

California Labor and Workforce Development Agency



Edmund G. Brown Jr.
Governor

Joint Enforcement Strike Force On the Underground Economy

2012 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 §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, §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), the California Department of Insurance (CDI), and the Office of Criminal Justice Planning; however, the Office of Criminal Justice Planning no longer exists. The Franchise Tax Board (FTB), the Board of Equalization (BOE), the Department of Justice (DOJ), the California Department of Alcoholic Beverage Control (ABC), the United States Department of Labor and the Internal Revenue Service (IRS) 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.

The **DCA** protects and serves California consumers while ensuring a competent and fair marketplace. The DCA helps consumers learn how to protect themselves from unscrupulous and unqualified individuals. The DCA also protects professionals from unfair competition by 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 educating consumers about contractors and construction law, CSLB activities include: administering examinations to test prospective licensees; issuing licenses; investigating complaints against licensed and unlicensed contractors; issuing citations; suspending or revoking licenses; and seeking administrative, criminal, and civil sanctions against violators. The **CSLB’s Statewide Investigative Fraud Team (SWIFT)** is set up to monitor and combat illegal activity. The SWIFT has teams around the State that conduct sting operations on a regular basis and sweep construction sites. The SWIFT also conducts joint operations and sweeps with other State agencies dedicated to combating underground activity.

The **DCA – Bureau of Automotive Repair’s (BAR)** enforcement team investigates general auto repair complaints and ensures that shops comply with Smog Check statutes. Each year the BAR handles more than 14,800 complaints relating to auto repair and/or Smog Check inspections. The BAR staff checks out every complaint and negotiates with the shop on the consumer's behalf to achieve a mutual 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 operator and alarm company employees; locksmith companies and locksmith company employees; private investigators; private patrol operators and security guards; proprietary private security officer and employer; 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 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 suggests that the aggressive anti-fraud campaign by the CDI, the district attorneys, the insurance industry, and California employers continues to play a substantial role in reducing crime and helps 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 **DOJ** 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 are directed at deterring underground economy violations, recapturing lost revenues, and protecting 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 **United States Department of Labor'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 nonagricultural 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 nonimmigrant visa programs (H-1B, H-1B1, H-1C, H-2A).

The ABC's agents are peace officers under §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 Internal Revenue Service 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 Internal Revenue Service estimates that in 2006 the net national tax gap was approximately \$385 billion. Based on this figure, the California Franchise Tax Board 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 noncompliant 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 operating 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 CUIIC, the California Labor Code, the Business and Professions Code, and/or the California Insurance Code (IC).

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 noncompliance and fraud. When noncompliance is detected by the TEG, the case is referred to the EDD Tax Branch's Audit Program.

Questionable Employment Tax Practices Project

The Questionable Employment Tax Practices Project 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 noncompliance 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 §329(d) of the CUIC. While the JESF is a cooperative effort among many agencies, the statistics within this report are limited to data from the EDD programs.

Blatant Violations and Noncompliance

The §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 2012.

Employment Enforcement Task Force Results

Number of Joint Inspections	1,472
Number of EDD Audit Referrals	406
Number of EDD Audits Completed	208
Number of Fraud Penalty Cases	31
Total Amount In EDD Audit Assessments	\$8,762,202
Average Amount of an EDD Audit Assessment	\$42,126

Tax Enforcement Group Results

Number of EDD Audit Referrals	285
Number of EDD Audits Completed	131
Number of Fraud Penalty Cases	7
Total Amount In EDD Audit Assessments	\$8,942,761
Average Amount of an EDD Audit Assessment	\$68,265

Questionable Employment Tax Practices Project Results

Number of EDD Audits Completed	51
Total Amount In EDD Audit Assessments	\$274,066
Average Amount of an EDD Audit Assessment	\$5,374
Number of Previously Unreported Employees	442

