A report on the State of

THE DIVISION OF LABOR STANDARDS ENFORCEMENT

Julie A. Su, Labor Commissioner
Department of Industrial Relations
Labor & Workforce Development Agency

STATE OF CALIFORNIA
Governor Edmund G. Brown Jr.

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When I was given the opportunity by Governor Brown to serve as the State Labor Commissioner, I set out to make the promise of a just day's pay for a hard day's work a reality in every workplace in California. As the head of the Division of Labor Standards Enforcement, I embraced the opportunity to promote the health and vitality of our state's economy by protecting working people and providing a level playing field for honest employers to prosper and thrive. To that end, I set the following priorities:

- ***Ensure effective inspections and payment of owed wages.*** *Rather than random targeting of employers for easy-to-uncover violations that do little to address the underground economy, I emphasized meaningful investigations to combat wage theft. In 2012, our field investigations assessed 462% more in minimum wages and 642% more in overtime wages than the DLSE did in 2010, the year before Governor Brown took office, and in public works, we assessed the highest combined amount of total wages and civil penalties since 2002.*
- ***Create a business-friendly environment for law-abiding employers.*** *My goal was to increase compliance with labor laws, not to punish employers who abide by the law. In 2012, the ratio of civil penalty citations to inspections was the highest in a decade, proving that better targeting identifies violators and avoids indiscriminately sweeping in those already in compliance.*
- ***Eliminate backlogs.*** *I sought to cut down the significant time lag in processing wage claims and retaliation complaints brought before the DLSE. The last two years have seen marked progress in both areas.*
- ***Protect communities against criminal activity by unscrupulous employers.*** *I established a Criminal Investigation Unit comprised of sworn peace officers with the power to conduct criminal investigations, arrest employers for violating the state's penal code and labor laws, and refer criminal cases to the district attorney's office. Since its formation, we have filed 10 felony theft of labor cases seeking over $655,000 in stolen wages.*
- ***Provide comprehensive training program for DLSE staff.*** *In order to equip all staff with the tools they need to work effectively and efficiently, I made it a priority to invest in training. In the last two years, the DLSE held over 60 training sessions and instituted improvements in internal communication and coordination.*
- ***Forge meaningful partnerships.*** *To work smarter, the Division has cultivated strong working relationships with employer groups, trade and industry associations, labor-management groups, unions, employee advocates, and community-based organizations, as well as local, federal and other state agencies.*
- ***Invest in technology and infrastructure.*** *In order to better serve the public and promote more efficient use of resources, I prioritized the development of online functions and the use of technology to target unlawful employers and track enforcement efforts.*

The DLSE provides a wide array of essential services for California workers and employers, including adjudication of wage claims, inspections of workplaces, enforcement of prevailing wage rates and apprenticeship standards in public works projects, licensing and registration of businesses, investigations of retaliation complaints, and education of the public on labor laws. Our enforcement efforts generate substantial revenue for the state when unlawful employers pay penalties for breaking the law.

In the course of only two years, we have made historic advances in the critical work of the Division. I am proud of what we have accomplished in such a short span of time and grateful for the dedication and hard work of the DLSE staff, who have made the achievements we have realized during this Administration possible. In the work that we do every day, we will continue to strive to ensure that the working people of California and the businesses who follow the law know that the State is on their side.

Julie A. Su
California Labor Commissioner

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EXECUTIVE **SUMMARY**

Since her appointment by Governor Edmund G. Brown Jr., California Labor Commissioner Julie A. Su has led the Division of Labor Standards Enforcement (DLSE) through the two most robust years in its history. Prior to her tenure, the Division struggled with considerable operational challenges. Severe backlogs were clogging the timely processing of wage claims and retaliation complaints, and the volume of inspections conducted by the agency was prized over the ability to identify wage theft and target non-compliant employers. To meet these formidable challenges and raise the bar on the agency's enforcement efforts, new priorities were set for the Division in order to make the Labor Commissioner's vision the reality in all offices of the DLSE statewide (see pages 5-6). As a result, in a relatively short period of time, the DLSE has experienced a renaissance in enforcement activity as significant improvements have been instituted across the Division.

The breadth of the DLSE's accomplishments in 2011 and 2012 underscores the success of this Administration's new approach to enforcement that focuses on smarter and more effective use of resources.

Wage Claims Adjudication (WCA)

Reduction in length of time from filing to hearing of individual wage claims ("Berman" claims).

- In 2012, **almost two-thirds** of WCA offices experienced a reduction in the time it took for Berman claims to be heard, with an average decrease of **more than two months** compared to 2010 (the year before Governor Brown appointed Commissioner Su). On average, Berman claims were being heard in 2012 faster than any year since 2008.

Highest total amount of hearing awards in the past five years.

- In 2012, WCA awarded over **$85 million** in unpaid wages, other compensation, and penalties – the highest total amount in the last five years.

Highest total amount awarded in garment claims in the past five years.

- In 2012, WCA awarded more than **$7 million** in hearing decisions on garment claims – the highest amount in the last five years. This is more than **6 times** the amount awarded in 2010.
- In 2012, WCA issued the most hearing decisions (254) on garment claims compared to any other year in the past five years. This is **more than triple** the number of hearing decisions issued in 2010.

Bureau of Field Enforcement (BOFE)

Highest amount on record of minimum wages assessed.

- In 2012, BOFE assessed over **$3 million** in unpaid minimum wages – more than any previous year for which such data is available. This is almost **triple** the amount assessed in 2009, the second highest year on record. It also represents an increase of **462%** from the minimum wages assessed in 2010.

Highest amount on record of overtime wages assessed.

- In 2011, BOFE assessed more than **$4.8 million** in unpaid overtime wages – the highest amount of any previous year on record.
- In 2012, BOFE nearly **tripled** the prior record set in 2011, by assessing more than **$13 million** in overtime wages. The 2012 figure represents a **187%** increase from 2008 (the highest year on record before the current Administration took office), and a **642%** increase from 2010.

Highest amount of total wages assessed in nearly a decade.

- Between 2008 to 2010, the total of all wages (minimum wage, overtime, meal and rest period premiums, and other compensation) assessed by BOFE dropped 68% to its lowest point in a decade in 2010. Under the Brown Administration, BOFE reversed this trend.
- In 2011, BOFE more than **doubled** the amount of total wages assessed compared to 2010.
- In 2012, BOFE assessed over **$25 million** in total wages – the highest amount in nearly a decade and an increase of **157%** from 2011. The 2012 figure also represents a **419%** increase from 2010.

Highest total amount of civil penalties assessed in a decade.

- In 2011, BOFE assessed almost **$35 million** in civil penalties – more than any previous year in a decade – for various labor law violations including failure to pay minimum wage or overtime, failure to provide itemized wage deduction statements, failure to carry workers' compensation insurance, and failure to comply with licensing and registration requirements.
- In 2012, BOFE set a new record by assessing over **$51 million** in civil penalties – a **150%** increase from 2010.

Highest amount of civil penalties for minimum wage violations in a decade.

- In 2011, BOFE assessed over **$670,000** in civil penalties for minimum wage violations – the highest amount on record in a decade.
- In 2012, BOFE broke its 2011 record and assessed over **$770,000** in minimum wage penalties. The 2012 figure is nearly **double** the amount assessed in 2009 (which was the highest year before the current Administration took over the DLSE). It also represents an increase of **159%** from 2010.

Highest amount of civil penalties for overtime violations in a decade.

- In 2011, BOFE assessed over **$670,000** in civil penalties for overtime violations – the highest amount on record in a decade.
- In 2012, BOFE more than **tripled** the amount in 2011, by assessing nearly **$2.4 million** in overtime penalties. The 2012 record is almost **6 times** the amount assessed in 2010 (which was the highest year before the current Administration took office).

Highest civil penalty citation rate in a decade.

- In 2012, BOFE's more targeted, efficient use of inspections yielded the highest rate of civil penalty citations (**80%**) in the past 10 years.

Public Works

Highest combined amount of wages and civil penalties assessed since 2002.

- In 2012, Public Works assessed over **$25 million** combined in total wages and civil penalties – the highest amount since 2002.
- In 2012, Public Works issued **370 Civil Wage & Penalty Assessments** (CWPAs) – the second highest number (trailing the 2010 high mark by only 3 CWPAs) since this data has been tracked.

Two of the three highest wage assessments in a decade.

- In 2011, Public Works assessed over **$17 million** in wages – the second highest amount in a decade (behind 2010).
- In 2012, Public Works assessed over **$16 million** in wages – the third highest amount in a decade.

Highest amount of civil penalties assessed in nearly a decade.

- In 2012, Public Works assessed over **$8.6 million** in civil penalties – the highest amount in the past nine years and the third highest amount since 2002.

Retaliation Complaint Investigations (RCI)

Reduction in average number of days to complete investigations.

- In 2012, the average number of days it took to complete a retaliation investigation was the lowest it has been in the past five years, despite the highest volume of complaints accepted and violations alleged since 2008.

Increase in percentage of cause findings.

- In 2012, the percentage of RCI investigative determinations that found violations (**23%**) was higher than in any previous year in the past five years.

Qualitative improvements in complaint and investigation procedures.

- The DLSE's response to retaliation has been reinvigorated through the creation of better processes for prioritizing complaints, so that meritless cases can be dismissed quickly and meritorious ones given immediate attention. Improved forms and notices, enhanced capacity to expedite complaint processing, a new system of coordinated investigation efforts between the RCI unit and the DLSE's other enforcement units, and procedures to deter retaliation by educating employers and workers have all been implemented in the past two years.

Judgment Enforcement

Record amount of wages and penalties collected.

- In 2012, the Judgment Enforcement unit collected a record of over **$3.9 million** in wages and penalties, exceeding any other previous year since the inception of the unit.

Licensing and Registration

Fastest application review process in the past five years.

- In 2012, it took the DLSE an average of only **21 days** to review licensing and registration applications – **50%** faster than in 2010. For applications involving garment contractors, car washes, and farm labor contractors, 2012 marked the shortest review period (30 days or under) in the past five years.

Creation of key online functions for the public and streamlined application process.

- Employers are now able to pay required application and exam fees online, and the procedure for correcting defective applications has been expedited. Work permits for minors can now be obtained online as well. In addition, the licensing application for farm labor contractors has been simplified, and the current licensing status of farm labor contractors may be verified online.

DLSE Legal

Successful representation of workers in de novo appeals of wage claims.

- In 2011 and 2012, DLSE attorneys achieved favorable resolutions for the claimant (either through judgment or settlement) in over **95%** of cases.

Strategic lawsuits to combat wage theft.

- Affirmative suits against employers who have engaged in widespread violations of wage and hour laws are one of the most powerful enforcement tools in the Division's arsenal. In 2011 and 2012, DLSE attorneys filed several high-profile cases: a lawsuit on behalf of real estate agents throughout California who were denied minimum wage, which brought much-needed attention to the fact that violations of minimum labor standards are occurring in a wide variety of industries; the first lawsuits against farm labor contractors in the agency's history, on behalf of hundreds of workers owed more than $2 million in unpaid wages, damages, and penalties; and lawsuits against car washes for systematically underpaying their employees and attempting to avoid liability by transferring ownership.

INTRODUCTION: THE LABOR COMMISSIONER'S PRIORITIES

When Governor Edmund G. Brown Jr. appointed Labor Commissioner Julie A. Su two years ago, the DLSE was facing significant operational challenges. Massive backlogs were clogging the timely processing of wage claims and retaliation complaints, and the volume of inspections conducted by the agency was prized over the ability to identify wage theft and target non-compliant employers. To raise the bar on the agency's enforcement efforts, the Administration set the following new priorities for the Division:

- **Ensuring effective inspections and payment of owed wages.** Because workplace investigations are central to the DLSE's efforts to combat the underground economy, Commissioner Su prioritized making inspections meaningful and effective. Prior to 2011, the DLSE utilized the "sweep" approach to inspections, where random investigations of as many employers as possible were launched within a given industry and geographical area, and employers were cited primarily for workers' compensation and licensing violations. Such violations could be confirmed through quick, superficial inspections. Without a focus on more in-depth evaluations of what workers were being paid and the often sophisticated means of covering up wage violations, "sweeps" resulted in a large number of inspections but left wage theft undetected. Under this Administration, the Division has refocused inspections on ensuring that employers comply with minimum wage and overtime requirements. Rather than merely citing employers for easy-to-uncover violations that only scratch the surface of the underground economy, the DLSE has eliminated the scattershot approach in favor of targeted investigations that are now based on: (a) better intelligence (through data sharing among state agencies and better leads from employer associations, industry groups, and worker advocates); and (b) a commitment to root out illegal schemes aimed at denying workers their wages and avoiding detection.

- **Creating a business-friendly environment for law-abiding employers.** This Administration's improved approach to field investigations targets scofflaws and protects those already in compliance from unnecessary inspections. Furthermore, the Division has expanded the use of self-audits of payroll records for employers who want to correct violations. The Administration's goal is to increase compliance, not to punish those who want to abide by the law, so that honest businesses can thrive and profit in California.

- **Eliminating backlogs.** The Brown Administration prioritized cutting down the significant time lag in processing claims brought before the DLSE. As a result, the time it takes to hear a wage claim filed under the Berman process (Labor Code Section 98) and to investigate a retaliation complaint (Labor Code Section 98.7) has been reduced.

- **Utilizing all available tools to combat wage theft and protect communities against crimes.** In order to enhance the state's ability to fight wage theft and worker exploitation, Labor Commissioner Su established a Criminal Investigation Unit (CIU) to conduct criminal investigations of employers who engage in illegal conduct. Prior to the formation of the CIU, the DLSE had failed to effectively utilize its authority to pursue criminal penalties against employers who commit wage theft and other crimes against workers. Made up of sworn peace officers who have completed the police academy, the CIU reflects our state's recognition that such crimes harm not only individual workers but also communities. The CIU has the power to conduct investigations into criminal activity, arrest employers for violating the state's penal code and labor laws, file criminal cases with the district attorney's office, and obtain and serve inspection and search warrants. To facilitate the Division's criminal

enforcement efforts, the DLSE has cultivated working relationships with district attorneys throughout California, who may utilize CIU investigations as the basis for criminal prosecutions. Since its formation, the CIU has pursued employers who have perpetrated crimes against workers, including filing 10 felony theft of labor cases seeking over $655,000 in wages stolen from workers, in addition to 2 felony forgery charges.

As part of the Administration's commitment to combat wage theft and other crimes against workers, the Division has also begun certifying U-visa petitions,[1] in order to encourage immigrant workers to report criminal activity by unscrupulous employers, and to protect workers who have the courage to step forward. The DLSE's ability to certify petitions based on crimes targeting the state's most vulnerable workers serves an invaluable law enforcement goal; the DLSE is often the first and only agency of the state to encounter and uncover criminal conduct committed as part of a scheme of labor exploitation. The Labor Commissioner therefore deems U-visa certification in appropriate cases as integral to the DLSE's core mission to ensure robust enforcement of labor laws.

- **Launching comprehensive, Division-wide training program for DLSE staff.** For several years prior to 2011, DLSE staff had not received much-needed training. Any informal training that occurred was conducted ad hoc, office by office, which led to inconsistent practices and applications of the law. Under this Administration, the DLSE has instituted comprehensive, Division-wide staff trainings. In the past two years, the DLSE convened over 60 training sessions on 23 different topics including effective mediation of cases; investigative techniques in public works projects; effective worker interviews; best practices for administering wage claims; new procedures and forms for retaliation complaint investigations; citation appeals; identification of criminal cases; performing wage audits; understanding the underground economy; and new legislation. Each training has focused not only on the substantive knowledge necessary for staff to do their jobs well but also on improved processes for investigating cases, keeping abreast of developments in the law, identifying barriers to successful enforcement efforts, and working across different units within the DLSE. As a result of these trainings, DLSE staff are better equipped with the skills and knowledge necessary to handle claims and investigations effectively and efficiently.

