

*California Labor and Workforce Development Agency*



**Edmund G. Brown Jr.**  
Governor

# **Joint Enforcement Strike Force on the Underground Economy**

## **2013 Report**

**Employment Development Department  
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## **JOINT ENFORCEMENT STRIKE FORCE OVERVIEW, MEMBERS, AND PARTICIPATING ENTITIES**

This legislatively mandated report provides the annual summary of activities and outcomes from the Joint Enforcement Strike Force (JESF) on the Underground Economy in accordance with section 329(d) of the California Unemployment Insurance Code (CUIC). In October 1993, Executive Order W-66-93 established the JESF to combat the underground economy by pooling resources and sharing data among the state agencies charged with enforcing licensing, labor, and payroll tax laws.

On January 1, 1995, section 329 was added to the CUIC, which placed the provisions of the Executive Order into law. The JESF members are the Employment Development Department (EDD), which is the lead agency, the Department of Consumer Affairs (DCA), the Department of Industrial Relations (DIR), and the California Department of Insurance (CDI). The Office of Criminal Justice Planning was a member however, that office no longer exists. The Franchise Tax Board (FTB), the Board of Equalization (BOE), the Department of Justice, the California Department of Alcoholic Beverage Control, the United States Department of Labor (USDOL), the Internal Revenue Service (IRS), and District Attorneys throughout California are not statutory partners but participate in the JESF to combat the underground economy. The EDD Director or designee serves as the chairperson of the JESF.

The **EDD's Tax Branch** works with employers to collect California's employment taxes and data to support the employment security, child support, and personal income tax programs. The Tax Branch is committed to providing service to California employers and Unemployment Insurance, State Disability Insurance, and Paid Family Leave benefit claimants and to increasing voluntary compliance with payroll tax laws through education, simplified reporting processes, and the promotion of fair business competition.

The **EDD's Investigation Division** created the **Criminal Tax Enforcement Program**, a specialized law enforcement unit that investigates criminal violations of the CUIC, the California Penal Code, and the United States Code for federal prosecutions. This unit is staffed by sworn peace officers who work with law enforcement agencies throughout California and the JESF partner agencies to identify and prosecute employer fraud. They conduct criminal investigations involving employer collusion in the underground economy, employer failure to register and report wages paid to employees, and collaborate on Workers' Compensation Insurance investigations related to state payroll tax violations. They conduct surveillance, perform undercover operations, interview witnesses, initiate search warrants, and submit completed investigations to prosecutors to convict individuals who commit employment tax fraud.

All adjudicated criminal complaints initiated by the EDD's Investigation Division are assigned to the Collection Strategies and Research Group within the **EDD's Collection Division**. This allows the Collection Division to monitor these cases closely to ensure compliance with the court-ordered restitution. They determine if the convicted party

made restitution, is still on active probation, and obeys all laws with respect to the future filing of returns and payments. They will initiate revocation of probation when appropriate. The Collection Division monitors the cases so they can be transferred to the appropriate Area Collection Offices at the earliest point of non-compliance to expedite involuntary collections. The conviction itself and the collection of the tax liabilities play an integral part in deterring the underground economy.

The **DCA** protects and serves California consumers and ensures a competent and fair marketplace. The DCA helps consumers learn how to protect themselves from unscrupulous and unqualified individuals. The DCA protects professionals from unfair competition by identifying unlicensed practitioners.

The **DCA – Contractors’ State License Board (CSLB)** protects consumers by licensing and regulating California's construction industry. There are about 300,000 licensed contractors in the state, in 43 different licensing classifications. In addition to consumer education on contractor and construction law, CSLB activities include: administer prospective licensee examinations; issue licenses; investigate complaints against licensed and unlicensed contractors; issue citations; suspend or revoke licenses; and seek administrative, criminal, and civil sanctions against violators. The **CSLB’s Statewide Investigative Fraud Team** is set up to monitor and combat illegal activity. They have teams throughout the State that conduct sting operations on a regular basis and sweep construction sites. They also conduct joint operations and sweeps with other state agencies dedicated to combat the underground activity.

The **DCA – Bureau of Automotive Repair’s (BAR)** enforcement team investigates general auto repair complaints and ensures shops comply with Smog Check statutes. Each year, the BAR handles more than 14,800 complaints related to auto repair and/or Smog Check inspections. The BAR staff investigates complaints and negotiates with the shop on the consumer's behalf to achieve a mutually agreeable resolution. The bulk of complaints are resolved by mediation. Each year, the BAR returns over \$6.3 million to California consumers in the form of direct refunds, rework, or adjustments.