Criminal Tax Enforcement Program Results

Type of Action	# of Cases	Amount of Tax Liability
Payroll Tax Evasion Cases in Progress	184	\$53,894,778
EDD Criminal Complaints Filed	17	\$4,965,732
EDD Criminal Prosecutions Completed	21	\$8,831,461

Publicity and Marketing Outreach Strategies

The §329(d)(2) of the CUIC 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 was launched in July 2012 and received 4,139 “hits” in calendar year 2012. 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 those considering fraud activity by demonstrating that California State government is actively pursuing and punishing those operating 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 provides the viewer with data, access to prior reports, program and operation information, etc. In calendar year 2012, the website received 10,713 “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)
 - *Informational Sheet: Employment Enforcement Task Force* (DE 631)
 - *Informational 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

The §329(d)(3) of the CUIC 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 2012, the EDD received:

- 419 allegations via telephone calls to the JESF hotline
- 2,097 allegations via online submission

Information Sharing

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

Businesses operating 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

The §329(d)(5) of the CUIC 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. 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.

Recommendations for Statutory Changes

The §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).

The §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 §329(a) be amended to remove the Office of Criminal Justice Planning from the listing of statutory JESF member agencies.

The information in this report sends a clear message that California will not tolerate the illegal activities of businesses that operate in the underground economy. With the continued hard work and dedication of each and every member and participating entity, the JESF will continue to improve its efforts to combat the underground economy.

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 and the DLSE conducted a site inspection of a corporation operating a restaurant/catering business in San Mateo County. The inspection revealed 19 unreported workers providing services as corporate officers, managers, cooks, food servers, delivery drivers, dishwashers, pantry workers, and office staff. A subsequent EDD audit revealed unreported cash payments were made to the workers. The employer had only been reporting very few of their employees and only a small portion of the wages paid to the workers to the EDD each quarter. A fraud penalty was charged under §1128 of the CUIA for intent to evade, as the business reported the payments made by check to some of the employees but failed to report cash payments made to acknowledged employees and temporary workers. The business withheld the required payroll taxes on the cash wages but these wages and the payroll taxes withheld on them weren't reported nor paid. The employer also issued false Form W-2s to the workers. The audit covered a four year period and the employer was assessed \$810,833 for unpaid payroll taxes and penalties.
- The EDD, the DLSE, and the ABC conducted a site inspection of a bar/nightclub business operating in the Bay area. During the inspection, several employees were observed on the premises. The business' "Daily Register" logs obtained during the inspection revealed the names of numerous unreported workers. The business had attempted to conceal the misclassified wages by using various methods of payment to the workers, including cash payments from the cash register. The business provided some of the workers with a Form W-2 at the end of the year reflecting only part of their actual earnings. During a subsequent EDD investigation, fraud penalty was charged under §1128 of the CUIA for intent to evade. The investigation covered a four year period and the employer was assessed \$543,217 for unpaid payroll taxes and penalties.
- The EDD, the DLSE, and the CSLB conducted a site inspection of a corporation operating a construction business in the San Bernardino County area. The inspection revealed the corporation was operating with an expired California Secretary of State number and working with a suspended CSLB license. Employee wage statements were not provided to the workers; therefore the DLSE issued a §226 of the California Labor Code citation. There were eight workers observed providing framing services during the site inspection. The employer was registered with the EDD in 2006 and reported wages for employees that included corporate officers and construction workers. The employer reported a very small number of workers and a small amount of wages

to the EDD each quarter. A subsequent EDD audit of the employer's records revealed that employees previously reported in 2006 received unreported wages from 2009 through 2012. Since no Form W-2s or Form 1099 MISCs were issued to these employees, a fraud penalty was charged under §1128 of the CUIIC for intent to evade. The audit covered a four year period and the employer was assessed \$345,673 for unpaid payroll taxes and penalties.