- **Forging meaningful partnerships with businesses, labor, educational institutions, and community-based groups.** Working collaboratively with community partners is integral to smart, effective enforcement. As part of leveraging collective resources to help identify labor law violators, fight abuses in the underground economy, and level the playing field for honest employers, this Administration has prioritized the development of strong working relationships with employer groups, trade and industry associations, labor-management groups, unions, employee advocates, and community-based organizations, as well as local, federal and other state agencies. The DLSE has also piloted partnerships with California law schools, including Stanford, Loyola, UC Irvine, and Santa Clara, to train students to assist in retaliation investigations. Law school clinics allow students to help members of the public seeking assistance from the DLSE and have expanded the Division's ability to reach communities that would otherwise have trouble accessing services.

- **Investing in technology and infrastructure.** In order to better serve the public and promote more efficient use of resources, the Brown Administration has focused on developing more online functions, as well as improving the use of technology to target bad employers and track complaints and enforcement efforts. Currently, most DLSE data is still input manually multiple times or is not easily shared from one part of the Division to another. The Administration is working to implement an enhanced data management system that would facilitate the DLSE's ability to coordinate all its enforcement activities. The new system, unlike the antiquated system currently in use, would enable the DLSE to immediately determine if an employer who has a pending wage claim in one office has any other claims or outstanding judgments, has a valid state license to do business, or is (or should be) the subject of a field enforcement inspection.

1 The U-visa is a special type of visa issued by the U.S. Citizenship and Immigration Services (USCIS) of the federal Department of Homeland Security. In recognition of the fact that immigrant crime victims might not have legal status and thus may be reluctant to step forward to report criminal activity, Congress created the U-visa in order to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute crimes that target immigrants and to protect immigrant victims of such crimes. In order to petition USCIS for a U-visa, an immigrant victim of a "qualifying crime" must submit a certification form from a federal, state, or local law enforcement agency along with his or her U-visa application. The U-visa extends critical protections to immigrant crime victims by providing temporary lawful status as a "U nonimmigrant" for up to four years, work authorization, and an opportunity to adjust to lawful permanent resident status.

IMPACT OF THE DLSE'S ENFORCEMENT ACTIVITIES

The DLSE's enforcement activities are essential for a healthy California economy. When California workers are paid what they are owed, there is pride in the work accomplished, families can put food on the table, payroll taxes are generated, and consumer spending increases; when labor law violators are caught, law-abiding employers are not undercut by businesses that reap the economic benefits of operating illegally; and when the state penalizes employers who have tried to game the system, respect for the law is restored and substantial state revenues are gained.

Ensuring Workers are Paid their Wages

The wage theft crisis in this state is well-documented. A recent UCLA study[2] reported that an estimated **$26 million** in wages ***per week*** are stolen from low-wage workers in Los Angeles County alone. Workers who experienced a pay-based violation in the previous work week lost an average of $2,070 annually due to workplace violations, out of total annual earnings of only $16,536. Of the Los Angeles workers surveyed:

- Almost 30 percent were paid less than minimum wage in the work week preceding the survey.
- 21.3 percent worked more than 40 hours for a single employer during the previous work week. Over three-fourths (79.2 percent) of these workers were not paid the legally required overtime rate by their employers.
- 89.6 percent worked enough consecutive hours to be legally entitled to a meal break. However, more than three-fourths of these workers (80.3 percent) experienced a meal break violation in the previous work week.
- 63.6 percent did not receive statutorily-mandated documentation of their wage earnings and deductions.

Wage theft exacts a heavy socio-economic toll on workers, particularly low-wage workers and their communities. The proliferation of wage theft, particularly in the underground economy, underscores the fact that effective, strong enforcement of labor laws is needed now more than ever before, to give working people a chance in our economy.

Leveling the Playing Field for Legitimate Businesses

Law-abiding businesses who play by the rules suffer the economic consequences when government enforcement of labor laws is lackluster or nonexistent; unscrupulous employers operating illegally are able to gain an unfair competitive advantage and ignite a race to the bottom that lowers even the most basic labor standards.

The Labor Commissioner has met with hundreds of businesses who are demanding more and better labor enforcement in California. Legitimate businesses count on the state to enforce the rules. Many of these businesses have come to the DLSE seeking our help and leadership; in industries such as janitorial, garment and car wash, honest employers fear they will be out of business in a year if the DLSE does not step up enforcement efforts. Legitimate construction contractors say they are on the verge of closing their businesses because of illegal competition posed by those who are unlicensed and pay in cash. In multiple other industries, law-abiding employers cannot compete against the scofflaws. These serial violators are a primary focus of the Division's enforcement efforts.

Generating State Revenues

Addressing workplace violations through vigorous state enforcement of labor laws is necessary for a vibrant economy. When California workers are not paid their earned wages, they have less money to spend for basic necessities, which means less consumer spending to help spur economic growth. This adversely impacts not only local communities and economies, but also the entire state. The DLSE's enforcement activities not only put hard-earned wages in the pockets of workers, but also help generate tax revenue and substantial monetary penalties for the state.

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2 *Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-Wage Workers*, Milkman, Gonzalez & Narro, Institute for Research on Labor and Employment, UCLA (2010).

MAJOR **ACHIEVEMENTS**

Under Labor Commissioner Su's leadership, the past two years were record-setting ones for the DLSE. Significant improvements to address long-standing problems that had hampered the DLSE's enforcement efforts were implemented across the Division, which experienced a renaissance in enforcement activity. Despite numerous challenges, three major enforcement areas – Wage Claims Adjudication, Bureau of Field Enforcement, and Licensing and Registration – demonstrated marked gains in performance. In addition, the Public Works unit operated at peak levels even during a critical period of transition for the unit. Considerable progress was made in revamping the Retaliation Complaint Investigation unit, although more work is necessary to address the entrenched problems that have historically held that unit back. The Division's Judgment Enforcement unit continued to improve its performance relative to previous years and recently implemented key measures intended to enhance its collections efforts. Finally, the Legal unit maintained the high quality of its enforcement work while also strategically broadening its impact through affirmative litigation against employers who have engaged in widespread violations of wage and hour laws.

WAGE CLAIMS **ADJUDICATION**

As the largest unit within the DLSE, **Wage Claims Adjudication** (WCA) handles over 30,000 new wage claims a year in 16 offices across the state. Under Section 98 of the California Labor Code, workers may file a claim before the DLSE for unpaid wages (including minimum wage and overtime), other compensation, and penalties through an administrative claims process. Commonly known as the "Berman" process, this process has been heralded by the Legislature and the courts as an indispensable alternative to costly litigation for both workers and employers. When a Berman claim is filed, WCA staff typically hold a settlement conference and hearing on the claim. In addition, WCA staff administer wage claims brought by garment workers under a separate statutorily-mandated process (known as "AB 633") for investigating and adjudicating garment claims.

When the Brown Administration took over the DLSE in 2011, WCA was suffering from its lowest staffing levels in more than ten years.[3]

The unit operated with almost 10% fewer staff in both 2011 and 2012 as compared to 2009, when WCA was staffed at one of its highest levels over the past decade but nonetheless accumulated an excessive delay in adjudicating claims.[4] Before the Brown Administration came into office, it was taking an average of approximately 7 months (210 days in 2009 and 203 days in 2010) for a Berman claim to be heard. In 2011, Commissioner Su inherited this severe backlog in claims processing.

The backlog in AB 633 claims was even worse. When this Administration took office in 2011, **more than half** of the open AB 633 cases had been filed **two to three years ago**; some pending cases had been filed as far back as 2005. The Division's failure to properly handle AB 633 cases prior to 2011 is evidenced by the extremely low number of hearing decisions issued: a mere 54 in 2009 (an average of only 4.5 per month) and 73 in 2010 (an average of only 6 per month). As a result, many garment workers with pending claims cannot proceed now because their employers have since closed shop.

3 Furloughs during the past four years have also affected staffing.

4 Prior to 2008, the DLSE did not keep official statistics on how long it was taking to hear Berman claims.

ACCOMPLISHMENTS

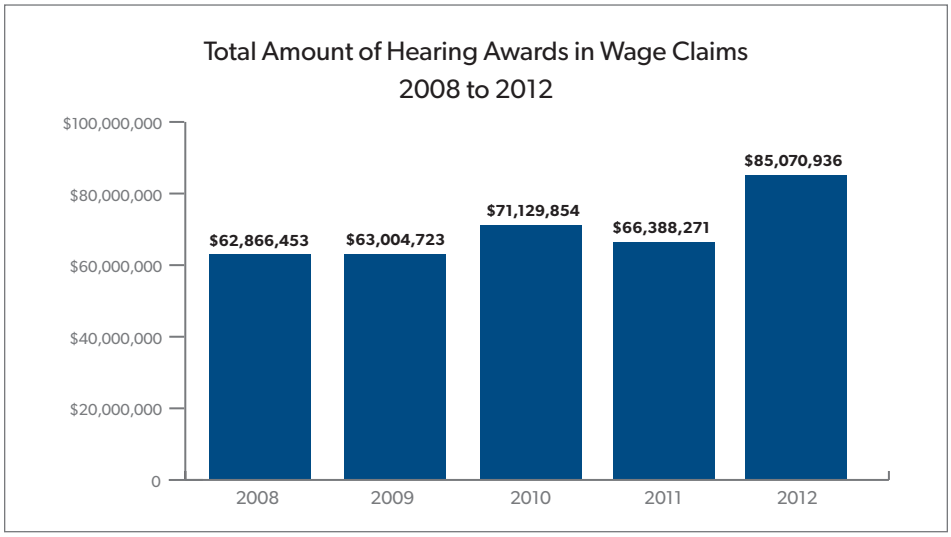
Despite these serious challenges, the Brown Administration has led several key improvements in both Berman and AB 633 claims processing over the past two years.

Reduction in length of time for Berman claims to be heard.

- In 2012, WCA cut down the time it took to hear a Berman claim[5] by an average of approximately **one month** compared to 2009 and 2010 (a reduction of 31 days and 24 days, respectively). In 2012, Berman claims were heard within an average of 179 days from the date of filing, the lowest number on the books since 2008.
- In 2012, **almost two-thirds** of WCA offices[6] experienced a reduction in the average number of days for Berman claims to be heard, with an average decrease of **more than two months** (64.5 days) compared to 2010.

Highest total amount of hearing awards in the past five years.

- In 2012, WCA issued the highest total amount of hearing awards for wage claims – over **$85 million** in unpaid wages, other compensation, and penalties – within the last five years.[7]



ENFORCEMENT SPOTLIGHT

A WCA deputy mediated a successful settlement on behalf of a worker who reported that he typically worked from 6 a.m. to 6 p.m., six days a week, for only $300 a week. He was not paid the wages he had earned or allowed to take meal or rest breaks as required by law. The worker stated that when he asked to take his breaks, he was fired and was denied his wages upon termination. On the day of the settlement conference before the DLSE, the employer initially claimed he did nothing wrong and that he did not even know the worker. After the WCA deputy discussed the applicable law and potential liability of the employer, the case settled.

Cases like this are resolved daily by WCA deputies before they even proceed to hearing. However, data on unpaid wages recovered by WCA through settlement of claims has historically not been maintained by the DLSE, and successful settlement outcomes are thus not reflected in annual statistics. Nevertheless, such effective case resolution remains an important part of the critical work of the Division to ensure that the state's labor laws are followed.

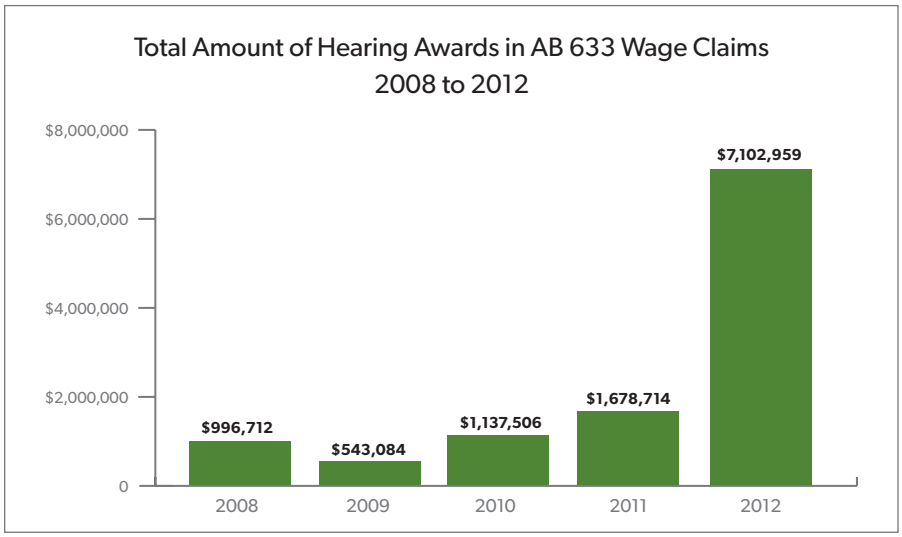
5 This statistic is based on the average number of days from the date of filing to the hearing.

6 Ten out of 16 WCA offices that experienced a reduction in the time it took to hear claims include Oakland, Sacramento, San Bernardino, San Diego, and Santa Ana, which typically process among the highest number of wage claims filed in the state.

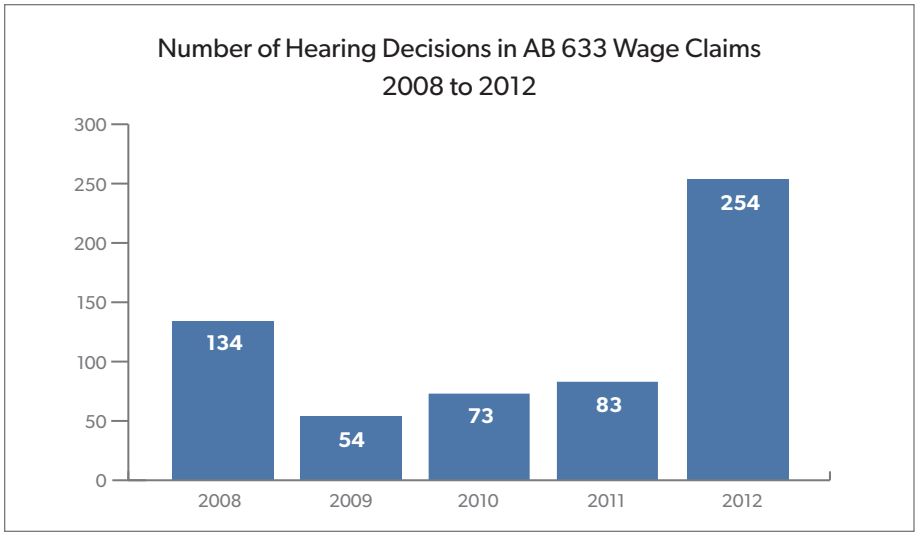
7 This statistic and accompanying graph include both Berman claims and AB 633 claims.

Highest total amount of AB 633 hearing awards and number of hearing decisions in the past five years.

- In 2012, WCA issued more than **$7 million** in AB 633 hearing awards, the highest amount in the last five years. This represents more than **6 times** the amount awarded in 2010, the year before Governor Brown appointed Commissioner Su.



- In 2012, WCA issued the most AB 633 hearing decisions on record within the past five years. This represents **more than triple** the number of hearing decisions issued in 2010.