The **DCA – Bureau of Security and Investigative Services (BSIS)** protects consumers by licensing and regulating the following industries: alarm company operators and alarm company employees; locksmith companies and locksmith company employees; private investigators; private patrol operators and security guards; proprietary private security officers and employers; reposessor agencies and reposessor agency employees; and training facilities and training instructors. As part of its mission, the BSIS actively investigates complaints against its licensees and works to punish unlicensed business operations. This includes the suspension and revocation of licenses and seeking administrative, criminal, and civil sanctions against violators. Undercover sting and sweep operations are conducted on an ongoing basis throughout California. The BSIS also educates consumers, administers examinations to validate prospective licensees, and issues licenses and permits.

The **DIR - Division of Labor Standards Enforcement's (DLSE), Bureau of Field Enforcement** is responsible for the investigation and enforcement of statutes covering workers' compensation insurance coverage, child labor, cash pay, unlicensed contractors, Industrial Welfare Commission orders, and group claims involving minimum wage and overtime claims. The Bureau of Field Enforcement also handles criminal investigations involving these group claims.

The **DIR – Division of Occupational Safety and Health's** enforcement unit has jurisdiction over every employment situation and place of employment in California, which is necessary to adequately enforce and administer all occupational safety and health standards and regulations. They conduct inspections of California workplaces in response to a report of an industrial accident, a complaint about an occupational safety and health hazard, or as part of an inspection program targeting industries which have a high rate of occupational hazards, fatalities, injuries, or illnesses.

The **CDI** ensures that consumers are protected; the insurance marketplace is fostered to be vibrant and stable; the regulatory process is maintained as open and equitable; and the law is enforced fairly and impartially. The **Fraud Division** is charged with investigating insurance fraud, which includes the crimes of intentional misrepresentation of payroll and employee staffing in order to obtain lower rates for Workers' Compensation Insurance. Studies suggest that the aggressive anti-fraud campaign by the CDI, the district attorneys, the insurance industry, and California employers continue to play a substantial role in reducing crime and help lower workers' compensation insurance premiums for employers statewide.

The **FTB's** primary function is to administer the Revenue and Taxation Code. Elected officials determine the tax policy for raising revenue. Under the direction of the FTB's Chief Law Enforcement Officer, the **Criminal Investigation Bureau (CIB)** enforces the criminal provisions of the Revenue and Taxation Code. The CIB's principal mission is to identify, investigate, prosecute, and deter tax evasion and fraud, and encourage compliance with California income tax laws while maintaining the public's trust through publicity. The CIB takes over where voluntary compliance and civil enforcement efforts end. Special agents with full peace officer powers investigate alleged criminal violations of the Revenue and Taxation Code, principally income tax fraud and evasion, and assist in prosecuting non-compliant individuals. The special agents work cases independently (agency only) and partner with city, county, state, and federal agencies (jointly) when other charges exist. The special agents' efforts are supported by forensic auditors, collectors, analysts, and support staff; basically a micro-organization all in one bureau. The CIB also relies on a strong collaborative enterprise to accomplish their mission.

The **BOE** administers tax programs in four general areas: sales and use taxes, property taxes, special taxes and fees, and the tax appellate program. The BOE's **Investigations Division** plans, organizes, directs, and oversees all criminal investigative activities for the various programs administered by the BOE. Its goals are to identify tax evasion and new fraud schemes, and actively investigate and assist in the prosecution of individuals who are violating the laws administered by the BOE.

**The Department of Justice** Attorney General works to protect California's workers, legitimate businesses, and taxpayers through the **Underground Economy Unit**. The Underground Economy Unit brings civil and criminal actions against persons engaged in the underground economy. The Unit has used California's Unfair Competition law, labor, tax, insurance, and penal statutes to obtain restitution of unpaid wages, civil penalties, and injunctions to bring businesses into compliance with applicable labor and employment, tax, and licensing laws. The Unit's enforcement efforts deter underground economy violations, recapture lost revenues, and protect workers and legitimate businesses from illegal and predatory enterprises. It has prosecuted cases involving: wage, tax, and insurance issues including the theft of wages, unpaid overtime, denial of breaks, payroll tax evasion, and misclassification of employees as independent contractors; patterns of safety violations leading to fatal workplace injuries; workers' compensation insurance premium fraud; and the illegal avoidance of workers' compensation coverage for employees.