- The EDD and the DLSE conducted a site inspection of a business operating an automotive and recreational vehicle repair shop in Santa Clara County. During the inspection, four individuals were observed working on the employer's premises. The business had become a subject employer and registered with the EDD in 2002. A subsequent EDD investigation revealed the employer had been reporting a very low number of workers and very low wage amounts and in the year 2010, the employer filed "zero payroll" wage reports. The EDD auditor who completed the investigation determined that the employer's failure to file the necessary and accurate reports to the EDD was a deliberate act. The employer underreported workers and wages to the EDD in order to lower his payroll tax liability with the EDD. A fraud penalty was charged under §1128 of the CUIIC. The employer was assessed \$243,955 for unpaid payroll taxes and penalties.
- The EDD and the CSLB conducted a site inspection of a construction business that installs carpeting and other flooring in the Contra Costa County area. A subsequent EDD investigation revealed that the employer was registered with the EDD in 2004 but inactivated his account in 2006, although he continued to employ workers. The employer deliberately failed to report the wages paid to his acknowledged employees in order to avoid the payment of payroll taxes, including the State Personal Income Tax withheld from the wages of his acknowledged employees. A fraud penalty was charged under §1128 of the CUIIC. The employer was assessed \$232,847 for unpaid payroll taxes and penalties.
- The EDD, the DLSE, and the ABC conducted a site inspection of a bar/nightclub business operating in Los Angeles County. Workers interviewed indicated they were paid in cash. A subsequent EDD audit revealed that the business first registered with EDD as an employer in 2003 and the employer account was inactivated in 2005. However, the employer was found operating in the same location in 2010 with unreported workers. The monthly sales revenues and bank deposits were reviewed and indicated that the employer had continued operations after 2005 on a continuous basis through the date of the inspection. In addition, a review of the business' gross sales receipts revealed significant under reporting of income. A penalty under §1128 of the CUIIC was charged due to intent to evade. The employer was assessed \$89,321, for unpaid payroll taxes and penalties.

Tax Enforcement Group Blatant Violator Cases

- An EDD TEG agent conducted an investigation based upon a complaint filed by a former employee against a painting contractor in the Sacramento area. The complaint alleged that the employer was paying workers and making deductions but that the wages and deductions were not being reported to the EDD. The case was referred to the EDD's Sacramento Area Audit Office and a field audit was conducted. During the audit, the employer admitted to intentionally not reporting workers' wages. The audit revealed that the employer failed to report subject wages for seven employees. The employer was assessed \$180,823 for unpaid payroll taxes, penalties, and interest, including fraud penalties.
- An EDD TEG agent conducted an investigation based upon an anonymous complaint that was filed against a janitorial company in the San Bernardino area. The informant identified himself as a friend of a former employee of the business. The informant stated that the employer reported wages for workers who had a social security number, but did not report wages for workers that did not have a social security number. The case was referred to the EDD's San Bernardino Area Audit Office and a field audit was conducted. During the audit, the employer admitted to intentionally not reporting workers' wages. The audit revealed that the employer failed to report subject wages for 100 employees. The employer was assessed \$2,162,464 for unpaid payroll taxes, penalties, and interest, including fraud penalties.

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 JESF member agencies worked together to prosecute in 2012.

- The EDD Investigation Division and the CDI conducted a joint criminal investigation of an employer in San Joaquin County. The husband and wife owners operated several businesses including a restaurant, a bridal shop, and a poultry labor contracting company. The employer failed to report approximately 800 employees and \$15,340,037 in employee wages to the EDD and to their Workers' Compensation Insurance carriers.

The wife pleaded guilty to one felony count each of §2117.5 of the CUIIC for willful filing of fraudulent returns, §11760 of the IC, and §11880(a) of the IC for misrepresentation of facts to lower the business' Workers' Compensation Insurance premium paid to their insurance carriers. She was convicted and sentenced the same day to four years in State prison. The husband pleaded guilty to one felony count of §11880 of the IC. He was sentenced to 30 days of county jail and five years of probation. They were ordered to jointly pay restitution in the amount of \$2,899,256 to be equally divided between the EDD and their two insurance carriers.