ENFORCEMENT SPOTLIGHT

One day a woman came to the DLSE front counter crying. She informed the WCA deputy that she was a garment worker, paid by piece rate, and that her employer had not paid her in over a month. Her employer had kept promising to pay her each week, but payday never came. When the utility company threatened to shut off the power in the apartment she lived in with her children, she begged for her hard-earned wages. Her employer then gave her a check, but it bounced when she tried to cash it. With nowhere else to turn, she came to the DLSE. Based on a new, more proactive approach to cases, the WCA deputy promptly called the employer. The deputy informed the employer that the minimum wage had to be met in piece rate earnings and that if wages were found due, the employer could face waiting time penalties on top of paying wages owed. The employer agreed to pay the worker immediately.

LOOKING AHEAD

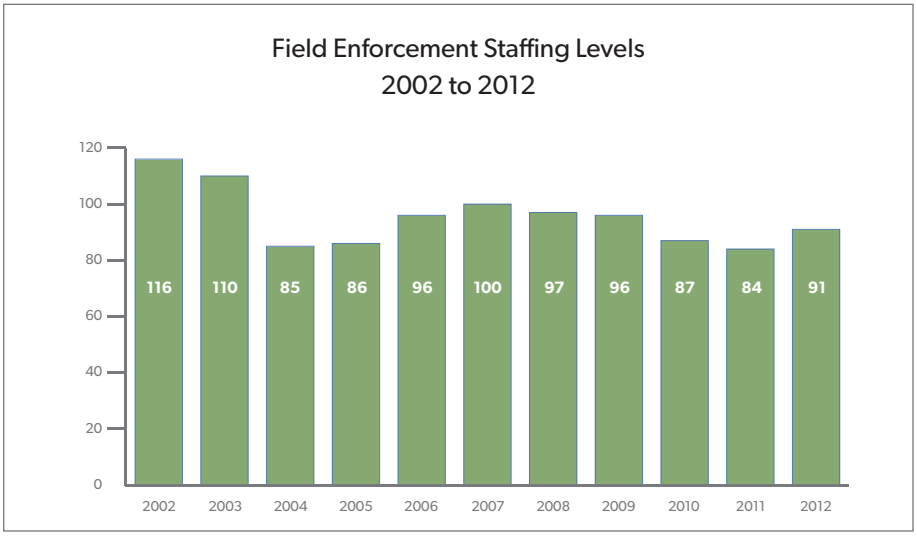
Although the DLSE has reduced the delay in hearing Berman claims and made appreciable headway in processing AB 633 cases in the past two years, more work needs to be done to further expedite the wage claims process. Building on the success of the comprehensive staff training program initiated under her leadership, the Labor Commissioner is committed to providing staff with additional tools necessary to efficiently and effectively handle wage claims. With a focus on case outcomes, the Division is implementing improved settlement and hearing procedures to ensure not only the payment of owed wages but also the imposition of penalties and damages meant to deter wage theft in the first place.

BUREAU OF **FIELD ENFORCEMENT**

The Division's **Bureau of Field Enforcement** (BOFE) conducts investigations of employers and assesses civil penalties for non-compliance with wage and hour laws, workers' compensation, and business licensing and registration requirements. BOFE focuses on major underground economy industries in California where labor law violations are most rampant, including agriculture, garment, construction, car wash, and restaurant. In addition to levying civil penalties which generate substantial money for the state,[8] BOFE investigators conduct audits for unpaid wages, including minimum and overtime wages owed to workers. BOFE's efforts help ensure that workers are paid their lawful wages and legitimate employers are not forced out of business by those operating illegally in the underground economy.

When the Brown Administration came into office in 2011, the DLSE was facing several significant challenges within its field enforcement unit.[9] The "sweep" approach espoused by previous administrations did not prioritize uncovering wage theft, and instead focused heavily on violations that were relatively easier to detect, including workers' compensation and licensing and registration violations. Accordingly, Labor Commissioner Su inherited a steep 68% drop from 2008 to 2010 in the total amount of wages assessed by BOFE. In 2010, BOFE assessed only a little over $4.8 million in total wages, the lowest amount in a decade; BOFE also experienced more than a 20% reduction from 2009 in the total amount of civil penalties assessed.

Furthermore, the overall number of DLSE field enforcement staff had substantially declined over the past decade. In 2011, when this Administration took office, the DLSE had the fewest field enforcement staff since 2002, with only 84 staff.[10]



8 Civil penalties that are collected pursuant to BOFE penalty citations are transferred to the General Fund and to the Uninsured Employers Fund (which helps to cover the cost of injured workers of those employers who do not have workers' compensation insurance).

9 The DLSE's field enforcement activity includes BOFE and the DLSE's efforts as part of multi-agency collaboratives such as the Labor Enforcement Task Force (LETF, formerly the Economic and Employment Enforcement Coalition, or EEEC) and the Employment Enforcement Task Force (EETF, a project of the Joint Enforcement Strike Force). To capture the entirety of the DLSE's field enforcement activity, all references to "BOFE" throughout this report include DLSE efforts under LETF, EEEC, and EETF, but do not include Public Works activity, which is detailed in a separate section.

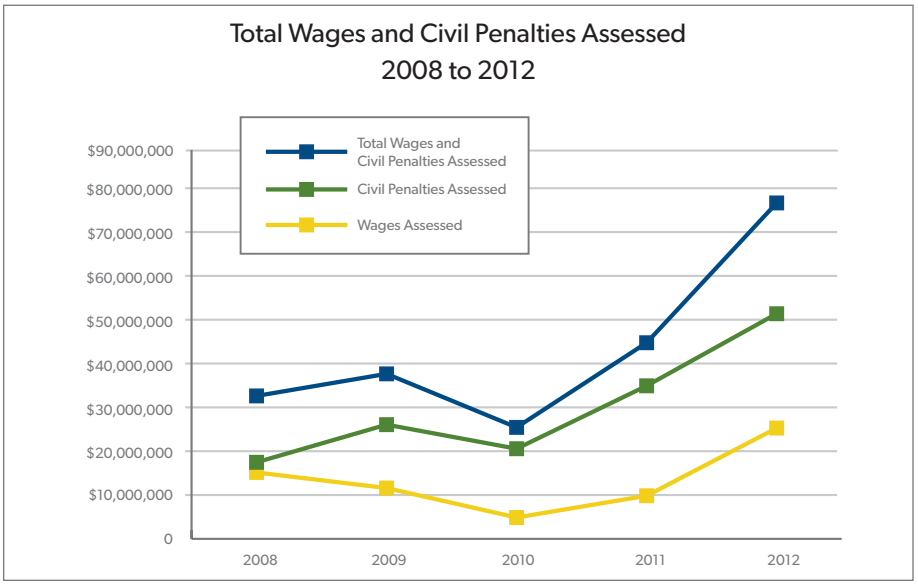
10 This statistic includes all BOFE and EEEC/LETF staff, including investigators, supervisors, and support staff.

When limiting the analysis to the number of investigative staff, between 2008 and 2011, the number of investigators fell to its low point in 2011 of only 60 statewide. By 2012, although the Administration was able to increase the total number of field enforcement staff to 91, of which 63 were investigators, the Division still had the second lowest number of investigators since 2008.

Year	Number of Investigators
2008	69
2009	66
2010	64
2011	60
2012	63

ACCOMPLISHMENTS

Over the last two years, the DLSE has overcome these challenges and turned around BOFE's performance.[11]



11 Data in this section was derived from two primary sources: (1) summary statistical information that has been reported annually to the Legislature; or (2) underlying data from BOFE deputies, compiled on a monthly basis and aggregated for the calendar year. Underlying data from BOFE deputies constitutes the more reliable data source, as it is based directly on deputies' records (such as citations and wage audits) and should have been the source of statistics reported to the Legislature in previous years. However, the Legislative reports submitted by the previous administration in 2008 and 2009 do not correspond with the underlying data maintained by the Division and were therefore deemed unreliable for this report. Instead, underlying data from BOFE deputies was utilized where it exists for a full calendar year (prior to 2008, such data generally could not be found). In general, the 2008 Legislative report overreported both penalties and wages assessed for that year, and the lower amounts supported by the underlying data have been utilized herein instead; the 2009 Legislative report underreported penalties assessed, and the higher amounts supported by the underlying data have been utilized.

In 2011, despite the lowest field enforcement staffing levels in a decade, BOFE more than doubled the amount of total wages assessed compared to 2010. By 2012, BOFE far surpassed its performance in previous years, including almost tripling the amount of overtime wages assessed and increasing the amount of minimum wages assessed by almost 7-fold compared to 2011.

	2010	2011	2012	Percent Increase from 2010 to 2012
Total Wages Assessed[12]	$4,867,508	$9,829,542	$25,278,887	419%
Minimum Wages Assessed[13]	$540,958	$438,785	$3,041,455	462%
Overtime Wages Assessed	$1,795,609	$4,834,712	$13,324,098	642%
Total Civil Penalties Assessed	$20,564,058	$34,918,259	$51,366,438	150%
Civil Penalties Assessed for Minimum Wage Violations	$298,850	$676,700	$775,293	159%
Civil Penalties Assessed for Overtime Violations	$414,542	$672,763	$2,394,390	478%

Under the Brown Administration, the DLSE has embraced a new approach to field enforcement that centers on improving the quality and depth of investigations to recover unpaid wages and that utilizes better targeting to focus resources on non-compliant employers. BOFE's achievements since 2011 showcase the success of this approach. In the past two years, while relatively lean staffing levels hindered the full realization of the DLSE's field enforcement capabilities, BOFE was nevertheless able to outperform prior years (when the DLSE had more field enforcement staff) and register record-high wage and penalty assessments.[14]

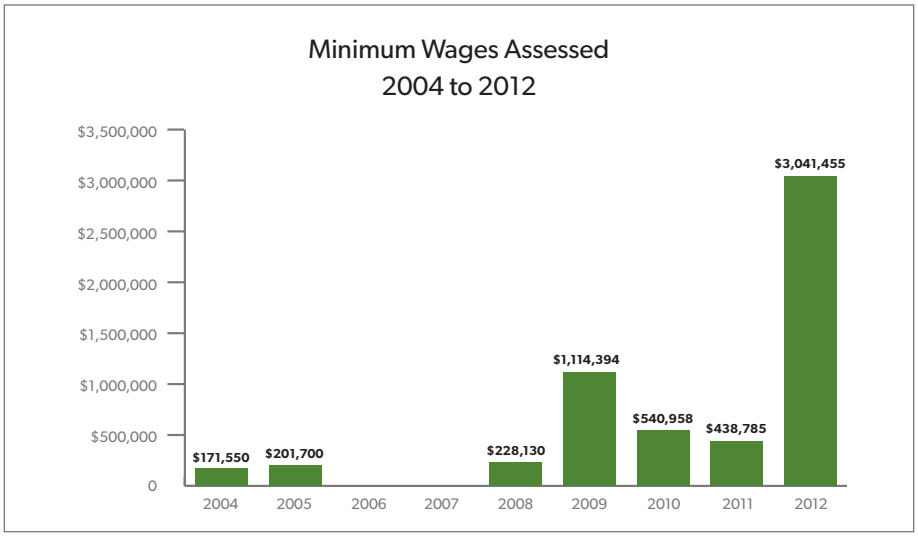
12 "Total wages" include minimum wages, overtime wages, premium pay for missed meal and rest periods, and other compensation.

13 Effective January 1, 2012, Labor Code Section 1197.1 was amended to explicitly provide for the authority of the DLSE to assess unpaid minimum wages on behalf of employees as part of a BOFE citation.

14 Most of the following field enforcement data was examined as far back as 2002. In some cases, as noted, data prior to 2004 or for calendar years 2006 and 2007 was not available.

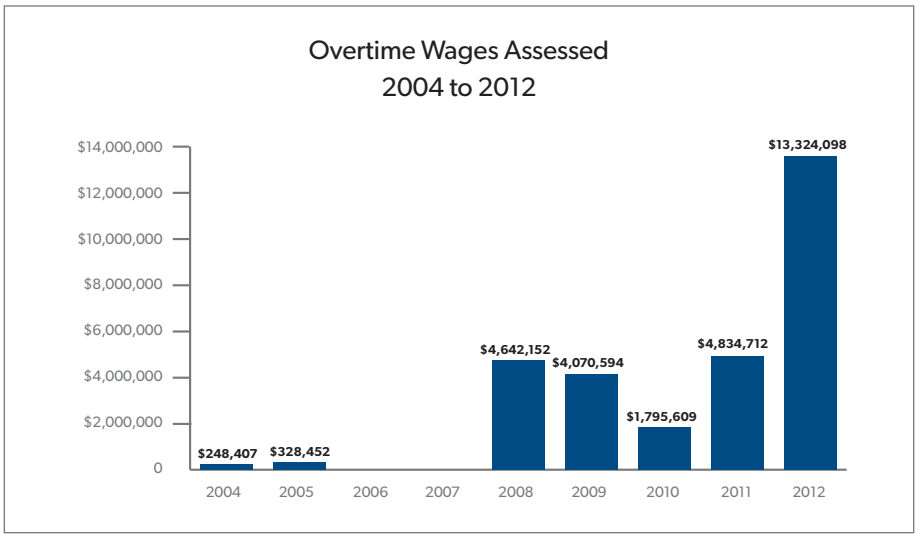
Highest amount on record of minimum and overtime wages assessed.

- In 2012, BOFE assessed over **$3 million** in unpaid **minimum wages**, more than any previous year for which such data is available. This is almost **triple** the amount assessed in 2009 (the next highest year on record).



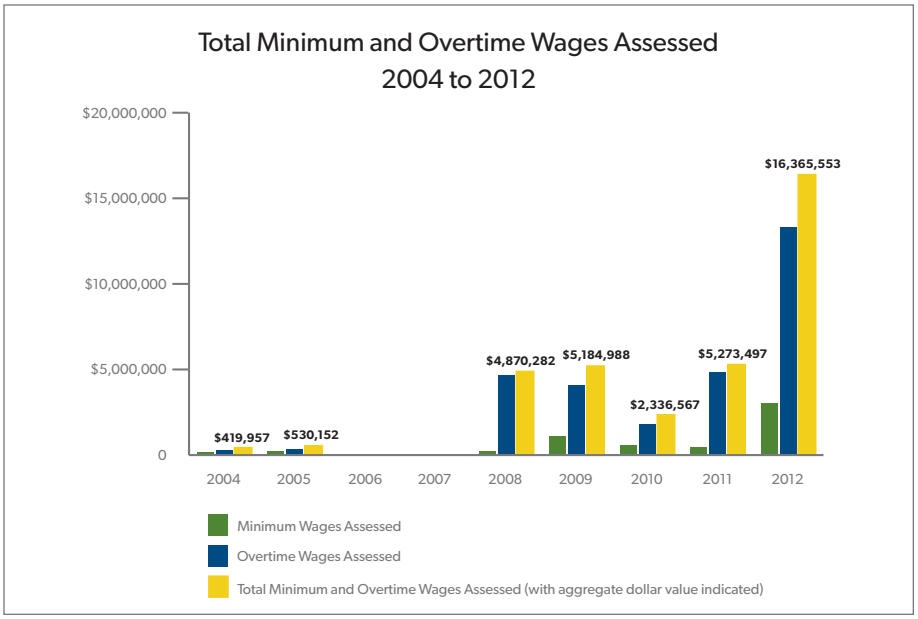
NOTE: Data for 2006 and 2007 and prior to 2004 could not be found.

- In 2011, BOFE assessed more than **$4.8 million** in unpaid **overtime wages**, the highest amount of any previous year on record.
- In 2012, BOFE nearly **tripled** the prior record set in 2011, by assessing more than **$13 million** in overtime wages. The 2012 figure represents a 176% increase from 2011; a 642% increase from 2010; a 227% increase from 2009, and a 187% increase from 2008.



NOTE: Data for 2006 and 2007 and prior to 2004 could not be found.

- In sum, in 2012, BOFE assessed a total of over **$16 million in minimum and overtime wages**, exceeding any previous year for which such data is available. The 2012 record represents a 210% increase from 2011; a 600% increase from 2010; a 216% increase from 2009; and a 236% increase from 2008.