The **USDOL's** mission is to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights. The **Fair Labor Standards Act** prescribes standards for wages and overtime pay, which affect most private and public employment. The act is administered by the **Wage and Hour Division**. It requires employers to pay covered employees, who are not otherwise exempt, at least the federal minimum wage and overtime pay of one and one-half times the regular rate of pay. For non-agricultural operations, it restricts the hours that children under age 16 can work and forbids the employment of children under age 18 in certain jobs deemed too dangerous. For agricultural operations, it prohibits the employment of children under age 16 during school hours and in certain jobs deemed too dangerous. The Wage and Hour Division also enforces the labor standards provisions of the **Immigration and Nationality Act** that apply to aliens authorized to work in the United States under certain non-immigrant visa programs (H-1B, H-1B1, H-1C, H-2A).

**The California Department of Alcoholic Beverage Control's** agents are peace officers under section 830.2 of the California Penal Code and are empowered to investigate and make arrests for violations of the Business and Professions Code that occur on or about licensed premises. Agents are further empowered to enforce any penal provisions of the law any place in the state. Licensees who violate state laws or local ordinances are subject to disciplinary action and may have their licenses suspended or revoked. These licensees are entitled to a hearing before an Administrative Law Judge and an appellate process to the State Supreme Court.

The **IRS** is a bureau of the Department of the Treasury and one of the world's most efficient tax administrators. In fiscal year 2012, the IRS collected more than \$2.5 trillion in revenue and processed more than 237 million tax returns. The IRS' mission is to provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

## BACKGROUND AND PROGRAM INFORMATION

### The Underground Economy

The actual size of the underground economy is difficult to measure. In January of 2012, the IRS released a new set of tax gap estimates for tax year 2006. The tax gap is defined as the amount of tax liability faced by taxpayers that is not paid on time. After adjusting for audit and collection activities, the IRS estimates that in 2006 the net national tax gap was approximately \$385 billion. Based on this figure, the FTB estimates California's tax gap (for the personal and business taxes that they administer) to be about \$10 billion per year.

Barron's Online featured the article, *Going Underground*, on January 3, 2005. This article states, in part:

*"America has two economies, and one is flourishing at the expense of the other. First, there's the legitimate economy, in which craftsmen are licensed and employers and employees pay taxes. Then there's the fast-growing underground economy, where millions of workers are paid off-the-books, their incomes largely untaxed."*

Reports on the underground economy indicate it imposes significant burdens on revenue needed to fund critical state programs and businesses that comply with the law. When businesses operate in the underground economy, they gain an unfair, competitive advantage over businesses that comply with labor, licensing, and payroll tax laws. This causes unfair competition in the marketplace and forces law-abiding businesses to pay higher taxes and expenses.

Workers of non-compliant businesses are also affected. Their working conditions may not meet the legal requirements, which can put them in danger. Their wage earnings may be less than what is required by law, and benefits they are entitled to can be denied or delayed because their wages are not properly reported. Consumers can also be affected when contracting with unlicensed businesses. Licensing provisions are designed to ensure sufficient skill and knowledge to protect consumers.

The ultimate impact of the underground economy is erosion of economic stability and working conditions.

## **Joint Enforcement Strike Force Goals**

The JESF's goals are intended to help restore economic stability and to improve working conditions and consumer and worker protection in the state. The goals of the JESF are to:

- Eliminate unfair business competition.
- Protect workers by ensuring that they receive all compensation, benefits, and worker protections they are entitled to by law relating to their employment.
- Protect consumers by ensuring that all businesses are properly licensed and that they adhere to the state's consumer protection regulations.
- Reduce the burden on law-abiding citizens and businesses by ensuring that all businesses and individuals comply with the state's licensing, regulatory, and payroll tax laws.
- Reduce the tax gap by increasing voluntary compliance with the state's payroll tax laws to maximize the state's General and Special Fund revenues.

## **Enforcement Efforts**

The following are enforcement efforts undertaken by the JESF to combat the underground economy:

### Employment Enforcement Task Force

The Employment Enforcement Task Force (EETF) is the first program implemented by the JESF. The EETF works with the JESF partner agencies to conduct joint on-site business inspections to identify employers who operate in the underground economy. The goal of the EETF is to identify and bring into compliance individuals and businesses participating in the underground economy that are in violation of payroll tax, labor, and licensing laws. To minimize the disruption of businesses that comply with federal and state laws, the EETF conducts investigations only if there is reasonable belief that businesses are violating provisions of the CUIA, the California Labor Code, the Business and Professions Code, and/or the California Insurance Code (CIC).

### Tax Enforcement Group

The Tax Enforcement Group (TEG) conducts desk investigations of businesses in a variety of industries using various databases and income tax return analysis to detect non-compliance and fraud. When non-compliance is detected by the TEG, the case is referred to the EDD Tax Branch's Audit Program.

### Questionable Employment Tax Practices Program

The Questionable Employment Tax Practices Program was initiated in 2007 as a collaborative effort between the EDD and the IRS. A Memorandum of Understanding was created to allow for exchange of case information. These cases are excellent audit leads for the EDD since the employers in these cases concurred with the IRS findings regarding unreported wages and/or misclassified workers.

