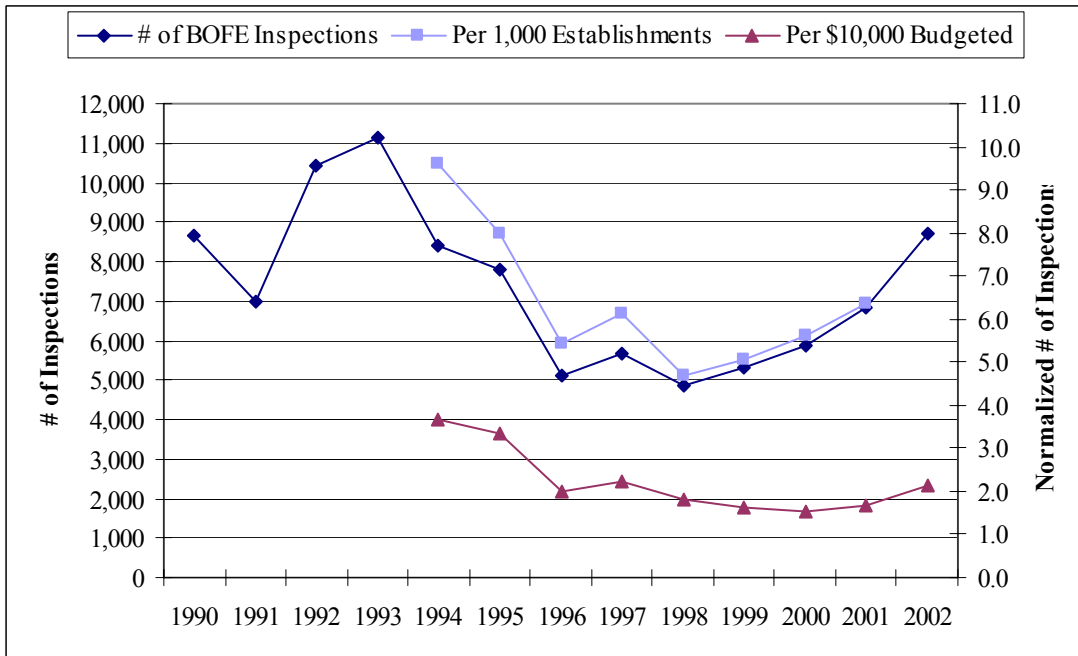
Figure A.1: Wage Claims in California over Time



Source: California Division of Labor Standards Enforcement.

Notes: Number of workers is based on published average annual civilian employment estimates by the California Employment Development Department. Annual DLSE budget amounts are from the DLSE.

Figure A.2: BOFE Inspections in California over Time



Source: California Division of Labor Standards Enforcement.

Notes: Number of workers is based on published average annual civilian employment estimates by the California Employment Development Department. Annual DLSE budget amounts are from the DLSE.

Industrial Clusters in DLSE Wage Claim Data

Table A.3 provides a detailed breakdown of the industrial clusters identified in the DLSE wage claim data files.

Table A.3: DLSE Wage Claim Data Industrial Clusters

Cluster	Code	Name	Description
Order 1		Manufacturing	
	180		All manufacturing except computer and garment
	181		Garment manufacturing except AB 633
	189		Computer Industry
Order 2	633		Garment under AB 633
		Beauty-related	
	223		Beauty shops & barber shops
Order 3	229		Other(Funeral parlors, weight and Health clubs)
		Agricultural - Canning	
Order 4	303		Canning freezing & preserving establishments
		Proferssional Service	
Order 5	419		Communications, Utilities, Newspapers
	429		Banks, finance, Mortgage Companies, insurance,real estate, Travel Agencies
	439		Other (Chainsaw & lawn mower repair, Home health care, Employment Agencies, Non boarding schools, Cable TV)
	440		Health Care Industry
	449		Professional offices(Architects, Attornies,CPAs,Dentist,Doctors)
	450		Computer Industry (Non manufacturing)
Order 6		Travel and Personal Service	
	511		Eating & drinking places (ice cream parlors, donut shops)
	515		Hotels, Motels, Resorts, Organized camps, Trailer Parks, Guest Ranches
	516		Health Care Industry, Hospitals
	517		Rest Homes, Sanitariums, Board & Care homes for the aged, child care & juvenile facilities
	524		Animal care, Pest control,Landscaping (other than new construction), cemeteries, Upholstery cleaning,Mini storage, Tree service
	534		Janitorial
Order 7		Personal Service 2	
	620		Dry cleaning, carpets and draperies
	621		Laundry
Order 8	677		Other
		Wholesale & Retail Trade	
	709		wholesale
	711		Retail (Auto sales, Gas stations, Sand & Gravel, Department stores, Nurseries, Auto wrecking, Christmas tree sales)
Order 9	729		Other (including commodity rentals,storage, TV repair,recycling)
		Agricultural - Packing	
Order 10	873		packing/processing/agricultural commodities

Table A.3, Continued: DLSE Wage Claim Data Industrial Clusters

Cluster	Code	Name	Description
Order 9		Transportation-related	
	913		Transportation companies (Airplanes, Ambulances, Buses, Disposal services, Taxis, Tours, Trucks)
	922		Warehouseing, storage, of commodities moved)
	932		Other (Delivery, Parking, Rentals, Tow trucks)
	943		Auto repair, garages and car washes
Order 10		Entertainment	
	101		Other (Carnivals, Charter fishing, Golf & Tennis Facilities, Marinas, Ski Lifts)
	102		Theaters
	103		Amusement Parks
	104		Stables and Horse Racing
Order 11		Media 1	
	113		broadcasting industry-all
Order 12		Media2	
	121		motion picture industry
Order 13		Agricultural Manufacture3	
	133		packing, processing agr commodities on farmers land
Order 14		Agricultural - On Farm Lands	
	140		occupations involved in growing/harvesting crops & all maintenance
	142		Irrigation Districts (employees involved in delivering water to farmers)
	144		Commercial fishing
Order 15		Private Households	
	151		private households
Order 16		Construction & Mining	
	161		On-site Logging
	162		On-site Construction
	163		On-site Mining
	164		On-site drilling
Other			
	919		Government employees