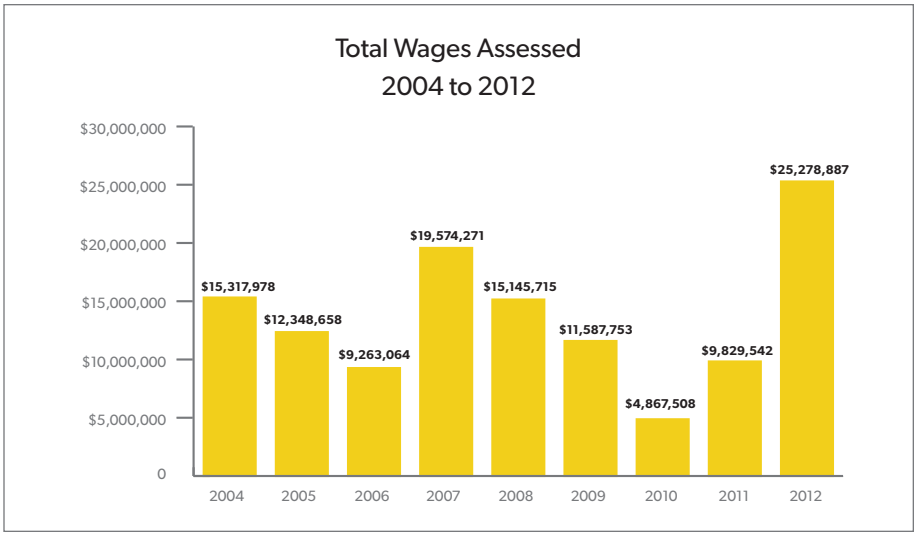
NOTE: Data for 2006 and 2007 and prior to 2004 could not be found.

Highest amount of total wages assessed in nearly a decade.

- In line with the overall jump in minimum and overtime wages assessed, in 2011 and 2012, BOFE reversed the steady decline since 2008 in total wage assessments.[15]

- In 2011, BOFE more than **doubled** the amount of total wages assessed compared to 2010.

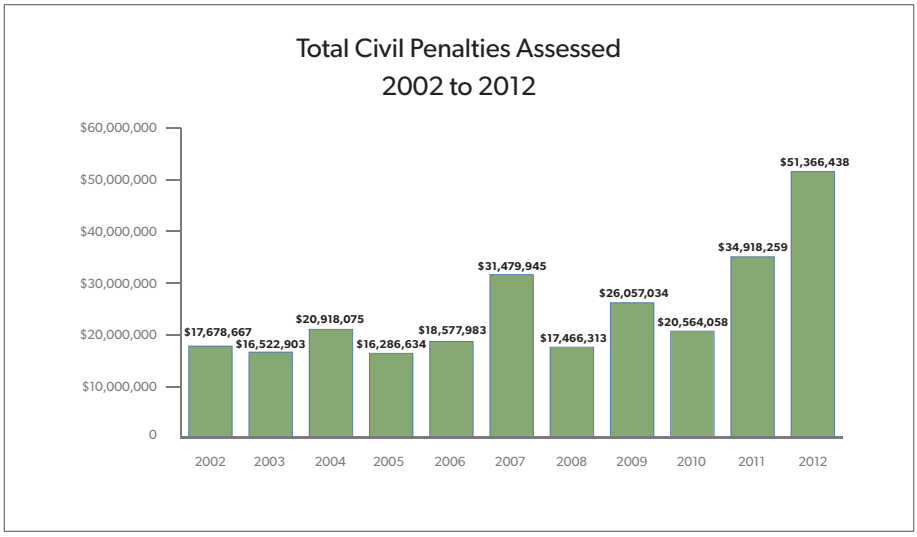
- In 2012, BOFE assessed over **$25 million** in total wages, the highest amount in nearly a decade and an increase of 157% from 2011.



15 "Total wages" include minimum wages, overtime wages, premium pay for missed meal and rest periods, and other compensation.

Highest total amount of civil penalties assessed in a decade.

- In 2011, BOFE assessed more civil penalties[16] than any previous year in a decade.
- In 2012, BOFE assessed a record of over **$51 million** in civil penalties. The 2012 figure represents a 47% increase from 2011; a 150% increase from 2010; a 97% increase from 2009; and a 194% increase from 2008.



- Of the civil penalties assessed in 2012, BOFE assessed over $13 million for failure to provide itemized wage statements (record high for the past five years); over $900,000 for operating as an unlicensed construction contractor (second highest assessment in the past five years, behind the record set in 2011 of over $1 million in such penalties); and over $30 million in workers' compensation penalties.[17]

ENFORCEMENT SPOTLIGHT

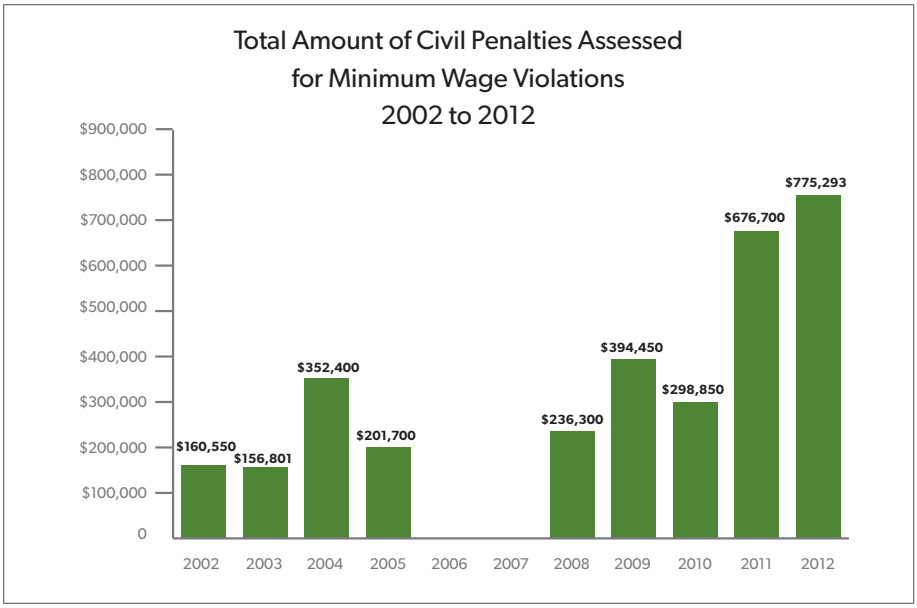
In 2011, BOFE conducted an investigation of a large warehouse employing almost 200 workers in Riverside County. Due to effective pre-inspection preparation and surveillance, off-site worker interviews, and an in-depth investigation, BOFE issued over $1 million in citations for failure to provide itemized wage statements to the warehouse workers. Accurate wage statements are essential to ensure that workers are not cheated out of their wages. Without these statements, the warehouse workers had no idea what they had earned; they were paid a piece rate to unload containers but did not know what that piece rate was or how it was calculated. After the BOFE inspection, one worker said, "I never expected the State to care about us, because we are invisible workers. Today, we can say they do." More than 100,000 people work in warehouses and distribution centers in the area of California known as the Inland Empire, the largest concentration of warehouses in the world. Most are considered "temp" workers even though many work for the same warehouse for years.

16 Civil penalties may be assessed for various violations of labor laws such as failure to pay minimum wage or overtime, failure to provide itemized wage deduction statements, failure to carry workers' compensation insurance, or failure to comply with licensing and registration requirements.

17 The Legislature significantly increased the penalty for workers' compensation violations beginning in January 2011.

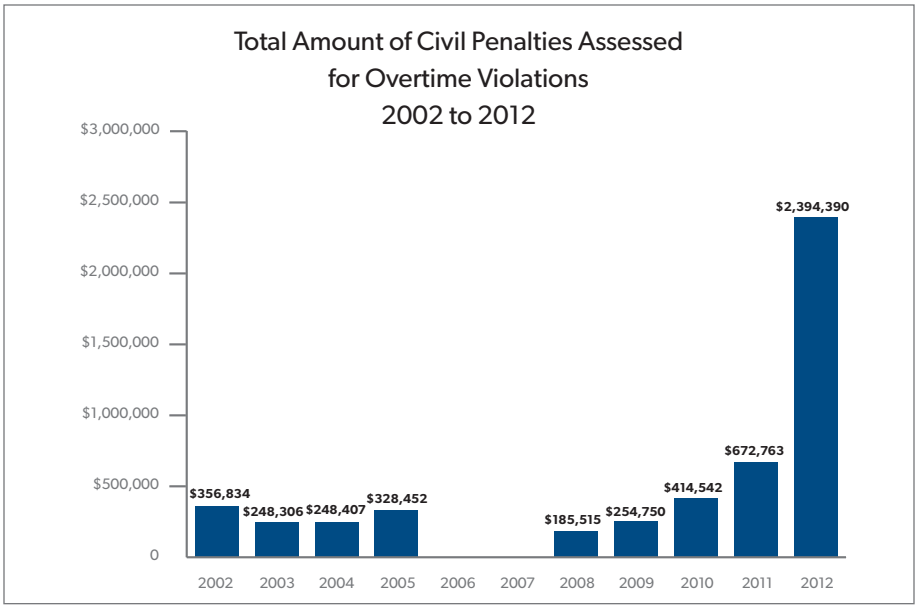
Highest amount of civil penalties for minimum wage and overtime violations in a decade.

- In 2011, BOFE assessed over **$670,000** in civil penalties for **minimum wage** violations – the highest amount on record in a decade.
- In 2012, BOFE set a record of more than **$770,000** in minimum wage penalties. The 2012 figure is nearly **double** the amount assessed in 2009, which was the highest year before this Administration assumed office.



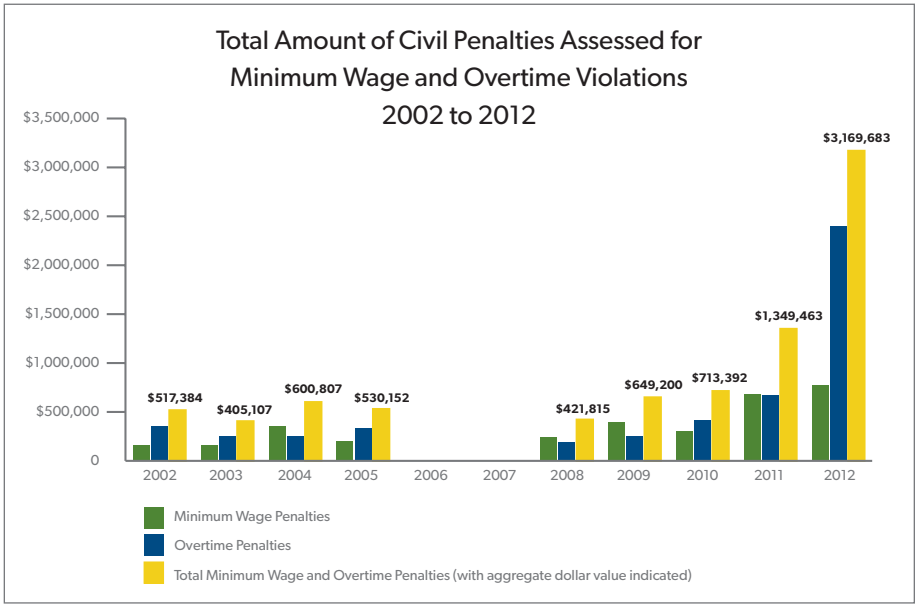
NOTE: Data are not available for 2006 and 2007.

- In 2011, BOFE assessed over **$670,000** in civil penalties for **overtime** violations – the highest amount on record in a decade.
- In 2012, BOFE more than **tripled** the amount in 2011, by assessing nearly **$2.4 million** in overtime penalties. The 2012 record is almost **6 times** the amount in 2010, which was the highest year before this Administration took office.



NOTE: Data are not available for 2006 and 2007.

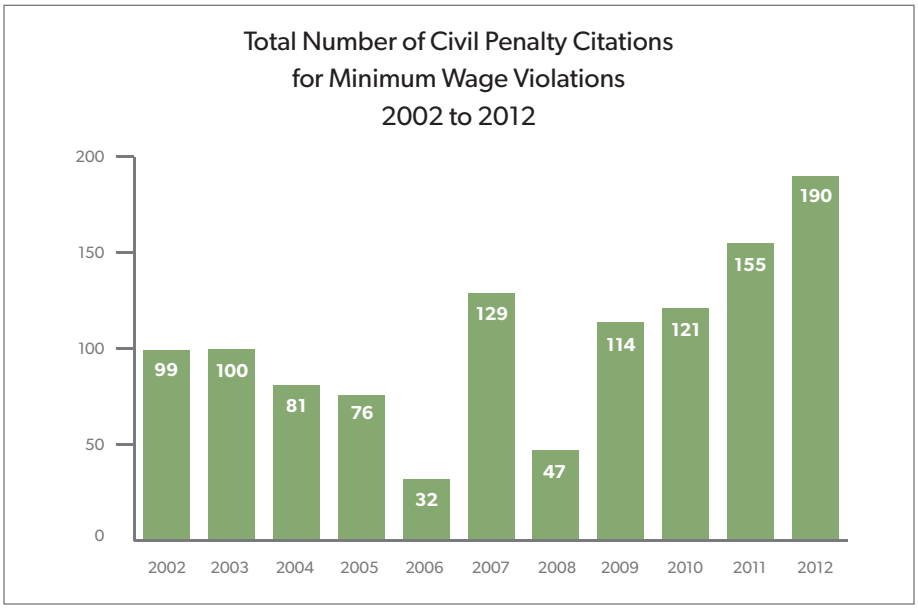
- In sum, in 2012, BOFE assessed a total of over **$3.1 million in civil penalties for minimum wage and overtime violations**, the highest amount on record in more than a decade. The 2012 record represents a 135% increase from 2011; a 344% increase from 2010; a 388% increase from 2009, and a 651% increase from 2008.



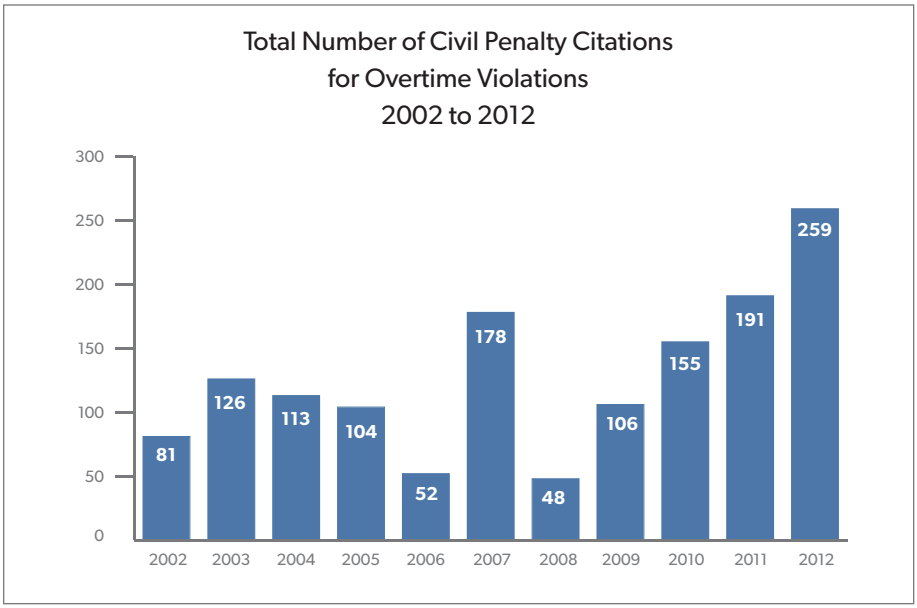
NOTE: Data are not available for 2006 and 2007.