### Industry Specific Enforcement Efforts

The JESF has several additional enforcement efforts that target industries known for high levels of non-compliance with licensing, labor, and payroll tax laws. They include:

- The Construction Enforcement Project
- The Janitorial Enforcement Project
- The Public Works Enforcement Project
- The Security Guard Enforcement Project

The EDD Tax Branch's Audit Program takes administrative actions to address employer noncompliance detected via the above efforts. For cases warranting criminal investigation, the EDD Investigation Division's Criminal Tax Enforcement Program works with law enforcement agencies and the JESF partner agencies throughout California to identify and prosecute those responsible for the criminal activities.

**SUMMARY OF INFORMATION REQUIRED BY SECTION 329(d) OF THE CALIFORNIA UNEMPLOYMENT INSURANCE CODE**

This section includes information related to the underground economy and the JESF’s efforts mandated by Section 329(d) of the CUIC.

**Blatant Violations and Non-compliance**

Section 329(d)(1) of the CUIC requires this legislatively mandated report to include “the number of cases of blatant violations and noncompliance with tax and cash-pay laws identified, audited, investigated, or prosecuted through civil action or referred for criminal prosecution.” The following are JESF activity results for calendar year 2013.

EDD Employment Enforcement Task Force Results

Joint Inspections	807
EDD Audit Referrals	470
EDD Payroll Tax Audits	251
EDD Payroll Tax Assessments	\$9,918,286
Previously Unreported Employees	2,716
Cases w/ Fraud Penalty Assessed	19
Assessments on Fraud Cases	\$1,546,578

EDD Tax Enforcement Group Results

EDD Audit Referrals	253
EDD Payroll Tax Audits	175
EDD Payroll Tax Assessments	\$6,285,295
Previously Unreported Employees	3,458
Cases w/ Fraud Penalty Assessed	6
Assessments on Fraud Cases	\$1,080,816

### EDD Questionable Employment Tax Practices Program Results

EDD Payroll Tax Audits	65
EDD Payroll Tax Assessments	\$827,771
Previously Unreported Employees	738

### EDD Criminal Tax Enforcement Program Results

Type of Action	# of Cases	Amount of Tax Liability
Payroll Tax Evasion Cases in Progress	151	\$80,768,210
EDD Criminal Complaints Filed	22	\$45,033,031
EDD Criminal Prosecutions Completed	10	\$4,313,819

### CSLB Legal Actions

Each month, the CSLB conducts stings and sweeps, which resulted in 763 legal actions for the calendar year 2013. As a result of 176 licensee citations and 171 non-licensee citations, the CSLB assessed \$390,750 in civil penalties.

Accusations	4
Administrative Licensee Citations	176
Criminal Referrals – Licensee	19
Criminal Referrals – Non-Licensee	393
Administrative Non-Licensee Citations	171
Total	763

### CSLB Stop Orders

There were 297 stop orders served on construction employers, which prohibits the use of employee labor until workers' compensation insurance is obtained.

Licensee Stop Orders Issued	114
Unlicensed Operator Stop Orders Issued	183
Policies Obtained	80
Licenses Suspended	46

### CSLB Stings and Sweeps

The CSLB performed 46 stings and 79 sweeps during the calendar year 2013. The sting operations targeted unlicensed repeat offenders and wanted criminals who work in the construction industry.

Region	Stings	Sweeps
Central	18	16
Northern	16	40
Southern	12	23
Totals	46	79

### CSLB License Suspensions

This summarizes amounts due to state agencies that resulted in license suspension or may result in license suspensions due to collection efforts in 2013. This also includes collection amounts recovered to avoid a license suspension. A license can be suspended by the CSLB if the licensee is delinquent in paying amounts due to CSLB or other state agencies.

Department	Amounts due that resulted in/or may result in contractor license suspensions	Amounts due that businesses resolved or made arrangements to pay in order for their contractor licenses to be unsuspended or to avoid suspension
CSLB	\$171,296	\$167,666
EDD	\$26,367,005	\$9,237,751
DIR-Division of Occupational Safety and Health	\$1,271,472	\$1,841,852
DIR-DLSE	\$3,332,060	\$2,130,096
FTB	\$6,200,240	\$2,621,799
*BOE	\$161,229	0
Totals	\$37,503,302	\$15,999,164

\* BOE amount is for November and December 2013 only.

