

# **DEPARTMENT OF INDUSTRIAL RELATIONS**

Report of Review

## **ACCOUNTING AND ADMINISTRATIVE PROCESSES AND PROCEDURES FOR COLLECTION OF DEBT DUE THE STATE**



**JOHN CHIANG**  
California State Controller

August 2008



**JOHN CHIANG**  
California State Controller

August 5, 2008

John C. Duncan, Director  
Department of Industrial Relations  
455 Golden Gate Avenue  
San Francisco, CA 94102

Dear Mr. Duncan:

This report presents the results of the State Controller's Office (SCO) review of the Department of Industrial Relations' (DIR) administrative practices and procedures for accounting and collection of debt due the State. The SCO review was conducted pursuant to Government Code section 12418, which stipulates that the State Controller shall direct and superintend the collection of all money due the State.

Our review disclosed the following:

- DIR was able to collect only a fraction of fines imposed.
- DIR is circumventing state control requirements by not establishing accounts receivable in its formal accounting records.
- DIR's internal control over collection is weak because its collection duties are not clearly defined and adequately segregated.
- Accuracy and completeness of DIR's accounts receivable balance resulting from DOSH-imposed fines are questionable.

We provided a draft version of the report to DIR for review and response. DIR's response is included in this report as Attachment A. In addition, we made comments on some of the issues raised in DIR's response, and these are included as Attachment B of the report.

If you have any questions, please contact Mike Spalj, Audit Manager, at (916) 324-6984.

Sincerely,

*Original signed by*

**JEFFREY V. BROWNFIELD**  
Chief, Division of Audits

JVB:wm

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# Executive Summary

This report presents the results of the State Controller's Office (SCO) review of the Department of Industrial Relations' (DIR) administrative practices and procedures for accounting and collecting debt due the State. Our review was initiated to ensure the DIR has adequate processes and procedures in place to account for and collect moneys due the State for citations issued and fines assessed against business entities. Under Government Code section 12418, the State Controller is to direct and superintend the collection of all money due the State.

Our review identified the following concerns:

- The DIR was able to collect only a fraction of fines imposed by the Division of Labor Standards Enforcement (DLSE). According to the DIR's annual report to the Legislature, it was able to collect only \$17.8 million of \$71.9 million (24.7%) in fines for citations DLSE issued against employers from the 2004 through the 2006 calendar year (see Appendix 1). Although it is inherently difficult for the DIR to collect some moneys due to the nature of the industries targeted for inspection and its lack of collection leverage, the fact that the DIR collected less than 25% of fines strongly suggests that opportunities exist for significant improvement in its collection efforts with respect to fines assessed by the DLSE. A 10% improvement in the DIR's rate of collection should result in approximately \$2.4 million in additional funds to the State.
- The DIR circumvented state controls by not setting up accounts receivable for fines imposed by the DLSE. Based on DLSE Field Enforcement annual reports, the DIR failed to record an estimated \$71.9 million in accounts receivable in its accounting records from January 1, 2004, through December 31, 2006. According to DLSE staff, this amount is composed of all citations issued regardless of whether there were subsequent reductions in the citation amount or if the citation was dismissed altogether. Therefore, this amount may be inflated significantly. However, the DIR does not have the means to determine the actual amount due to the lack of sufficient and reliable data. Apparently, this problem has been ongoing for more than ten years. In a report issued in March 2006, the Department of Finance (DOF) found that the DIR failed to record approximately \$43.4 million in accounts receivable. The DOF report further noted that similar findings were included in another report issued in 1997. The failure to record accounts receivable represents a serious internal control weakness. DIR management does not have an accurate, complete, and independent data-management system to effectively oversee and manage the DLSE enforcement activity pertaining to issuance of citations, assessment of fines, and collection efforts. Moreover, the DIR's failure to record fines and penalties as accounts receivable is, in effect, bypassing the review by outside state control agencies. State agencies are required to file Discharge from Accountability requests to write off the uncollectible accounts

receivable. By not recording the fines as accounts receivable, the DIR would not need to file the Discharge from Accountability requests for approval to write off uncollectible fines and penalties.