Highest number of citations issued for minimum wage and overtime violations in a decade.

- In 2011, BOFE issued **155 citations** for **minimum wage** violations – more than any previous year in a decade.
- In 2012, BOFE outpaced its 2011 record and issued a new high of **190 citations** for minimum wage violations.



- In 2011, BOFE issued **191 citations** for **overtime** violations – more than any previous year in a decade.
- In 2012, BOFE broke its 2011 record and issued **259 citations** for overtime violations.



Highest civil penalty citation rate in a decade.

- In 2012, BOFE's more targeted, efficient use of inspections yielded the highest rate of civil penalty citations in the past 10 years.

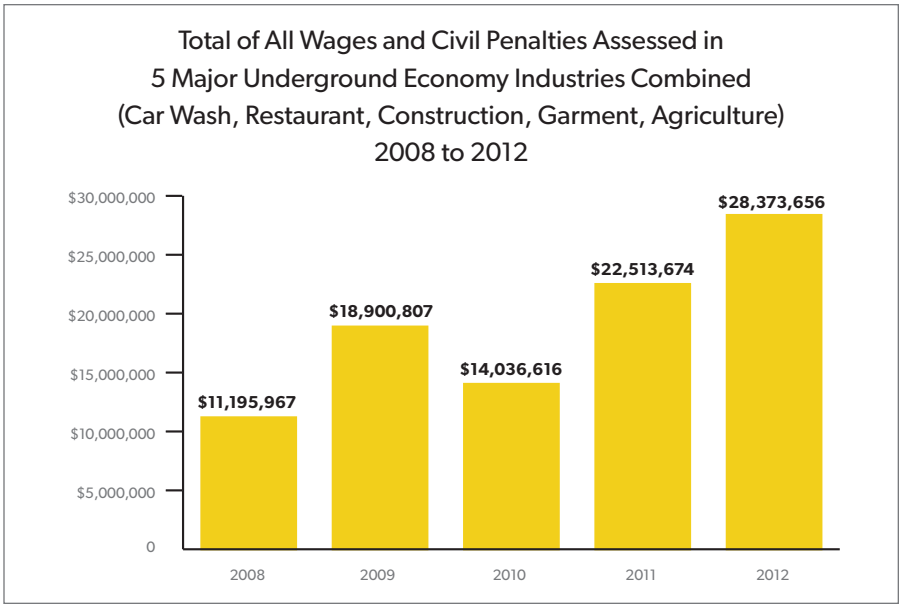
Year	Number of Inspections Conducted	Number of Civil Penalty Citations Issued	Civil Penalty Citations as a Percentage of Inspections
2012	**4403**	**3526**	**80%**
2011	7081	4125	58%
2010	7779	4101	53%
2009	7701	4263	55%
2008	6958	2346	34%
2007	7883	4800	61%
2006	4720	2419	51%
2005	5407	2604	48%
2004	5796	2694	46%
2003	6816	2994	44%
2002	8684	3363	39%

Under the Brown Administration, BOFE has eliminated the "sweep" style investigative approach that resulted in a higher volume of inspections which were indiscriminately directed at businesses already in compliance. Today, the DLSE is conducting fewer inspections but finding many more violations per inspection, with a top priority on identifying wage theft.

INDUSTRY SNAPSHOTS: **INTRODUCTION**

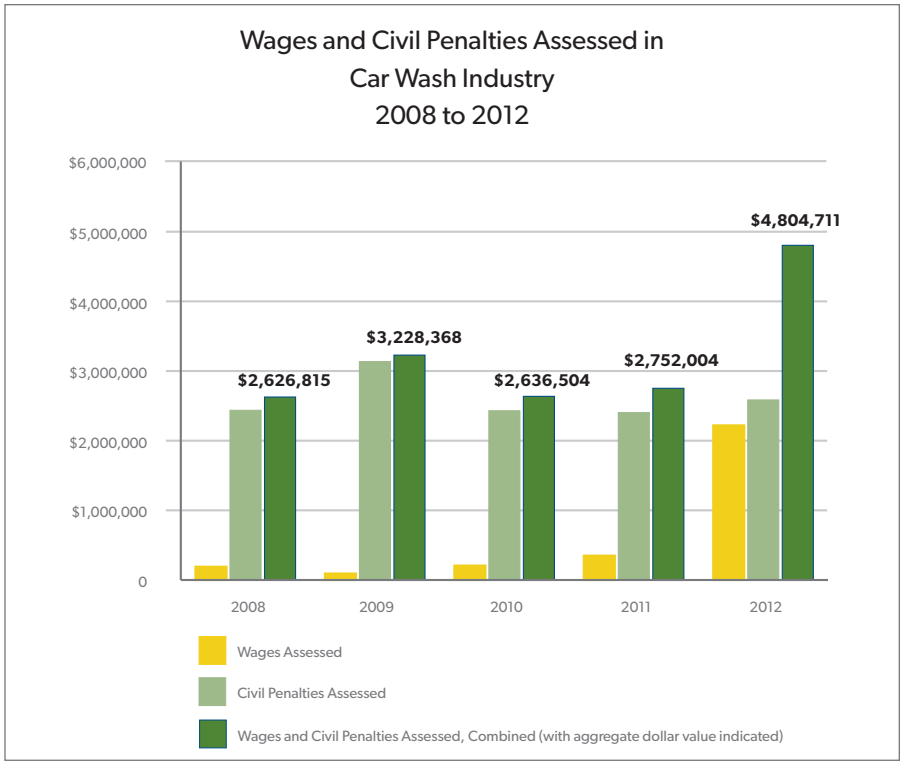
In 2011 and 2012, BOFE set various records in wage and civil penalty assessments in five major underground economy industries: car wash, restaurant, construction, garment, and agriculture. The following industry snapshots focus on the last five years (2008 to 2012) of enforcement activity in these industries.

- In 2011, BOFE assessed over **$22 million** in **total wages and civil penalties** for the **car wash, restaurant, construction, garment, and agricultural industries combined** – more than any previous year since 2008.
- In 2012, BOFE surpassed its 2011 record and assessed more than **$28 million** in total wages and civil penalties in these industries.
- The 2012 record exceeds the total amount assessed for these industries in 2009 (the third highest total since 2008) by almost $9.5 million – an increase of **50%**.



INDUSTRY SNAPSHOTS: **CAR WASH**

- In 2012, BOFE assessed over **$4.8 million combined in wages and civil penalties** in the car wash industry – more than any previous year since 2008. The 2012 record exceeds the combined amount assessed in 2009 (the second highest since 2008) by almost **50%**.



Wages Assessed

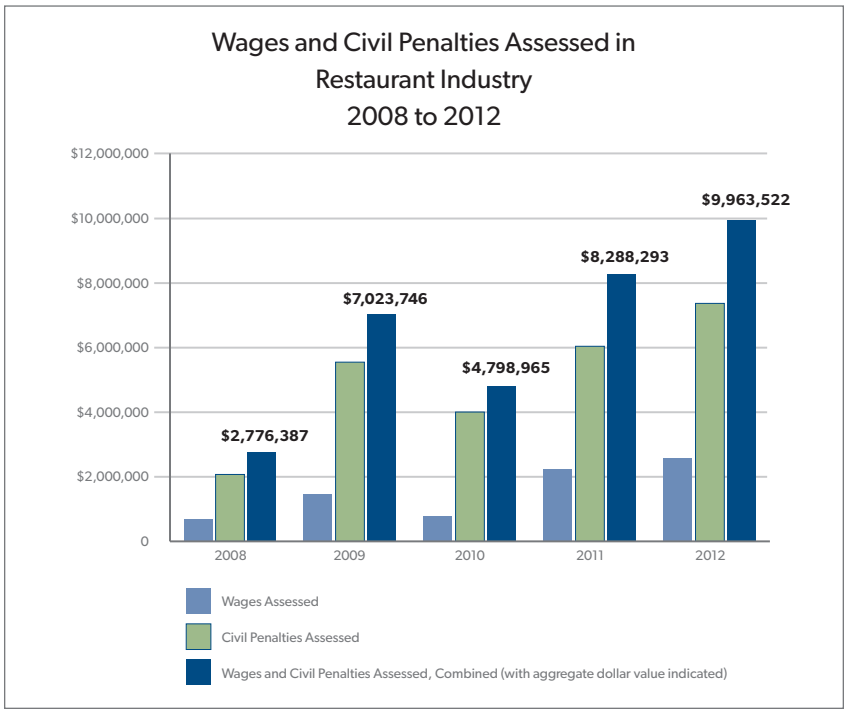
- In 2011, BOFE assessed over **$349,000** in **wages** in the car wash industry – more than any previous year since 2008.
- In 2012, BOFE assessed a record high of over **$2.2 million** in wages – more than **6 times** the amount assessed in 2011. The 2012 record represents an increase of more than **10 times** the wages assessed in 2010 ($207,012, the third highest assessment since 2008).

Civil Penalties Assessed

- In 2012, BOFE assessed almost **$2.6 million** in **civil penalties** in the car wash industry, the second highest penalty amount since 2008.

INDUSTRY SNAPSHOTS: **RESTAURANT**

- In 2011, BOFE assessed over **$8.2 million combined in wages and civil penalties** in the restaurant industry – more than any previous year since 2008.
- In 2012, BOFE broke its 2011 record and assessed more than **$9.9 million** combined in wages and civil penalties. The 2012 figure represents an increase of **20%** from 2011, and over **40%** from 2009 (the third highest year since 2008).



Wages Assessed

- In 2011, BOFE assessed over **$2.2 million** in **wages** in the restaurant industry – more than any previous year since 2008.
- In 2012, BOFE surpassed its 2011 record and assessed nearly **$2.6 million** in wages. The 2012 figure represents a **15%** increase from 2011, and a **76%** increase from the wages assessed in 2009 ($1,472,466, the third highest assessment since 2008).

Civil Penalties Assessed

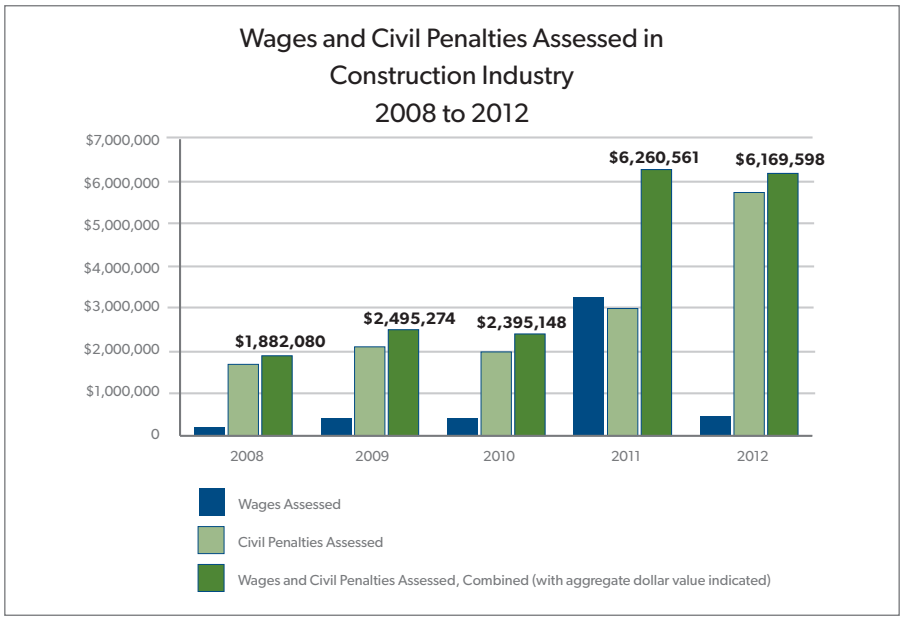
- In 2011, BOFE assessed over **$6 million** in **civil penalties** in the restaurant industry – more than any previous year since 2008.
- In 2012, BOFE set a record high of almost **$7.4 million** in civil penalties – an increase of **22%** from 2011. The 2012 record exceeds the amount assessed in 2009 ($5,551,280, the third highest assessment since 2008) by **33%**.

ENFORCEMENT SPOTLIGHT

After receiving a referral from San Francisco's Office of Labor Standards Enforcement (OLSE), BOFE collaborated with OLSE to launch an investigation of an employer in the San Francisco restaurant industry. Citations were issued for unpaid minimum and overtime wages and failure to provide itemized payroll statements on behalf of 28 restaurant workers. Within a matter of months, the DLSE reached a settlement of over $300,000 – bringing the total amount of money recovered in 2012 for San Francisco restaurant workers to over $900,000 through the Division's partnership with OLSE and assistance from community groups. The settlement stipulated that the employer pay wages owed as well as penalties for the violations. The employer also agreed to maintain accurate daily records of hours worked, to provide workers with wage statements as required by law, and to pay $50,000 in liquidated damages if the employer engages in unlawful retaliation against any worker for cooperating with the DLSE investigation.

INDUSTRY SNAPSHOTS: **CONSTRUCTION**

- In 2011, BOFE assessed over **$6.2 million combined in wages and civil penalties** in the construction industry – the highest amount since 2008.
- In 2012, BOFE almost matched its record in 2011 by assessing over **$6.1 million** combined in wages and civil penalties – the second highest amount since 2008.
- The record-high assessments in 2011 and 2012 are more than **double** the combined amount assessed in 2009 (the third highest amount since 2008).



Wages Assessed

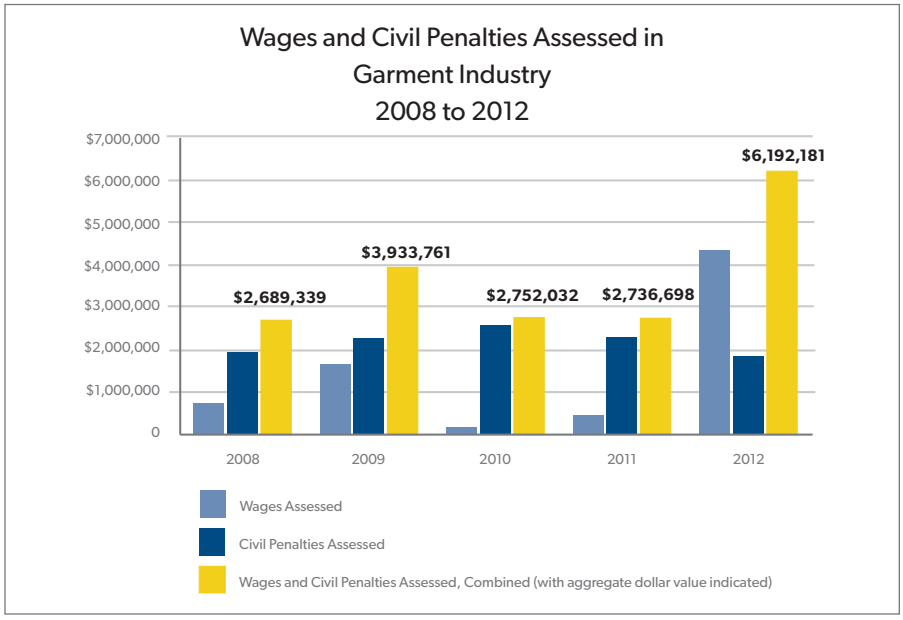
- In 2011, BOFE assessed over **$3.2 million** in **wages** in the construction industry – more than any previous year since 2008.
- In 2012, despite falling below its high mark in 2011, BOFE assessed the second highest amount in wages (nearly **$450,000**) since 2008.

Civil Penalties Assessed

- In 2011, BOFE assessed almost **$3 million** in **civil penalties** in the construction industry – more than any previous year since 2008.
- In 2012, BOFE assessed a record high of more than **$5.7 million** in civil penalties. The 2012 figure is almost **double** the penalties assessed in 2011, and nearly **triple** the amount in 2009 ($2,092,492, the third highest amount since 2008).