### USDOL Garment Industry Investigation Results

Completed Investigations	336
Back Wages	\$3,907,470
Civil Money Penalties	\$78,717
Number of Employees Affected	2,735

### USDOL Recycling Centers Investigation Results

Completed Investigations	4
Back Wages	\$66,937
Number of Employees Affected	74

### DLSE Results From EETF Inspections

Industry	Number of Inspections	Number of Citations	Total Dollar Amount of Penalties Assessed
Agriculture	2	4	\$49,287
Automotive	12	7	\$95,435
Construction	17	11	\$26,650
Other	145	145	\$1,282,943
Restaurant	41	33	\$361,709
Total	217	200	\$1,816,024

## Publicity and Marketing Outreach Strategies

Section 329(d)(2) of the CUIA requires this report to include actions taken by the JESF to publicize its activities. The JESF accomplishes this in several ways as cited below:

- The JESF website [www.edd.ca.gov/Payroll\\_Taxes/Joint\\_Enforcement\\_Strike\\_Force.htm](http://www.edd.ca.gov/Payroll_Taxes/Joint_Enforcement_Strike_Force.htm) was launched in July 2012 and received 4,721 “hits” in calendar year 2013. It was created to:
  - Provide information on how to report fraud.
  - Educate readers about the harm caused by the underground economy.
  - Publicize the work being done by California state government and partner agencies.
  - Deter fraudulent activity by communicating that California state government will actively pursue and punish those who participate in the underground economy.
  - Provide contact information for each of the partner agencies.
- The EDD’s website includes a page with information on the underground economy. This website [www.edd.ca.gov/Payroll\\_Taxes/Underground\\_Economy\\_Operations.htm](http://www.edd.ca.gov/Payroll_Taxes/Underground_Economy_Operations.htm) provides the viewer with data, access to prior reports, program and operation information, etc. In calendar year 2013, the website received 10,130 "hits."
- The EDD has a variety of information sheets and publications available to the public, businesses, and taxpayers. These publications include:
  - *Joint Enforcement Strike Force Brochure* (DE 665)
  - *Information Sheet: Employment Enforcement Task Force* (DE 631)
  - *Information Sheet: Employment Development Department Underground Economy Operations* (DE 631UEO)
  - *Underground Economy Operations Lead Referral/Complaint Form* (DE 660)
- The JESF member agency staff conducts outreach presentations to business and labor organizations throughout the state and to representatives of local government agencies.

### **Informant Contacts**

Section 329(d)(3) of the CUIIC also mandates this report include information on the efforts made by the JESF to establish an advertised telephone hotline. The JESF toll-free hotline number is 800-528-1783. The EDD also established methods for informants to submit information regarding violations of payroll tax, labor, and licensing law via the EDD and the JESF websites. In 2013, the EDD received:

- 2,745 allegations via telephone calls to the JESF hotline.
- 1,341 allegations via online submission.
- 225 allegations via correspondence.

### **Information Sharing**

Section 329(d)(4) of the CUIIC requires this report to include procedures for improving information sharing among the agencies represented on the JESF.

Businesses who operate in the underground economy constantly develop new schemes to avoid detection of their illegal activities. As these new schemes are identified by the JESF members, information regarding the schemes is shared with member agencies, business associations, and labor organizations. There is an ongoing need for the JESF staff to be aware of the various types of schemes used in industries prone to underground economy activity. This knowledge transfer facilitates the development of detection and enforcement techniques necessary to stop the illegal activities. Information is shared as follows:

- On-the-job.
- Informal ad-hoc joint management meetings.
- Semi-annual management meetings with member agencies.

### **Collaboration**

Section 329(d)(5) of the CUIIC also requires this report to include steps taken by the JESF to improve cooperation among participating agencies, reduce duplication of effort, and improve voluntary compliance.

Collaborative efforts among the JESF member agencies continue to grow. The operations of the EETF have forged closer ties and improved coordination of enforcement activities among the EDD, the DIR, and the DCA. Among the DCA's entities, the CSLB, the BAR, and the BSIS have been active participants in the EETF. These joint operations have improved program results for all of the participating agencies. A coordinated effort now exists that involves not only the JESF member agencies, but also other local, federal, and state entities.

In the latter part of 2013, a collaborative enforcement partnership was formed between the JESF and the Labor Enforcement Task Force, which conducts on-site compliance inspections on targeted industries within designated geographic locations. Both programs have special focus, talent, and strength. The JESF and Labor Enforcement Task Force remain under the guidance of their respective programs, while taking

advantage of opportunities to more effectively streamline operations, leverage resources and mitigate overlap, and increase overall coordination. The result is broader statewide operations, stronger communications, and more knowledgeable cross-trained staff. Collaborative efforts are expected to continue to grow as the operations of the JESF become more successful and as other agencies become more aware that collaborative efforts produce positive results.