- The DIR's internal controls over collection of fines imposed by DLSE are weak because duties are not clearly defined and adequately segregated. Apparently, numerous individuals are involved in the collection function and processes; these individuals do not have clearly defined duties and responsibilities. In essence, deputies and senior deputies have access to all aspects of the collection process, including imposing fines, collecting fines, and recording and tracking the amounts of fines imposed and collected by DLSE. This problem is further compounded by the lack of accurate and reliable data with which the DIR management might effectively oversee and monitor collection efforts.
- The accuracy and completeness of the DIR's accounts receivable for fines imposed by the Division of Occupational Safety and Health (DOSH) are questionable. We noted discrepancies between DOSH's Integrated Management Information System (IMIS), used for federal reporting purposes, and Oracle, used by DIR accounting as an accounts receivable subsidiary system. A difference of \$3,857,203 existed between the dollar amount of citations issued as reported by IMIS and by the Oracle accounts receivable system. DIR Accounting does not perform reconciliation of accounts receivable between IMIS and Oracle's subsidiary system for DOSH's accounts receivable.

### Recommendations

1. DIR should assess the efforts and results of the newly created Collections Unit. If it determines that the Collection Unit's efforts are cost effective, the DIR should consider expanding the functions of the Unit to collection tasks currently being performed by field office personnel or by having the Collection Unit perform the collection of delinquent fines imposed by the DOSH that is currently being performed by a private collection agency on a contingency fee basis.
2. The DIR should consider sponsoring legislation to provide it with greater leverage in its collection efforts. For example, according to the DIR staff, the department has been very successful in collecting fees from contractors by referring cases to the Contractor's State Licensing Board, which has the authority to suspend or revoke a contractor's license. The DIR may also wish to consider pursuing a legislative change extending from one year to three years the statute of limitations period for filing a judgment on DLSE-imposed fines. For DOSH-imposed fines, the statute of limitations period is already three years.

3. The DIR should develop a formal manual for DLSE and DOSH that should include, but is not limited to, the following:
  - Procedures to be performed and a timeframe for completion of each procedure.
  - The roles and responsibilities for all staff members who are involved in the process.
  - The role and responsibilities of each unit within the department and the procedures for coordinating and communicating efforts.
  - Procedures for supervisor and management review of cases from the initial data entry to completion of the cases.
  - Procedures to ensure that all deputies and legal staff members act in a timely manner on all cases by filing a judgment against an employer within the statutory timeframe.

The DIR should reassess its efforts and progress in implementing the new case management systems to determine whether the system is still viable. If the DIR determines that it is unrealistic to expect full implementation within the foreseeable future, it may wish to redirect its efforts from developing and implementing the new system to making improvements to the File Maker Pro system to ensure that the data in the system is accurate, complete, and reliable.

# Review Report

## Introduction

The State Controller's Office (SCO) conducted a review of the Department of Industrial Relations' (DIR) accounting and administrative practices and procedures for collecting debt due the State and collecting fines and restitution imposed against the employers it regulates. The SCO review was conducted pursuant to Government Code section 12418, which stipulates that the State Controller shall direct and superintend the collection of all money due the State.

## Background of Department of Industrial Relations (DIR)

The DIR was established to improve working conditions for California's wage earners and advance opportunities for profitable employment in California. The DIR's principal objectives are to protect the California workforce, improve working conditions, and advance opportunities for profitable employment. The DIR carries out its responsibilities through six divisions and ten commissions, boards, and programs.

Within the DIR, three operating divisions issue citations and/or impose fines and/or penalties as part of their monitoring and enforcement efforts. The responsibilities and functions of the three divisions are described in the following section.