INDUSTRY SNAPSHOTS: **GARMENT**

- In 2012, BOFE assessed almost **$6.2 million combined in wages and civil penalties** in the garment industry – more than any previous year since 2008. The 2012 record represents an increase of almost **60%** from the combined amount assessed in 2009 (the second highest amount since 2008).



NOTE: The figures in this chart include wage assessments by BOFE in AB 633 cases.

Wages Assessed

- In 2012, BOFE assessed more than **$4.3 million** in **wages** in the garment industry, the highest amount since 2008. This represents an increase of **161%** from the wages assessed in 2009 ($1,662,761, the second highest amount since 2008).

Civil Penalties Assessed

- In 2011, BOFE assessed over **$2.28 million** in **civil penalties** in the garment industry, the second highest amount since 2008.

ENFORCEMENT SPOTLIGHT

In 2012, BOFE's agricultural investigations resulted in high-profile lawsuits by the DLSE against two farm labor contractors (FLCs) that failed to pay workers their lawful wages.

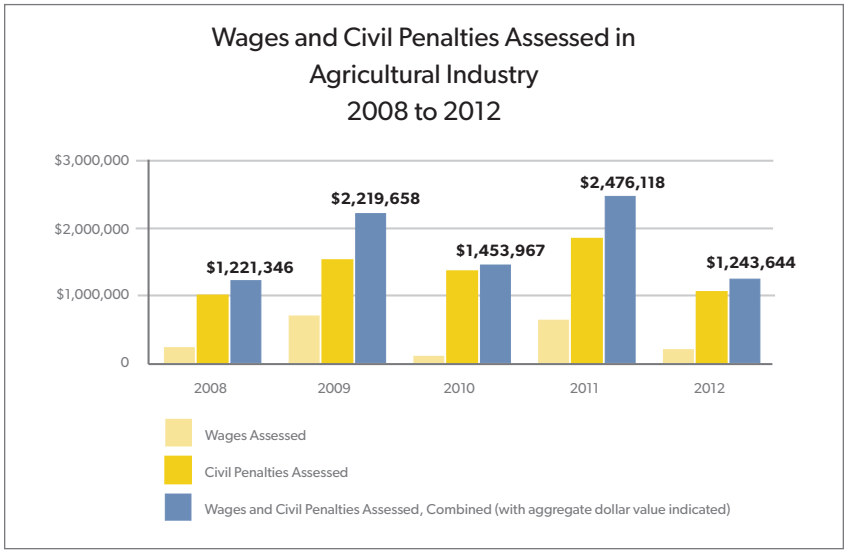
In one case, BOFE launched an investigation of a FLC based on a tip from a nonprofit legal services organization. The FLC had failed to pay wages including minimum wage and overtime to its employees. The BOFE inspection led to the filing of a lawsuit by the DLSE on behalf of approximately 130 farmworkers seeking in excess of $600,000 in unpaid wages, damages, and penalties.

In another case, BOFE conducted an investigation of a FLC after farmworkers courageously stepped forward to inform the DLSE about the illegal working conditions under which they labored. The farmworkers picked lettuce and worked in grape fields for over ten hours a day. The investigation revealed evidence establishing that the contractor willfully violated the law and failed to pay minimum and overtime wages to its workers for several years. Based upon the BOFE inspection, the DLSE filed a $1.6 million lawsuit seeking unpaid wages, damages, and penalties against the FLC on behalf of hundreds of workers covering multiple work locations.

Both suits also seek injunctive relief to stop the FLCs from engaging in any future violations of the law. These underlying BOFE investigations in the agricultural industry that lay the groundwork for DLSE enforcement suits are not captured in the statistics for 2012.

INDUSTRY SNAPSHOTS: **AGRICULTURE**

- In 2011, BOFE assessed almost **$2.5 million combined in wages and civil penalties** in the agricultural industry – the highest amount since 2008.



Wages Assessed

- In 2011, BOFE assessed over **$630,000** in **wages** in the agricultural industry, the second highest amount since 2008.
- In 2012, the amount of wages assessed by BOFE dropped. However, BOFE investigations uncovering wage theft in the agricultural industry resulted in affirmative lawsuits filed by the DLSE on behalf of hundreds of farmworkers for over $2 million in unpaid wages, damages, and penalties.

Civil Penalties Assessed

- In 2011, BOFE assessed more than **$1.8 million** in **civil penalties** in the agricultural industry, the highest amount since 2008.

LOOKING AHEAD

Overall, while remarkable improvements have already been made to the DLSE's field enforcement activity, still more can be achieved. Even with the Division's tremendous success over the past two years in identifying wage violations – and the exponential rise in the amount of minimum wage and overtime assessments by BOFE – effectively addressing the growing problem of wage theft that harms both workers and businesses requires stepping up labor law enforcement efforts now more than ever before.

In 2013 and beyond, the DLSE's field enforcement efforts will continue to face many tough challenges: an ever-expanding underground economy; complex industry structures that make it increasingly difficult to determine who the employer is (including misclassification, use of subcontractors, and joint employer relationships); and workers who are often vulnerable and fear coming forward to report violations. The Labor Commissioner's commitment to providing field enforcement staff with necessary tools and resources to conduct meaningful inspections and to engage in smarter and more strategic enforcement efforts will continue to be invaluable in BOFE's ability to meet these challenges.

PUBLIC **WORKS**

The DLSE investigates and enforces prevailing wage rates and apprenticeship standards for public works construction projects. The **Public Works** unit conducts investigations based upon complaints filed with the DLSE and also includes a proactive Compliance Monitoring Unit (CMU), which specifically monitors activities and payment of prevailing wages on construction projects utilizing state bond funding and/or statutorily-defined design-build projects. The CMU is an enhanced enforcement mechanism that is aimed at improving compliance with prevailing wage statutes by requiring that employers subject to monitoring submit certified payroll reports electronically (in order to facilitate early detection and correction of violations and encourage compliance from the outset). When the DLSE finds that a public works contractor has improperly paid wages, the DLSE issues a Civil Wage and Penalty Assessment (CWPA) specifying the wages and penalties due for violating prevailing wage requirements. The Labor Commissioner also has authority to debar contractors that fail to comply with the law.

Over the past decade, staffing levels in the Public Works unit dramatically decreased – from a high point in 2002 of 38 staff to a low of 25 staff or less (a reduction of over 30%) for the majority of years from 2004 through 2011. Between 2004 and 2009, Public Works also experienced a sharp drop (an average decline of over $13 million compared to 2002) in the combined amount of wages and penalties assessed by the unit.

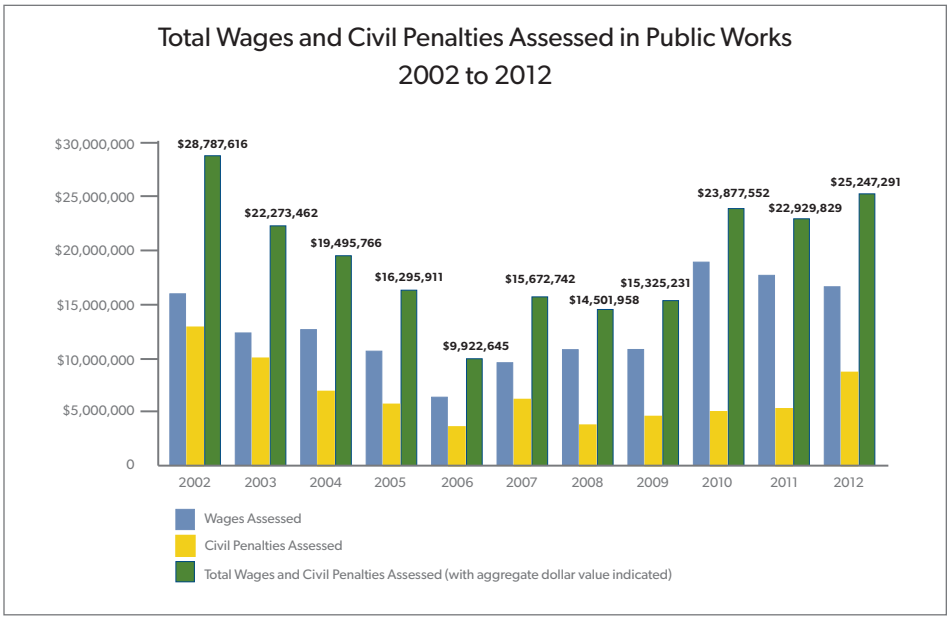
Although Public Works was able to improve its performance by 2010, the unit was facing a period of significant transition as this Administration took office. The Division was tasked with consolidating all public works enforcement activity, including implementation of the CMU, enforcement of apprenticeship requirements in public works projects, and incorporation of the Electrician Certification Unit, which administers exams for approximately 35,000 electricians in the state. Prior to 2012, implementation of the CMU had been held in abeyance, and enforcement responsibilities for apprenticeship standards and electrician certifications were lodged outside of the DLSE in a separate division. In order to implement these new enforcement responsibilities, the Division needed time to effectively integrate the activities of the Public Works unit, and to institute major upgrades to infrastructure and technology.

ACCOMPLISHMENTS

Under the Brown Administration, the Division has focused on rebuilding the Public Works unit and creating an efficient one-stop shop for public works enforcement. Although the Public Works Unit has undergone marked transition within the last two years, it has nevertheless performed at peak levels.

Highest combined amount of wages and civil penalties assessed on public works projects since 2002.

- In 2012, Public Works assessed more than **$25 million** combined in total wages and civil penalties – the highest amount since 2002.



- In 2012, Public Works issued **370 Civil Wage & Penalty Assessments** (CWPAs), the second highest number of CWPAs issued (trailing the 2010 high mark by only 3 CWPAs) since this data has been tracked.

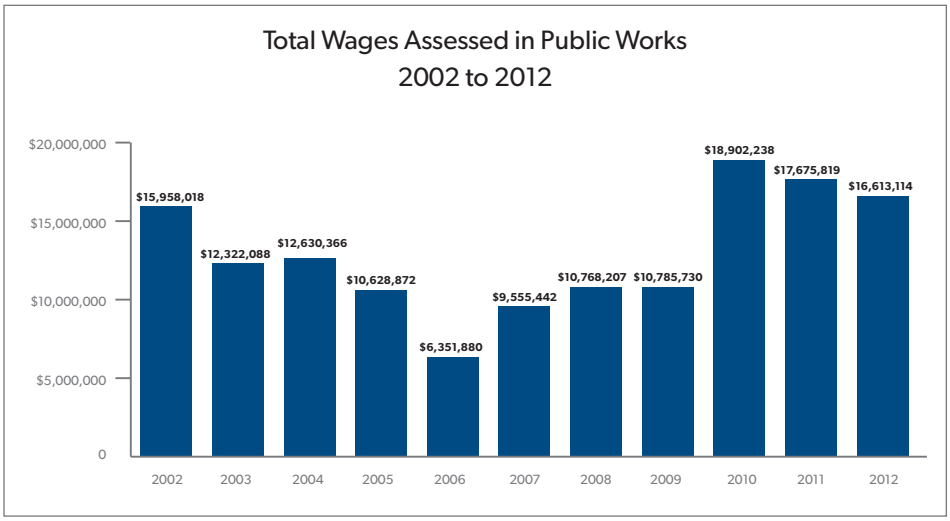
NOTE: Prior to 2007, the DLSE did not maintain statistics on the number of CWPAs issued.

ENFORCEMENT SPOTLIGHT

In 2011, the Public Works unit investigated a company employing workers for a large housing development in Orange County that involved a complicated mix of public and private funding. A comprehensive audit of the entire project by the Public Works investigator found that over $2.4 million was owed in wages and training fund contributions, and almost $600,000 was due in penalties. At trial, it was determined that 42% of the project was public and subject to payment of the prevailing wage. The DLSE was able to successfully settle the case on behalf of 70 workers for the full amount of wages due on the 42% of the project that was determined to be public (in the amount of over $1 million), plus penalties.

Two of the three highest wage assessments in a decade.

- In 2011, Public Works assessed more than **$17 million** in wages (the second highest amount of wages assessed in a decade).
- In 2012, Public Works assessed more than **$16 million** in wages (the third highest assessment in a decade).



ENFORCEMENT SPOTLIGHT

Construction workers toil long hours and perform invaluable work building the infrastructure in our communities. The Public Works unit is committed to conducting meaningful investigations and holding accountable all parties responsible for labor law violations, so that workers are paid their hard-earned wages and decision-makers in construction projects have the incentive to deal only with honest, law-abiding contractors. The following investigations conducted in 2012 highlight the work of the unit.

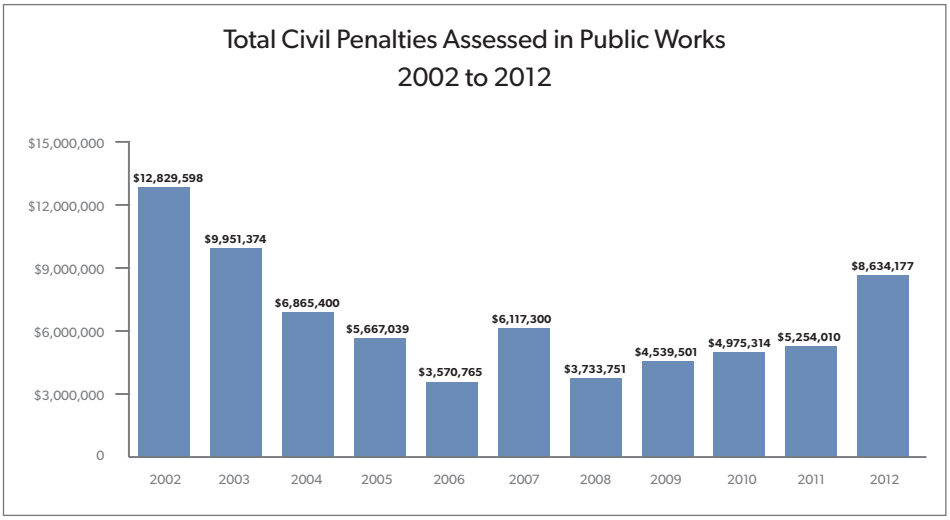
In one case, a general contractor that was hired to build a train station platform in Los Angeles was ordered by the Labor Commissioner to pay over $400,000 in wages and more than $180,000 in penalties for labor law violations committed on the public works project. The general contractor engaged in numerous violations, including failure to pay prevailing wages and daily overtime, failure to make employer payments into its fringe benefit programs, failure to pay Saturday and Sunday premium rates, and failure to pay into a state-approved training program for the California Apprenticeship Council.

In another case, the Public Works unit investigated a Cypress-based plumbing contractor that failed to pay 44 employees lawful wages on a public works project in Stockton. After the Public Works unit uncovered evidence that the contractor failed to pay prevailing wages and overtime and intentionally falsified certified payroll records by shaving the number of hours actually worked by its employees, the DLSE ordered the contractor to pay over $850,000 in unpaid wages and $200,000 in penalties. The Labor Commissioner issued a civil wage and penalty assessment against the plumbing contractor and the general contractor, who was deemed jointly responsible under the law for the plumbing contractor's violations.

In a third case, a San Diego-based stone and tile contractor was ordered to pay wages to 55 employees for their work on a public works project in Escondido. The Public Works investigation found that in addition to failing to pay overtime, the general contractor had illegally charged workers over 9 percent in various fees for payments made into a fringe benefit plan, causing a significant underpayment of the prevailing wage. Based on the investigation, the Labor Commissioner issued a civil wage and penalty assessment against the contractor in excess of $100,000 in unpaid wages and $400,000 in penalties.

Highest amount of civil penalties assessed in nearly a decade.