During the past several years, Memoranda of Understanding have been developed to facilitate the sharing of information and data between enforcement partner agencies and to enhance collaboration and joint enforcement of labor, tax, and licensing laws.

The table below highlights JESF collaboration efforts. It shows the number of JESF business inspections that partner agencies participated in from July 1, 2013, through December 31, 2013. As the lead agency of the JESF and the EETF, EDD participates in all EETF inspections. The other JESF partners participate in inspections when there is a potential violation of the laws they administer.

ABC	BAR	BOE	BSIS	CSLB	District Attorney	DLSE	EDD	Local Police	Other
13	4	5	19	82	23	265	355	58	70

**Recommendations for Statutory Changes**

Section 329(d)(6) of the CUIC requires this report to provide any recommendations for any statutory changes needed to accomplish the goals described in paragraph (7) of subdivision (c).

Section 329(a) of the CUIC cites the Office of Criminal Justice Planning as a member of the JESF; however, the Office of Criminal Justice Planning no longer exists. It is recommended that Section 329(a) be amended to remove the Office of Criminal Justice Planning from the listing of statutory JESF member agencies.

## **BLATANT VIOLATOR CASES**

The following examples of blatant violation cases detected by the JESF include the most flagrant cases where schemes were used by businesses to avoid payroll tax, labor, insurance, and licensing laws, and where the EDD found fraud or intent to evade payment of payroll taxes.

### **Employment Enforcement Task Force Blatant Violator Cases**

- The EDD, the CSLB, and the San Diego District Attorneys Insurance Fraud Unit conducted a site inspection of a general partnership operating a roofing company in San Diego. The inspection revealed the company operated for 14 years. The owner obtained a workers' compensation policy but cancelled it after one month. There were five workers providing services as laborers and a site foreman. A subsequent EDD audit revealed unreported payments were made to the workers. Although the business had an active EDD account, it filed returns indicating "no payroll" from 2009 through most of 2012. A fraud penalty was charged under section 1128 of the CUIA for intent to evade, as the business was registered with the EDD, reported only partial wages for one quarter in 2012, and failed to report payments made to acknowledged employees and temporary workers. The business withheld the required payroll taxes on the cash wages but the wages and the payroll taxes withheld weren't reported. The audit covered the period 2005 to 2012. The business was assessed \$377,101 for unpaid payroll taxes and penalties.
- The EDD and the DLSE conducted a site inspection of a corporation operating a restaurant in the Bay area. A complaint was received by DLSE indicating that kitchen workers were providing services 10 hours a day, 60 hours a week, and were not receiving the hourly minimum wage. During the inspection, several employees were observed on the premises. The restaurant had been operating for two years. A subsequent EDD audit revealed that the business attempted to conceal the wages that had been paid by using various methods of payment to the workers, including cash payments from the petty cash account. A fraud penalty was charged under section 1128 of the CUIA for intent to evade and failure to reflect all payments made to workers on their Form W-2. The investigation covered a two year period and the employer was assessed \$172,659 for unpaid payroll taxes and penalties.
- The EDD, the DLSE, and the CSLB conducted a site inspection of a corporation operating a concrete construction business in Santa Clara County. The inspection revealed workers providing services as laborers. During worker interviews, it was determined they received unreported cash pay. The corporation registered with the EDD in 2005 and reported minimal wages to the EDD. The payroll records reviewed revealed major discrepancies and that the company stopped reporting laborers that were previously acknowledged employees during the period of 2010 through 2013. The corporate principal admitted he paid workers in cash and kept no records of the cash payments. A

## Attachment A

fraud penalty was charged under section 1128 of the CUIIC for intent to evade and failure to include all payments made to workers on the Form W-2. The investigation covered a four-year period and the employer was assessed \$209,950 for unpaid payroll taxes and penalties.