### Division of Labor Standards Enforcement (DLSE)

The DLSE enforces minimum labor standards in order to ensure that employees are not required or permitted to work under substandard unlawful conditions. It also protects employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards. DLSE performs all of the following functions:

- Adjudicates wage claims, investigates discrimination and public works complaints, and enforces labor law and the Industrial Welfare Commission wage orders.
- Settles wage claims on behalf of workers who file claims for nonpayment of wages, overtime, and/or vacation pay pursuant to California Labor Code sections 96 and 98.
- Investigates complaints alleging discriminatory retaliation in the workplace on the basis of various Labor Code sections.
- Enforces statutes covering workers' compensation insurance coverage, child labor, cash pay, unlicensed contractors, Industrial Welfare Commission orders, and group claims involving minimum wage and overtime claims.
- Conducts targeted enforcement against unscrupulous businesses that abuse the rights of workers in industries such as garment manufacturing, janitorial, agriculture, car wash, construction, race track, and restaurant.

- Issues licenses to farm labor contractors, talent agents, employers, transporters and supervisors of minors involved in door-to-door sales, and industrial home workers.
- Registers garment manufacturers, certifies studio teachers, and approves permits for the payment of less than the minimum wage to employees with disabilities and to sheltered workshops.

In addition, DLSE's attorneys present civil cases at both the trial and appellate level. The majority of cases involve issues of unpaid wages that have arisen as a result of an appeal taken from an order, decision, or award of the Labor Commissioner.

### **Division of Occupational Safety and Health (DOSH) Cal/OSHA**

The DOSH Cal/OSHA Program is responsible for enforcing California laws and regulations pertaining to workplace safety and health and for providing assistance to employers and workers concerning workplace safety and health issues. The Cal/OSHA enforcement unit enforces and administers all occupational safety and health standards and regulations in every place of employment in the State. The Cal/OSHA Enforcement Unit conducts inspections of California workplaces based on worker complaints, accident reports, and high-hazard conditions.

### **Division of Workers' Compensation (DWC)**

The Division of Workers' Compensation (DWC) monitors the administration of workers' compensation claims and provides administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits. Within the division, the Audit and Enforcement Unit audits insurance employers, self-insured employers, and third-party administrators to ensure they have met their obligations under the Labor Code and the administrative director's regulations. By assessing penalties and ordering that unpaid compensation be paid, this unit ensures proper benefits are delivered accurately and in a timely manner.

## **DIR's Authority to Issue Citations and Impose Fines**

The Division of Labor Standards Enforcement (DLSE) conducts inspections to ensure compliance with labor standards. The Division of Occupational Safety and Health (DOSH) conducts inspections to ensure compliance with federal and state safety standards and requirements.

The Division of Workers' Compensation (DWC) audits employers to ensure that they have met their obligations under the Labor Code and the administrative director's regulations. When an inspection or an audit determines that an employer failed to comply with prescribed standards, laws, and regulations, the DIR may assess penalties that typically range from \$500 to \$100,000, depending on the seriousness of the infraction and number of employees affected.



An employer may appeal with the office of the Labor Commission any penalties assessed by the DLSE within 15 business days after service of the citation. The Labor Commissioner, or his or her deputy or agent, shall, within 30 days of receipt of the written appeal, hold a hearing to determine whether the citation amount should be affirmed, modified, or dismissed. For DOSH cases, the employer may file an appeal with the Occupational Safety and Health Appeals Board within 15 business days; the Board will, in turn, schedule a hearing. Prior to the hearing, the employer is encouraged to resolve the disputed issues through informal and pre-hearing conferences with the district manager. When the administrative remedies are exhausted, the employer may pursue additional appeals through the judicial system.

Appendix 1 of this report provides a schedule of citations issued and amounts collected by the DIR through DLSE since 2004. We prepared this schedule based on data provided by DLSE staff. The DLSE imposed \$71.8 million in fines and collected only \$17.7 million, or 24.7% of the total citations issued.