- In 2012, Public Works assessed over **$8.6 million** in civil penalties, the highest assessment in the past nine years and the third highest amount since 2002. The 2012 figure represents a 64% increase from 2011; a 74% increase from 2010; a 90% increase from 2009; and a 131% increase from 2008.



Qualitative improvements that enhance public works enforcement.

- ***New electronic database to ensure compliance on public works projects.*** Under this Administration, the DLSE has unveiled a new user-friendly online system that allows awarding bodies[18] to provide notice of public works projects. Awarding agencies now benefit from several convenient functions provided by the new system, including the ability to save notices of projects for up to six months, copy or save completed notices in pdf format, and edit previously submitted notices. Furthermore, all notices are available for review by the public and searchable online; the DLSE, as well as other enforcement groups, can expeditiously search for projects by date awarded, awarding agency, location, and estimated construction start date. Thus, the new database enables the DLSE to quickly identify projects that require monitoring and enforcement by the CMU and helps ensure the proper use of public funds earlier in the life of a public works project.

- ***One-stop shop for public works enforcement.*** The DLSE has streamlined the public works complaint form to allow workers and the public to file reports of both prevailing wage and apprenticeship violations on a single online form. The integrated form was created to provide an efficient "one-stop" mechanism for reporting public works violations.

LOOKING AHEAD

The last two years have been a period of considerable transition within Public Works. Under the leadership of Governor Brown, the DLSE has successfully worked to consolidate and coordinate various components of public works enforcement activity, including the CMU, apprenticeship standards, and electrician certifications. In 2013, the DLSE will continue integrating enforcement of apprenticeship requirements with prevailing wage investigations to better ensure full compliance on public works jobs; addressing the problems experienced to date by contractors in submitting electronic certified payroll records; implementing improvements to the Electrician Certification Unit; and developing new online functions to enhance services. Moreover, the use of increasing layers of subcontractors poses additional challenges to public works enforcement and requires a more creative and aggressive approach. To this end, the Administration has initiated a series of meetings with public works stakeholders across the state. These meetings are only the first step in facilitating open lines of communication and improving the quality and timeliness of leads in order to meet the Administration's goal of uncovering violations during the life of a project rather than continue the Division's historical practice of conducting investigations only after project conclusion. In 2013 and beyond, the DLSE remains committed to taking all necessary action to ensure the protection of workers, honest contractors, and public dollars on every public works job in California.

18 An awarding body is a department, board, authority, officer or agent awarding a contract for public works. In most cases the awarding body is a unit of state or local government, such as a city, county, school district, water district, special district, or a state agency.

RETALIATION COMPLAINT **INVESTIGATIONS**

The Division's **Retaliation Complaint Investigation** unit (RCI) is the first and last line of defense for most workers who speak up against workplace violations. One of the primary reasons workers do not report violations is the fear of retaliation, which can take the form of firing, reduced hours, and other adverse actions. Under Labor Code Section 98.7, individuals who allege retaliation or discrimination for engaging in protected activity – including complaining about underpayment, requesting time off for jury duty, raising health and safety issues with the employer, or disclosing information to a government or law enforcement agency about unlawful activity – may file a complaint with the DLSE within six months of the adverse action, subject to certain exceptions. The DLSE is required by law to investigate every complaint filed within its jurisdiction, and RCI investigators must conduct investigations to determine violations of over 30 statutory provisions the Division is charged with enforcing. In the event the Labor Commissioner determines a violation has occurred and issues a cause finding, the statute authorizes the Labor Commissioner to direct the violator to cease and desist from the violation and to take remedial action including, where appropriate, rehiring or reinstatement of the aggrieved employee and reimbursement of lost wages and interest. If the employer does not comply, the DLSE is empowered to file a lawsuit against the employer. If the Labor Commissioner determines after investigation that no violation has occurred, the complaint is dismissed.

When the Brown Administration assumed office in 2011, the RCI unit was suffering from years of neglect and inefficiency. In 2008, the average number of days it took to complete a retaliation investigation was 449 days; by 2010, the average number of days was reduced to 372, which still far exceeded the statutorily-mandated timeline for resolving retaliation complaints.

In the first two years under the Brown Administration, the RCI unit accepted more complaints for investigation[19] than any other previous year within the past five years. The complaints accepted in both 2011 and 2012 also alleged more violations[20] than in any other previous year in the past five years.[21]

Year	Total Number of Complaints Accepted for Investigation[22]	Total Number of Violations Alleged
2008	1118	1252
2009	1119	1302
2010	1081	1254
2011	1217	1624
2012	**1391**	**1794**

19 The DLSE must reject complaints that do not fall within its jurisdiction.

20 Retaliation complaints may contain one or more alleged violations.

21 At the same time, in 2011, the RCI unit struggled with 3 vacancies in investigator positions, which were not fully staffed until mid-2012.

22 Statistics on the total number of complaints accepted for investigation may differ slightly from the numbers previously reported to the Legislature due to a computer error in the retaliation complaint database, which has since been corrected.

The influx of complaints involving increasing numbers of violations underscores the dire problem of retaliation in the workplace. At the same time, this influx of new complaints exacerbated the pre-existing backlog in investigations and presented serious challenges to the unit's ability to issue timely determinations on complaints.

The numbers only paint half the picture, however. Several underlying qualitative problems have also historically plagued the unit. Although some complaints had been allowed to sit without action for years, thus resulting in the backlog in investigations, no system had been developed to triage cases so that the most urgent cases in need of attention could be addressed more immediately. Before Commissioner Su joined the DLSE, the processing of complaints was inefficiently relegated to a single DLSE office, which created a bottleneck and unnecessary delays in assigning cases for investigation. As the percentage of cause findings relative to the number of determinations issued remained low at no higher than 16% since 2008, the Division was under fire for the high volume of complaints dismissed, which raised questions about the quality of investigations that were taking place. Nor was the DLSE invested in educating employers and workers about the state's anti-retaliation provisions, in order to help deter retaliation in the first place. Moreover, RCI investigators had not been provided with the necessary resources to enable them to do their jobs effectively. The RCI unit lacked adequate training on investigative and interviewing techniques, complaint and investigation procedures, legal issues, and recent legislation. Basic notices and forms, such as the complaint form, were sorely in need of revision in order to promote accurate investigations in a more expeditious timeframe. These entrenched problems, which had accumulated over the years, urgently needed to be addressed when the Brown Administration took office.

ACCOMPLISHMENTS

In light of these formidable challenges, Labor Commissioner Su has energized and improved the state's response to employer retaliation against workers who exercise their rights. Progress has been made in reducing the amount of time it takes to complete retaliation investigations, uncovering violations, and developing efficient and effective complaint and investigation procedures.

Reduction in average number of days to complete investigations.

- In 2012, the average number of days it took to complete a retaliation investigation was the lowest it has been in the past five years. RCI was able to cut down the number of days to complete an investigation despite the highest volume of complaints accepted and violations alleged since 2008.

Increase in percentage of cause findings.

- In 2012, the percentage of RCI investigative determinations that found violations (i.e., where cause findings were issued) was higher than in any previous year within the past five years.

Year	Number of Determinations Issued	Number of Cause Findings	Cause Findings as a Percentage of Determinations Issued
2008	224	24	11%
2009	317	32	10%
2010	304	50	16%
2011	215	31	14%
2012	262	59	23%

Qualitative improvements in complaint and investigation procedures.

- ***Prioritization of cases.*** The DLSE's response to retaliation has been reinvigorated through the adoption of better processes for prioritizing retaliation complaints, so that meritless cases can be dismissed quickly and meritorious ones given immediate attention. A complaint may now be assigned for priority investigation when it falls into one or more of the following three categories: (1) alleged retaliation after a worker files a wage claim with the DLSE; (2) alleged retaliation based on an investigation of an employer by the DLSE or the worker's cooperation with such a governmental investigation into workplace abuses; or (3) alleged retaliation following a complaint made to Cal-OSHA, DLSE's sister division, for health and safety violations. This new approach not only makes the anti-retaliation provisions of the Labor Code meaningful, it strengthens all of the Division's other enforcement efforts, protects honest employers, and builds worker trust in state enforcement activity. Investigations of complaints where the worker has sought the assistance of the Division, filed a wage claim, or cooperated with a DLSE investigation are now being completed within weeks, sometimes even days.

ENFORCEMENT SPOTLIGHT

RCI and BOFE investigators collaborated to assist three workers who claimed they were terminated because they told the truth about labor law violations of their employer to a BOFE investigator. The RCI investigator commenced his investigation on the same day the retaliation cases were filed and utilized information provided by the BOFE deputy about what occurred during the BOFE investigation. Within only weeks of filing, the RCI investigator brought the parties together and facilitated a settlement of the RCI complaints.

- ***Procedures to educate workers and employers and deter retaliation.*** To further the Administration's commitment to education, field deputies now take with them a half-page flyer to inform employers and workers of their obligations and rights under anti-retaliation provisions of state law. This flyer is distributed during all inspections. Field deputies also provide information on anti-retaliation provisions to employers and workers as part of their concluding statement at the end of an inspection. Moreover, before retaliation complaints are closed, conferences are conducted with the parties to educate them on the law and the reasons for the outcome. These changes signal the Division's new focus on providing education about the state's anti-retaliation laws, in order to help prevent retaliation from occurring.

- ***Improved forms and notices.*** The DLSE has revised, updated, and streamlined RCI forms, letters, notices, and postings. As one example, an improved complaint form has been developed in response to many complaints from the public that the form was not user friendly and was not a productive tool for collecting information necessary to evaluate the claim. Written in lay language, the new form was formulated to better enable investigators to determine DLSE jurisdiction; to evaluate whether the basic elements of a claim are satisfied and, if not, to protect employers from frivolous case filings; to provide more complete information needed for investigation; to promote accurate investigations in a more expeditious timeframe; and to identify other sources of information about the claim that may reside with other agencies.

- ***Extensive training of investigators.*** The Labor Commissioner has vigorously promoted and provided essential training of RCI investigators to update their knowledge of investigative and interviewing techniques, procedures, legal issues, new legislation, and priorities such as treating all employers and employees with respect and the highest standards of professionalism. Such training is critical to the ability of DLSE staff to effectively and efficiently investigate retaliation complaints.
- ***Enhanced processing of retaliation complaints.*** In the past, all retaliation complaints, regardless of where they were filed, were sent to Sacramento for processing and assignment. This resulted in unnecessary delays before an investigation could even commence. In order to expedite the complaint process, a new Southern California location for processing complaints has been added. Today, all DLSE district offices accept in-person filings; complaints involving work performed in the southern part of the state (south of Bakersfield) are now processed in Santa Ana, while those involving work performed in the northern part of the state (north of Bakersfield) are processed in Sacramento.
- ***New system of internal coordination and information sharing.*** The Administration has also implemented a new system of information sharing and cooperative investigation efforts between enforcement units within the DLSE and the Department of Industrial Relations more broadly. Many claimants who file retaliation complaints also file claims for unpaid wages, have filed a safety complaint with Cal-OSHA, or have participated in a BOFE inspection. Complaints filed in multiple units can now be investigated in tandem. This new system of internal coordination results in streamlining of government functions, less waste, and more timely and accurate results.

LOOKING AHEAD

The DLSE's investigation of retaliation complaints strengthens all of the Division's enforcement efforts. The vital work of the RCI unit helps to make workers whole (through reinstatement and/or payment of lost wages) and to level the playing field for law-abiding employers. In the span of only two years, the Brown Administration has already implemented pivotal improvements to the RCI process, including identifying and addressing the roadblocks to effective handling of complaints and investigations. However, the foundational changes that have been made require more time before quantifiable results will fully materialize. Moreover, although this Administration has been able to shorten the average amount of time it takes to complete a retaliation investigation, there is still significant room for improvement. In 2013 and beyond, the Division's ability to issue timely determinations on retaliation complaints will remain an utmost priority.

ENFORCEMENT SPOTLIGHT

When a worker who filed a Berman claim attended the DLSE settlement conference on his claim, he informed the WCA deputy that his employer, a health services company, had written him up for filing the claim. The WCA deputy immediately referred the retaliation claim to the RCI unit. An RCI investigator reviewed the WCA case file, contacted the worker, and completed the retaliation investigation within weeks.

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Following a BOFE inspection of a car wash, a worker told the BOFE investigator that his hours were reduced due to his participation in a BOFE interview. The BOFE investigator immediately provided the worker with a retaliation complaint form and informed an RCI investigator about what had transpired. The RCI investigator contacted the worker and ultimately issued a cause finding in the case, in addition to the cases of two other workers at the car wash who had been retaliated against for complaining to the employer about not being paid for all hours worked.

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When wage claims were filed by a group of hotel workers, BOFE launched an investigation of the hotel. The hotel claimed that the workers were not their employees but were hired through an agency. After the workers claimed they were fired in retaliation, the BOFE and RCI investigators worked together, setting up interviews of the workers. These joint efforts resulted in cause findings in the retaliation cases even before the wage claims were resolved.

JUDGMENT **ENFORCEMENT**

The **Judgment Enforcement** unit (JEU), which was established in November 2006, enforces judgments for unpaid wages and penalties that issue from WCA hearing decisions and BOFE citations. The unit's enforcement activity includes filing claims against employer debtors to satisfy judgments; pursuing surety bonds required in certain industries[23]; and administering three restitution funds, the Farmworker Remedial Account, Garment Special Fund, and Car Wash Worker Restitution Fund,[24] which give some of the lowest-wage workers in the state a place to go to collect their owed wages when their employers cannot be found. The JEU files approximately 2,500 BOFE citations each year with the various Superior Courts to be entered as judgments, records about 3,800 real property liens per year, and processes around 120 restitution fund requests annually.

When the Brown Administration took over the DLSE in 2011, major impediments existed to successful enforcement of judgments by the Division. Procedures were not consistently utilized up front in the wage claims process or BOFE investigations to ensure that the employer was correctly named; as a result, the failure to properly set forth the identity and form of the employer in a wage claim or citation affected the enforceability of the Division's administrative determinations. Once a WCA hearing decision or BOFE citation became final, the Division frequently lacked accurate information necessary to pursue collections against the employer. Moreover, effective judgment enforcement typically requires prompt action to prevent unlawful employers from absconding, hiding assets, or otherwise evading collections, but the Division's inability to act quickly more often than not turned judgments into nothing more than paper tigers. Recognizing these underlying problems that have hampered the DLSE's judgment enforcement efforts, Commissioner Su has begun to integrate and streamline procedures as well as pursue more proactive judgment enforcement aimed at enhancing the Division's ability to recover wages and penalties.

23 For example, as a condition of registration, car washes are required to post a $15,000 bond, which is then used to satisfy any wage judgments against the car wash.

24 These restitution funds are funded through a portion of annual registration or licensing fees and/or fines collected by the DLSE.

ACCOMPLISHMENTS

In 2012, collections of wages and penalties by the Judgment Enforcement unit exceeded any other previous year since the inception of the unit.

	2007	2008	2009	2010	2011	2012
Total Amount of Judgments	$8,699,527.31	$24,508,915.93	$25,704,144.69	$26,123,235.36	$29,397,047.00	$30,114,027.18
Total Amount Collected[25]	$1,519,168.76	$3,103,048.85	$3,064,180.90	$3,297,170.18	$3,239,119.10	**$3,955,943.48**

However, in 2012, as in previous years, the total amount recovered as a percentage of the total amount of judgments remained low (under 15%). The low collection rate has historically presented one of the most significant challenges to the DLSE's enforcement efforts, and is in part the result of the characteristics of many entities that typically engage in labor law violations: they are small, undercapitalized and often go out of business once violations are caught. Nonetheless, the Labor Commissioner believes that the DLSE can and must do better.