- The EDD Investigation Division and the Santa Clara County District Attorney's Office conducted a joint criminal investigation of an electrical contractor in Santa Clara County. It was alleged that the employer was not accurately reporting their payroll to the EDD and to the State Compensation Insurance Fund. The employer underreported and misclassified laborers, framers, and electrical construction workers.

The owner of the business was convicted in Santa Clara County Superior Court of five felonies under §2117.5 of the CUIIC for willful failure to file returns and §2118.5 of the CUIIC for willful failure to withhold and pay wage taxes. In addition, he was convicted of five felonies under §11760(a) and §11880(a) of the IC for misrepresenting facts to lower the business' Workers' Compensation Insurance premium paid to two insurance carriers. The employer was sentenced to 468 days in jail with credit for time served, five years of formal probation, and ordered to pay \$243,762 in restitution to the EDD and the insurance carriers. The employer has paid \$113,000 in restitution to date.

- The EDD Investigation Division, the DOJ, and the CDI conducted a joint criminal investigation of a concrete contractor in Placer County. It was alleged that the employer intentionally misclassified payments to employees. The misclassified payments which were paid in some instances by check and other times in cash were not reported to the EDD or to the insurance carriers for Workers' Compensation Insurance purposes.

Attachment A

The husband and wife owners of the business pleaded to one felony count of §2117.5 of the CUIA for willful failure to file returns and one felony count of §11880(a) of the IC for misrepresenting facts to lower the business' Workers' Compensation Insurance premium. The wife was convicted as she pleaded and was sentenced to four years of formal probation. The charges against the husband were reduced to misdemeanors and he was sentenced to three years of informal probation. They have paid full restitution of \$222,644 to the EDD.

- The EDD Investigation Division, the CDI, and the Kern County District Attorney's Office conducted a joint criminal investigation of a general contracting business in Kern County. The employer paid the employees by two checks, one with deductions and the other without. The checks without deductions were not reported to the EDD.

The father and daughter owners of the business were convicted of four felony counts of §2117.5 of the CUIA for willful filing of fraudulent returns, four felony counts of §2118.5 of the CUIA for willful failure to withhold and pay taxes to the EDD, and one felony count of §11880(a) of the IC for misrepresentation of facts to lower the business' Workers' Compensation Insurance premium paid to an insurance carrier. The father was sentenced to one year in county jail and ten years of formal probation. The daughter was sentenced to ten years of formal probation with 400 hours of community service. They were ordered to jointly pay restitution in the amount of \$124,899 to the EDD and \$475,100 to the insurance carrier.

- The EDD Investigation Division and the CDI conducted a joint criminal investigation of a roofing contractor in San Mateo County. It was alleged that the employer intentionally underreported wages to the EDD and to their insurance carrier for years 2007 through 2009 and failed to report wages to the EDD in 2010 and 2011. The employer paid some of its roofing employees by both cash and check. The payments made by check were reported to the EDD, while the payments made in cash were not.

The owners were convicted in San Mateo County Superior Court of §2117.5 of the CUIA for willful filing of fraudulent returns, and §11880(a) of the IC for misrepresentation of facts to lower the business' Workers' Compensation Insurance premium. They were sentenced to five years of probation and eight months in county jail to be served as 120 days of work furlough and 120 days of house arrest. They were also ordered to pay \$146,236 in restitution to the EDD and \$629,391 to the State Compensation Insurance Fund. To date, the EDD and the State Compensation Insurance Fund have each received \$100,000 in restitution.

ACRONYMS

ABC	California Department of Alcoholic Beverage Control
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
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
DOJ	Department of Justice
EDD	Employment Development Department
EETF	Employment Enforcement Task Force
FTB	Franchise Tax Board
IC	California Insurance Code
IRS	Internal Revenue Service
JESF	Joint Enforcement Strike Force
SWIFT	Statewide Investigative Fraud Team
TEG	Tax Enforcement Group



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