## **Scope and Methodology**

The scope of our review included a review of DIR policies, processes, procedures, and practices relative to its accounting for and collection of issued citations and assessed fines from the business entities it regulates. Our review objective was to determine whether DIR properly performs, in a timely manner, the accounting and administrative processes necessary to promptly collect amounts it is owed and submits to the SCO, with appropriate documentation and review, any requests for discharge from accountability of uncollectible receivables balances.

We have excluded from the scope of our review the collections systems and processes relative to penalties assessed through audits by the Division of Workers' Compensation (DWC). The amounts involved were not significant in comparison with amounts assessed by the Division of Labor Standards Enforcement (DLSE) and the Division of Occupational Safety and Health (DOSH), and the DWC apparently was able to collect almost all of the net amounts assessed. For example, during the 2005 calendar year, DWC had a total of \$1,948,278 in assessable penalties. Of this amount, \$696,125 was waived based on criteria prescribed in the Labor Code, and the DIR was able to collect \$1,252,153 (100%) of the remaining amount.

We performed the following procedures:

- Reviewed pertinent statutes, regulations, and written policies and procedures regarding the DIR as they relate to the accounting and collection of fines and restitution.
- Reviewed and analyzed relevant audit reports issued by the Bureau of State Audits (BSA) and the Department of Finance (DOF).
- Reviewed and assessed the DIR's system of internal controls as they pertain to the accounting, tracking, and collection of citations and fines.

- Reviewed and analyzed the amount of citations issued and the number of fines assessed, recorded, and collected from Fiscal Year (FY) 2004-05 to FY 2006-07.
- Interviewed responsible officials at DIR headquarters, as well as staff in the DIR Accounting Unit, at the Division of Occupational Health and Safety, in the Division of Labor Standards Enforcement, and in the regional offices.
- Performed tests of transactions to assess the effectiveness of controls relating to the recording and collection of citations and fines.
- Selected a sample of citations issued and fines assessed to evaluate the accuracy and reliability of reported revenue and the balances reported as accounts receivables, and to determine if proper recording had occurred.

# Findings and Recommendations

**FINDING 1—  
The DIR is able to  
collect only a fraction  
of fines imposed.**

According to the DLSE Field Enforcement annual reports, the DIR was able to collect only \$17.8 million in fines for citations the DLSE issued against employers from the 2004 through the 2006 calendar year. The total of \$54.1 million in uncollected fines represents approximately 75.3% of the \$71.9 million in fines assessed since January 2004. The fact that the DIR collected less than 25% of fines strongly suggests that opportunity exists for significant improvement in the DIR's collection efforts. With an average of \$24 million in fines assessed by DLSE each year, a 10% improvement in the DIR's rate of collection should result in approximately \$2.4 million in additional funds to the State annually.

It should be noted that that it is inherently difficult for the DLSE to collect in many cases. Employers that are engaged in fraudulent or inappropriate labor practices often shut down operations after the DLSE issues citations due to complaints, performs a sweep, or performs a routine inspection. This is especially true for certain industries targeted by the DLSE (Agriculture, Car Wash, Construction, Garment, Janitorial, Race Track, Restaurant, Retail, and other such industries). The nature of these industries may make it inherently more difficult for the DIR to effectively carry out enforcement activities. Many of these employers do not understand the applicable laws or may not be willing to abide by the laws.

Moreover, it is apparent the DIR has little leverage to collect, as some employers simply ignore citations and refuse to make payments while continuing to operate.

In October 2006, the DIR established a DLSE Collection Unit to improve its collection efforts. The Collection Unit is supposed to provide for a more intensive collection effort when personnel at the field offices are unable to collect. With five authorized positions, the Collection Unit apparently has had some success. Records show that it has collected \$2.9 million and has filed 1,935 judgments totaling \$19.1 million. The judgments are in effect for ten years and are to be renewed for an additional ten years prior to expiring. These are legally binding judgments against cited employers. DIR attorneys can file a lien on real property with the county recorder's office and a lien on personal property with the Secretary of State.