- The EDD, the CSLB, and the Riverside District Attorney conducted a site inspection of a construction company operating a tile installation business in Riverside County. The inspection revealed workers who provided services as tile setters and laborers. During worker interviews, it was found that the workers received unreported cash pay. A subsequent audit revealed the company was registered with the EDD in 2001 and reported minimal wages to the Department. Payroll records reviewed reflected discrepancies between actual payroll and what was reported to the EDD. The company was found to have significantly underreported the number of workers and the amount of wages that were paid. A fraud penalty was charged under section 1128 of the CUIIC for intent to evade and failure to reflect all payments made to workers on Form W-2s. The investigation covered a four-year period and the employer was assessed \$108,919 for unpaid payroll taxes and penalties.
- The EDD and the DLSE conducted an inspection of a restaurant in Fresno County. The restaurant has been in operation since 2004. Initially, the restaurant was registered with the EDD and reported minimal employees and wages. The business inactivated its EDD account in 2006. The restaurant continued to employ workers and pay unreported cash wages to its workers. A review of the business records revealed the business required employees to keep time cards and the records indicated the amount of cash they were paid. A fraud penalty was charged under section 1128 of the CUIIC for intent to evade and failure to reflect all payments made to workers on Form W-2. The audit covered a 12-year period and the employer was assessed \$92,875 for unpaid payroll taxes and penalties.
- The EDD, the Department of Motor Vehicles, and the Roseville Police Department conducted a site inspection of a business that has been in operation since 2010, provided vehicle towing services, mechanical repair, auto body repair, and painting services. Interviews with employees indicated they were paid in cash. The business was registered with the EDD in 2010. A subsequent audit revealed the business did not maintain complete records of payments made to its employees. A fraud penalty was charged under section 1128 of the CUIIC for intent to evade and failure to reflect all payments made to workers on Form W-2. The audit covered a three-year period and the employer was assessed \$218,111 for unpaid payroll taxes and penalties.

## **Tax Enforcement Group Blatant Violator Cases**

- An EDD TEG Agent conducted an investigation based on an anonymous complaint filed against a veterinary company in the Manton area. The informant identified herself as a former worker who provided services as an animal dental hygienist. The informant stated that the employer set all of her appointments and collected all payments from the clients. The informant also stated that she was not issued a Form 1099-MISC at year-end. The case was referred to the EDD Sacramento Area Audit Office and a field audit was conducted. The audit revealed that the employer had been previously audited in 1999 and still failed to report subject wages for 70 employees, including the corporate officer. The employer was assessed \$388,973 for unpaid payroll taxes, penalties and interest, including fraud penalty.
- An EDD TEG Agent conducted an investigation based on a complaint filed against a heating, ventilation, and air conditioning (HVAC) contractor in the Riverside area, who was not registered with the EDD. The informant identified himself as a former worker and alleged that he provided services for the employer for over a year, and was paid \$17 per hour without deductions. The case was referred to the EDD's San Bernardino Area Audit Office and a field audit was conducted. The audit revealed that the employer failed to report subject wages for 15 employees, including unlicensed HVAC technicians and the corporate officer. The employer was assessed \$356,191 for unpaid payroll taxes, penalties, and interest, including fraud penalty.
- An EDD TEG Agent conducted an investigation based on a complaint filed against a general building and masonry contractor in the Redondo Beach area. The informant alleged that her former spouse was being paid in unreported cash by the employer. The case was referred to the EDD's Santa Fe Springs Area Audit Office and a field audit was conducted. The audit revealed that the employer failed to report subject wages of 58 employees, including several unlicensed laborers that were previously reported to the EDD as acknowledged employees. The employer was assessed \$23,404 for unpaid payroll taxes, penalties and interest, including fraud penalty.
- An EDD TEG Agent conducted an investigation based on a referral received from the USDOL on an aluminum product manufacturer that specializes in outdoor furniture and boat parts in the City of Industry area. The USDOL conducted their own investigation and assessed the employer additional wages and penalties for failure to pay the correct minimum wage rate and for overtime hours worked. The case was referred to the EDD's San Bernardino Area Audit Office and a field audit was conducted. During the audit, it was revealed that the employer registered with the EDD but never filed payroll tax returns and failed to report subject wages for 10 employees. The employer was assessed \$231,952 for unpaid payroll taxes, penalties and interest, including fraud penalty.

## Attachment A

- An EDD TEG Agent conducted an investigation based on a referral received from the USDOL on a tree service contractor within the Temple City area. The USDOL conducted their own investigation and assessed the employer additional wages and penalties for failure to pay the correct minimum wage rate and/or for overtime hours worked. The case was transferred to the EDD's San Bernardino Area Audit Office and a field audit was conducted. During the audit, the employer admitted paying one unlicensed subcontractor in cash, so that the worker could in turn pay his assistants in unreported cash. The audit revealed that the employer failed to report subject wages for 54 employees. The employer was assessed \$446,400 for unpaid payroll taxes, penalties and interest, including fraud penalty.
- An EDD TEG Agent conducted an investigation based on a complaint filed against a retail flooring and installation contractor in the San Diego area. The informant alleged that the employer made withholdings from his paycheck but did not remit the monies to the EDD. The case was referred to the EDD's San Diego Area Audit Office and a field audit was conducted. During the audit, it was discovered that the employer made withholdings from employee paychecks although he filed payroll returns and stated that he did have payroll. The audit revealed the employer failed to report subject wages for 30 employees, including several unlicensed installers that were previously reported as acknowledged employees. The employer was assessed \$48,869 for unpaid payroll taxes, penalties and interest, including fraud penalty.

