

California Employers Beware: The Labor Commissioner Is Coming for You!

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By [Betsy Johnson](#)

On May 22, 2013, California Labor Commissioner Julie Su, issued a report, [State of the Division of Labor Standards Enforcement](#), which summarizes and evaluates the enforcement activity of the Division of Labor Standards Enforcement (DLSE) in 2011 and 2012. The report demonstrates that the DLSE, which among its enforcement responsibilities adjudicates.....

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The report demonstrates that the DLSE, which among its enforcement responsibilities adjudicates wage claims, inspects workplaces for wage and hour violations, and investigates retaliation complaints, has significantly increased the number and scope of its enforcement actions during the first two years of Governor Jerry Brown's administration. The Labor Commissioner characterizes the DLSE's activities as an effort to combat the abuses associated with California's "underground economy" (referring to employers who utilize undocumented labor and/or ignore California's wage and hour laws). The statistics set forth in the report, however, indicate that all business sectors have been impacted by increased workplace inspections, audits, citations for violations, and wage adjudications by the DLSE.

The report highlights several significant findings regarding the DLSE's activities during Brown's administration including:

- Minimum wage: Over \$3 million in unpaid minimum wages were assessed in 2012, which is more than any previous year on record and an increase of 462 percent from minimum wage assessments in 2010.
- Overtime: More than \$13 million in unpaid overtime wages were assessed in 2012, which is more than any previous year on record and a 642 percent increase from 2010.

- Civil penalties: In 2013, over \$51 million in civil penalties were assessed against employers for violating labor laws—more than any previous year in a decade and a 150 percent increase from 2010.
- Targeting: In 2012, the Labor Commissioner’s office had the highest rate of civil penalty citations (80 percent) in the past decade (compared to an average citation rate of only 48 percent from 2002 to 2010).
- Public works: Over \$25 million in wages were assessed and civil penalties were issued on public works projects in 2012—the highest amount since 2002.
- Processing: The DLSE’s application review process for business licenses and registration applications was the fastest it has been in the past five years—50 percent faster than in 2010.

What this means for California employers

We can expect a continued and concerted effort by the DLSE to actively pursue employers for minimum wage and overtime violations. Employers of all sizes across all industries who have workers in California are advised to “get their houses in order” before the DLSE comes knocking at the door. Employers should conduct internal audits of compensation and payroll practices. These audits should include, among other things, a review of the company’s practices and procedures for:

- wage payments (i.e., itemized pay statements, timely payment of wages, payment at termination);
- timekeeping (i.e., rounding policies, off-the-clock work);
- calculation of employees’ regular rate and overtime compensation (i.e., daily overtime, alternative workweek schedules);
- recordkeeping, required postings, and required notices (i.e., the Wage Theft Protection Act);
- classification of employees as exempt from overtime; and
- classification of workers as independent contractors.

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