During our review, we found that the effectiveness of the DIR's collection efforts was further hampered by the following conditions:

- By failing to file a judgment against an employer within a one-year period, the DLSE has not acted in a timely manner on a significant number of cases. A report produced by the DIR's File Maker Pro system shows that the Department had 199 open cases totaling \$6.3 million between February 13, 2006, and February 12, 2007. We randomly selected six cases for review and found that the statute of limitations has expired on four out of six cases and, as a result, the DIR does not have a cause of action to pursue the case in a court of law.

For example, Case #35-62014 with an original citation of \$20,000 was issued on March 30, 2006. During a hearing on May 19, 2006, the amount was reduced to \$17,000. As of February 12, 2008, the case was still open and the DIR had not filed a judgment against the employer. In the other three examples—Case #35-32084 with balance due of \$10,000, Case #35-62034 with balance due of \$1,100, and Case #35-62087 with a balance due of \$27,000—the DIR also did not file a judgment within the one-year timeframe. Another report generated from the DIR’s File Maker Pro system shows a total of 508 open cases totaling approximately \$16.8 million before February 12, 2007. The two report amounts differ because one report is for a one-year period while the other report is for all open cases in the system.

- Significant delays in referring cases to the DLSE Collection Unit. According to DIR staff, the field offices are to refer cases 60 to 90 days old to the collection unit for more intensified collection efforts. In the four sample cases discussed above, we found that the cases were not referred to the collection unit for more than one year after the hearing. Generally, the prospect for collection diminishes as time passes; after obtaining a judgment, the DLSE has often found that the employer has no assets from which to collect. In the other two sample cases, the File Maker Pro system was not updated when cases were transferred to the DLSE Collection Unit.
- The DLSE does not have a formal manual documenting each step of the collection process and/or the roles and responsibilities of DLSE staff working to resolve the case. The aforementioned delays by the field offices in referring cases to the Collection Unit were partially caused by the lack of formal policies and procedures. We observed inconsistent case closure procedures among DLSE staff members. There is also a lack of communication between hearing officers when, after a hearing, the citation amounts have been reduced and/or the case was dismissed.
- DIR management does not have current, accurate, and reliable data to effectively monitor the progress of the collection efforts. DLSE maintains an electronic database and a manual system to record and track the fines imposed through citations. The electronic database, File Maker Pro, is to be used by senior deputies to monitor the progress of cases handled by their subordinates. In addition, the DLSE manually produces a monthly report based on case status information reported by individual deputies. Our review disclosed that there is a significant variance between the data contained in the two systems and that the DIR does not reconcile the differences. All of the DLSE staff members we interviewed stated that they have little confidence in the integrity of the data in the File Maker Pro system and that the manual system is more reliable. However, the manual system does not contain enough data on the status of projects for management to effectively monitor cases. Moreover, as the data in the manual system is produced through a process of self-reporting by the deputies, the effectiveness of its use in monitoring the progress of the deputies is in question. This matter is discussed further under Finding 2 of this report.

In addition to the DLSE, the DIR's Division of Occupational Safety and Health (DOSH) also imposes a significant number of fines and penalties. According to its annual reports, DOSH imposed a total of \$96.9 million in fines during the 2004, 2005, and 2006 calendar years. Of this amount, employers contested \$55.6 million through appeal process. Because of the way in which the DIR tracks the status and results of the appeals and the timing difference in the recording of payments, we have no practical means with which to calculate the percentage of DOSH-imposed fines that was actually collected. Based on our review of data extracted from the Oracle System, we believe that the collection rate of DOSH-imposed fines, including any adjustments made during appeals, is substantially higher than the 25% for DLSE-imposed fines. The DIR contracts with OSI Collection Services, Inc., an outside collection agency, on a contingency fee basis to collect delinquent accounts from DOSH-imposed fines. However, the OSI's collection rates appear to be quite low. For FY 2004-05, FY 2005-06, and FY 2006-07, the rates of collection were 2.4%, 5.8%, and 7.4%, respectively.