## **Joint Enforcement Strike Force Joint Criminal Prosecution Cases**

The JESF member agencies refer cases to their respective criminal investigation organizations. The following are examples of cases that the JESF member agencies worked together to prosecute in 2013.

- The EDD's Investigation Division and the CDI conducted a joint criminal investigation of a painting contractor in Napa County. It was alleged the employer did not accurately report payroll to the EDD and the State Compensation Insurance Fund. The employer underreported payroll and also used a payroll service to hide payroll.

The employer pleaded no contest to one felony count of section 2117.5 of the CUIIC for willful failure to file returns and willful filing of a false return and one felony count of section 11880(a) of the CIC for Workers' Compensation Insurance fraud. The remaining charges of section 2108, section 2110.7, and section 2118.5 of the CUIIC were dismissed. The employer paid full restitution of \$36,500 to the EDD in order to have the charges reduced to a misdemeanor. In addition, the employer served 45 days in the county jail.

- The Investigation Division conducted a joint investigation with the FTB, the CSLB, the DIR, and the Center for Contract Compliance in Orange County. The employer was accused of entering into public works contracts with various cities and then hiring mostly undocumented Hispanic workers. The employer was accused of embezzling over \$350,000 in employee wages from public works contracts and filing false tax returns.

The employer pleaded guilty to 17 felony counts of section 2117.5 of the CUIIC for failing to file a return with the intent to evade taxes, 15 felony counts of section 2118.5 of the CUIIC for willful failure to pay taxes, 7 felony counts of section 1778 of the Labor Code for taking and receiving a portion of a worker's wage on public works, 6 felony counts of section 115(a) of the Penal Code for recording false and forged instruments, and 3 felony counts of section 19705(a)(1) of the Revenue and Taxation Code for filing false tax returns.

- The Investigation Division and the CDI conducted a joint criminal investigation of a contractor in Santa Cruz County. It was alleged that the employer was paying employees in cash and not reporting the wages to the EDD. The total tax liability to the EDD was \$106,862.

The employer was convicted in Santa Cruz Superior Court of five felonies; section 2101.5 of the CUIIC for a false statement, representation or concealment for the purpose of avoiding payroll tax contributions, section 2108 of the CUIIC for failure to pay contributions, section 2117.5 of the CUIIC for filing false returns, section 2118.5 of the CUIIC for failure to collect, account for, and pay payroll taxes, and section 2121 of the CUIIC for aiding in the preparation of fraudulent

## Attachment A

payroll tax returns. The employer was also sentenced to one year in jail and to pay full restitution to the EDD.

- The Investigation Division along with the San Diego Worker Compensation Joint Task Force conducted a joint criminal investigation of a pool contractor in San Diego County. The employer was accused of underreporting wages to the EDD and paying employees in cash.

The owner pleaded guilty to one felony count each of section 2118.5 of the CUIIC for failure to collect, account for, and pay payroll taxes, section 19705(a)(1) of the Revenue and Taxation Code for filing a fraudulent tax return, and section 11880(a) of the CIC for misrepresentation to the company's workers' compensation carrier. The employer was ordered to pay restitution in the amount of \$1,141,080 to the State Compensation Insurance Fund, the EDD, and the FTB.

- The Investigation Division and the Alameda County District Attorney's Office conducted a joint criminal investigation of a contractor in Alameda County. The employer paid its employees in cash and underreported wages to the EDD.

The defendants pleaded no contest and were convicted of one misdemeanor count of section 2117.5 of the CUIIC for filing false returns and one misdemeanor count of section 11880(a) of the CIC for misrepresentation to the company's workers' compensation carrier. The defendants were also ordered to pay \$150,512 to the EDD and \$86,009 to the State Compensation Insurance Fund.

## ACRONYMS

BAR	Bureau of Automotive Repair
BOE	Board of Equalization
BSIS	Bureau of Security and Investigative Services
CDI	California Department of Insurance
CIB	Criminal Investigation Bureau
CIC	California Insurance Code
CSLB	Contractors' State License Board
CUIC	California Unemployment Insurance Code
DCA	Department of Consumer Affairs
DIR	Department of Industrial Relations
DLSE	Division of Labor Standards Enforcement
EDD	Employment Development Department
EETF	Employment Enforcement Task Force
FTB	Franchise Tax Board
HVAC	Heating, Ventilation, and Air Conditioning
IRS	Internal Revenue Service
JESF	Joint Enforcement Strike Force
TEG	Tax Enforcement Group
USDOL	United States Department of Labor



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