LOOKING AHEAD

Improving the effectiveness of the Division's judgment enforcement efforts is an urgent priority. The Brown Administration is committed to aggressive and swift action on judgments, which is essential to the work of the Division as a whole; without it, workers frequently cannot recover their unpaid wages, and legitimate businesses are undercut by unscrupulous employers who flout the law.

To enhance the Division's collections efforts, the DLSE recently partnered with the Wage Justice Center, a non-profit organization in Los Angeles that specializes in collecting unpaid wages for low-income workers, with a particular expertise in enforcing judgments from Berman claims.[26] Too often, workers win judgments only to find that the employer has gone out of business, fraudulently transferred assets, and erected shell corporations to avoid paying what is owed. Through creative use of underutilized legal tools to track down and seize assets and income, the Wage Justice Center has made its hallmark the collection of "uncollectable" judgments. The DLSE's partnership with the Wage Justice Center will strengthen the Division's ability to seek satisfaction of wage judgments, putting earned wages into the hands of California workers.

Furthermore, the Administration is fostering better collaboration both within the Department of Industrial Relations (including leveraging department-wide collections capabilities, where appropriate) and across state agencies (for example, through joint efforts with the Employment Development Department). The Division is also working to streamline the means by which workers in the agricultural, garment, and car wash industries can collect wages owed from existing restitution funds. Finally, the DLSE is committed to enforcing criminal penalties against employers who fail to pay outstanding wage judgments within 90 days.[27] The Labor Commissioner is confident that through implementation of these critical measures, the ability of the Division to enforce judgments and recover wages and penalties will improve dramatically within the coming years.

25 The figures in this table do not include money recovered outside the Judgment Enforcement unit, such as voluntary payments by employers short of judgments or payments in settlement of DLSE enforcement lawsuits. As a result, the total amount of money that workers recover and that flows into state coffers as a result of DLSE enforcement activity is not reflected in the statistics of the Judgment Enforcement unit.

26 This collaboration will take the place of the DLSE's former partnership with the Franchise Tax Board. In 2012, the Franchise Tax Board ceased accepting judgment enforcement referrals from the DLSE.

27 See Labor Code Section 1197.2.

LICENSING AND **REGISTRATION**

A threshold mechanism for ensuring compliance with minimum labor standards is the statutory requirement that certain industries obtain a business license from the state. The Division's **Licensing and Registration** (L&R) unit provides the essential service of processing licenses and registrations for farm labor contractors, garment contractors, car washes, studio teachers, and talent agencies. Less common but still under the jurisdiction of the DLSE are licenses for special minimum wage workers, sheltered workshops, industrial homework, and individuals using minors in door-to-door sales. In addition, the DLSE issues entertainment work permits for minors as well as employer permits to employ child entertainers.

Before the Brown Administration took office, the L&R unit suffered from long delays in processing applications, cumbersome application forms and procedures, and an antiquated payment system. In 2010, it took an average of 2 months (60 days) for the unit to review registration and licensing applications for garment contractors, car washes, and farm labor contractors. Online functions for application forms and fees were non-existent. In order to support California businesses that are committed to compliance, one of this Administration's top priorities has been to enhance DLSE licensing activities, speed up review of applications, and streamline and modernize application procedures so that they are efficient, accurate, and user-friendly.

ACCOMPLISHMENTS

In the past two years, the Brown Administration has instituted significant improvements to the licensing and registration process, including accelerating the application review process, simplifying forms and procedures, and developing more online functions to better serve the public.

Fastest application review process in the past five years.

- In 2012, it took the DLSE an average of only **21 days** to review licensing and registration applications – 50% faster than in 2010. For applications involving garment contractors, car washes, and farm labor contractors, 2012 marked the shortest review period in the past five years.

Type of License/ Registration	Average Number of Days to Review Applications from Date Received				
	Average Number of Days in 2008	Average Number of Days in 2009	Average Number of Days in 2010	Average Number of Days in 2011	Average Number of Days in 2012
Garment Contractors	120	55	60	60	30
Car Washing & Polishing	40	45	60	40	30
Farm Labor Contractors	60	45	60	55	25
Talent Agencies	30	15	30	30	15
Studio Teachers	30	15	30	30	15
Sheltered Workshops	30	15	30	30	15
Special Minimum Wage	30	90	30	30	20
AVERAGE OF ALL LICENSES/ REGISTRATIONS	**49**	**40**	**43**	**39**	**21**

ENFORCEMENT SPOTLIGHT

Since 2011, the Licensing and Registration unit has conducted outreach to approximately 600 cities and counties in California that license businesses, in order to help educate employers about the state's licensing and registration laws for garment contractors, farm labor contractors, car washes, talent agencies, and studio teachers. This effort is part of the DLSE's collaboration with other public entities in the state that issue business licenses, in order to provide all employers with accurate information about licensing and registration requirements and to help employers take the steps they need to start and maintain a lawful business.

Creation of key online functions for the public.

- ***Payment of application fees online.*** All applicants for licenses or registrations in the farm labor, garment, talent agency and car wash industries can now pay application fees (for both new and renewal applications) and exam fees online. The DLSE's implementation of online payments (a basic function that was previously unavailable) has made the application process for businesses easier and faster.

- ***Fillable application forms.*** Application forms to obtain a license or registration are now available on the DLSE website as fillable forms that allow the applicant to use a computer to type and print the application.

- ***Verification of farm labor contractor licenses online.*** The DLSE has implemented a one-step online system for growers to verify whether a farm labor contractor is licensed. Previously, such verification could only be conducted by email, fax, or phone, required the assistance of DLSE staff, and resulted in delays. Growers can now request, view, and print an official verification online. Moreover, verification data is updated daily; for a license issued today, the public will be able to see the updated information online the very next day.

- ***Online entertainment work permits for minors.*** For the first time in DLSE history, entertainment work permits for minors can be obtained online. The new system also enables online verification of permits by prospective employers. Although applicants may still apply for such permits by mail or in person, they now have another option that is convenient, secure, and fast.

Updated, streamlined application process.

- ***Expedited process to correct defective applications.*** The process to correct defective applications for licenses and registrations in the farm labor, garment, talent agency, and car wash industries has been streamlined. Previously, the application process was protracted and inefficient; defective applications were allowed to linger for up to 120 days, while multiple letters were sent by the Division to solicit corrective action. By tying up the entire review process, such delay negatively impacted those businesses that had submitted completed applications. Applicants are now provided with no more than two letters for corrective action and must perfect their application within an average of 60 days.

- ***Simplified licensing application for farm labor contractors.*** The Division has instituted new licensing application forms for farm labor contractors that simplify the application process, including a new "Short-Form" application that minimizes the paperwork and documentation required for a renewal license.

LOOKING AHEAD

Even with the considerable progress that has been made in this area, the Labor Commissioner recognizes that additional improvements are necessary to further expedite and facilitate the licensing and registration process. The Administration's goal is to fully integrate all licensing and registration systems online. For example, the DLSE is currently working on a comprehensive online application system for farm labor contractors, which would enable applicants to apply for a license online, pay their fees online, and receive information about defective applications as well as reminders about impending license expiration via email notifications rather than by regular mail. The same system would be implemented for garment contractors, car washes, and talent agencies.

Moreover, in order to maximize the effectiveness of the Division's enforcement efforts, the Labor Commissioner is working to promote more interface between units and to fully integrate the DLSE's enforcement efforts. Procedures have been established to foster the exchange of information and coordination of enforcement activities across the Division. For example, L&R is collaborating with WCA offices to provide information about the licensing status of garment contractors in AB 633 cases.[28] L&R is also exploring mechanisms to provide leads for BOFE investigations.[29] As part of the Labor Commissioner's holistic approach of engaging in smarter, more coordinated enforcement instead of addressing issues piecemeal, this Administration is invested in developing systems that enable units to work symbiotically and to share information that will enhance the work of each unit.

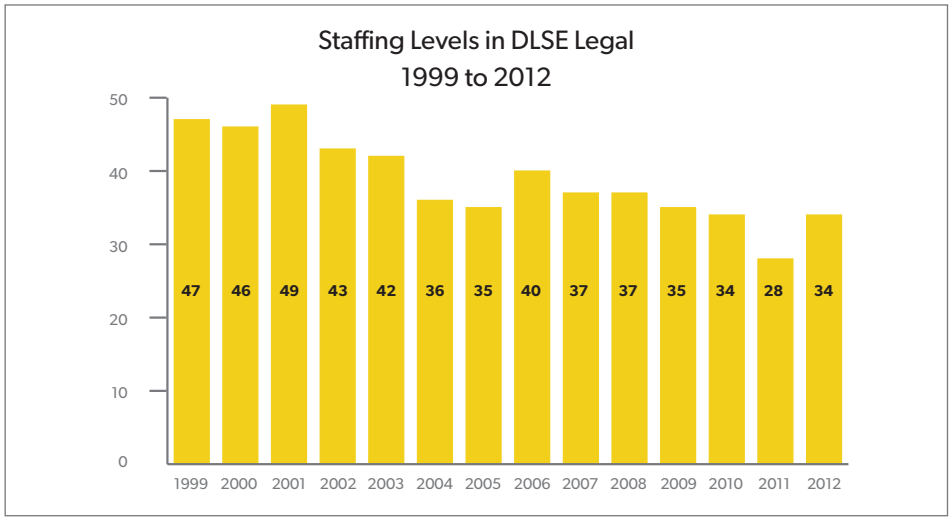
28 The Labor Code provides for joint liability of garment manufacturers when they have contracted with an unlicensed contractor.

29 Entities that fail to obtain licenses or registrations as required under the law may be more likely to have perpetrated wage and hour abuses.

LEGAL

As the backbone of the Division, the DLSE's **Legal** unit plays an indispensable role in all of the Division's enforcement activities. Among their various responsibilities, DLSE attorneys represent workers in de novo appeals of the Division's wage claims decisions; defend BOFE citations to ensure they are enforced; file affirmative lawsuits[30] when employers have refused to comply with the Division's demands for payment based on a BOFE audit for unpaid wages, or when employers have engaged in systemic violations of wage and hour laws; defend Public Works civil wage and penalty assessments and file debarment actions against contractors who have violated the law; file retaliation complaints in court; enforce subpoenas and obtain inspection warrants; draft amicus briefs on behalf of the Labor Commissioner; and provide ongoing legal counsel to all DLSE staff.

Over the years, staffing levels of the Legal unit have plummeted. In 2011, the first year under the Brown Administration, the unit operated with only 28 staff[31] – the lowest number of staff in well over a decade.



In addition, historically, the primary focus of DLSE attorneys has been their representation of workers in de novo appeals of wage claims, through which the Legal unit has built a long tradition of success. However, given this focus and the relative lack of resources in recent years, the Legal unit has been unable to maximize its use of affirmative suits – one of the most powerful enforcement tools in the Division's arsenal – to recover unpaid wages for workers, stop retaliation, and bring employers into compliance.

30 Labor Code Sections 98.3 and 1193.6 provide the Labor Commissioner with broad authority to file lawsuits to recover wages for workers and to remedy violations of the Labor Code and IWC wage orders.

31 This statistic is inclusive of all Legal staff, including attorneys and support staff.

ACCOMPLISHMENTS

Under the Brown Administration, the Division has been committed to rebuilding the ranks of the Legal unit and increasing the use of strategic lawsuits to combat wage theft. In 2012, the DLSE raised staffing levels in the unit by over 20%. During the past two years, the Labor Commissioner filed high-profile lawsuits on behalf of thousands of low-wage workers, while the Division maintained its success rate in de novo appeals.

Successful representation of workers in de novo appeals of wage claims.

In 2011 and 2012, the Legal unit remained highly successful in representing wage claimants in de novo appeals. DLSE attorneys achieved favorable resolutions for the claimant (either through judgment or settlement) in over 95% of cases.

Strategic lawsuits to combat wage theft.

In the past two years, the Division launched a concerted effort to bring lawsuits against employers who have engaged in widespread violations of wage and hour laws, with a focus on safeguarding the floor on minimum labor standards and deterring employers from perpetrating wage theft. Highlights include:

- ***Lawsuit on behalf of real estate agents throughout California who were denied minimum wage.*** On behalf of thousands of real estate agents throughout California, the DLSE filed a lawsuit against an Emeryville-based realty company that had failed to pay its real estate agent employees minimum wage and overtime for over four years. The agents frequently received no pay at all for their work. The lawsuit, which sought several millions of dollars in unpaid minimum wages and overtime, in addition to damages and penalties, brought much-needed attention to the fact that violations of minimum labor standards are occurring in a wide variety of industries and affecting employees outside traditional low-wage occupations. The DLSE originally became involved in the case when four real estate agents in Bakersfield filed wage claims before the DLSE for nonpayment of minimum wage and overtime by the company. After the Labor Commissioner issued an award in favor of the claimants in the amount of approximately $75,000, the company appealed. When the DLSE prevailed against the appeals in superior court, the company settled the claims of the four agents for over $595,000. Because the DLSE determined that the company's violations were not isolated events but indicated a pattern of wage theft across the state, the Labor Commissioner filed suit to recover unpaid wages for all the company's real estate agents in California. The DLSE subsequently settled the suit for $5 million.

- ***High-profile lawsuits against farm labor contractors, the first in DLSE history.*** The DLSE filed the first case against a farm labor contractor in the history of the Division, after a BOFE investigation revealed that the contractor had failed to pay minimum wage and overtime for approximately 130 workers. The DLSE subsequently filed a second suit on behalf of hundreds of workers against another farm labor contractor for $1.6 million in unpaid wages, damages, and penalties. (See Enforcement Spotlight, page 27, for details.) The enforcement suits send a powerful message that the Division is committed to aggressively combating wage theft in the agricultural industry.

- ***Lawsuits against Los Angeles car washes that routinely failed to pay minimum wage and overtime.*** The DLSE filed two separate lawsuits on behalf of over 40 workers against Los Angeles car washes for rampant wage and hour abuses, including failure to pay minimum wage and overtime to employees, failure to properly record accurate employee time records, and failure to provide itemized wage deduction statements as required by law. In one suit, the Labor Commissioner alleged that for a period of three years, the car wash systematically cheated workers out of their earned wages, resulting in over $1.5 million in unpaid minimum wages and overtime, damages, and penalties. The second suit, which was filed against a car wash and its successor, demonstrates the Division's vigorous enforcement of successorship provisions under the law that hold both the original employer and successor entity responsible for making sure workers are paid. The DLSE suit, which seeks several hundred thousand dollars in unpaid minimum wages, overtime, meal and rest period premiums, damages, and penalties, underscores that car wash employers who violate the law cannot avoid paying their workers by closing one entity down and opening up a new one under a different name.

LOOKING AHEAD

DLSE Legal represents the Labor Commissioner in court and supports all of the Division's enforcement activities. In the last two years, the Legal unit has played a leadership role in the Division's statewide training program. In addition, the last two years have seen an increase in the Division's enforcement responsibility in ways that directly affect the workload of DLSE attorneys. The other improvements described in this report, including the record numbers of citations issued and increased percentage of cause findings in retaliation investigations, also place growing demands on DLSE attorneys, the full impact of which has yet to be felt. Although Labor Commissioner Su has augmented the number of DLSE Legal staff, the Division has seen the retirement of senior attorneys and currently faces a need to train many of the new additions to the Legal unit. In 2013 and beyond, the Legal unit will continue to play its central role in the Division's enforcement efforts while working to enhance the breadth and impact of its work.

CONCLUSION

At the beginning of his term in 2011, Governor Brown said in his State of the State address, "California is on the mend." The DLSE, too, has experienced a remarkable period of transformation, with a focus on fixing what did not work while building on what does. As a result, the last two years of enforcement activity have been the most robust by almost every measure in the Division's history. With Labor Commissioner Su's vision guiding the hard work of the entire Division, the dramatic improvements that have been made in the past two years have laid the foundation for the DLSE to successfully meet the challenges that lie ahead.