**FINDING 2—  
The DIR is  
circumventing state  
control requirements by  
not establishing  
accounts receivable in  
its formal accounting  
records.**

When a citation is issued and a fine is assessed by DLSE, the DIR accounting office is not notified so that it can set up an accounts receivable to record and track the transaction in the accounting records. Based on the DLSE Field Enforcement annual reports, a manually-compiled report, the DIR failed to record an estimated \$71.9 million in accounts receivable in its accounting records from January 1, 2004, through December 31, 2006. According to DLSE staff this amount is composed of all citations issued regardless whether there were subsequent reductions in the citation amount or if the citation was dismissed altogether. Therefore, this amount may be inflated significantly. However, the DIR does not have the means to determine the actual amount due to lack of sufficient and reliable data. This problem apparently has been outstanding for more than ten years. In an audit report issued in 2006, Department of Finance (DOF) auditors found that the DIR failed to record approximately \$43.4 million in assessed fines as accounts receivable in its accounting records. Moreover, according to the DOF report, the same problem was reported in another DOF report that was issued in 1997.

The failure to record accounts receivable represents a serious internal control weakness, as DIR management does not have accurate, complete, and independent data to effectively oversee and manage the fines and penalties assessed and the amounts collected. Therefore, there is a high risk that fines or penalties may have been intentionally or inadvertently excluded from the department's records. These fines and penalties may remain uncollected and eventually become uncollectible.

State departments that wish to write off their accounts receivable are required to file a request for discharge from accountability with the Victim Compensation and Government Claims Board (VCGCB) through the SCO and/or the Attorney General's Office (AGO). The VCGCB, the SCO, and the AGO will then evaluate the adequacy of the collection effort before deciding whether the request should be approved or rejected. By neglecting to record fines and penalties as accounts receivable, the DIR, in effect, bypassed the review by outside state control agencies.

The DIR does have an electronic database to track fines and penalties imposed by DLSE deputies. The database is File Maker Pro (known as system 35). The DLSE issues citation booklets (25 citations in triplicate in each booklet) to its deputies. Deputies provide the original of the citation to the employer, submit a copy of the citation to the docket clerk to be entered into the File Maker Pro, and keep the third copy in the booklet. After the copy of the citation is entered into File Maker Pro, it is placed in the case file and returned to the deputy. However, all of the DIR staff we interviewed stated that they have little confidence in the accuracy and reliability of data in the File Maker Pro system. Thus, the system is not being used for any statistical or accounting purpose.

As a part of our review, we performed limited testing of data in the File Maker Pro system and found that the system does indeed contain significant errors and inaccuracies. Some examples include:

- Citations were not reported in the File Maker Pro system. Our test of citation booklets issued to deputies disclosed that four out of the 50 issued citations were not included in File Maker Pro. We also noted that one citation was completely torn out of the booklet and we could not determine whether it was included in File Maker Pro. DLSE does not keep track of issued citation booklets and does not ensure that each issued citation is actually entered into File Maker Pro, which raises questions about the completeness of the data in the File Maker Pro system.
- The DLSE does not have a formal process in place to ensure the accuracy of data in the File Maker Pro system after the initial data entry. Any changes to the case are tracked only by the deputy assigned to the case in the case file. The updated case information is not consistently posted to the File Maker Pro. Therefore, the system may not be the most accurate and reliable source of information. For example, Case #35-7-105-360-T-3 reflected that \$29 million was incorrectly posted to File Maker Pro instead of the correct amount of \$29,000.
- The DLSE lacks system controls to prevent unauthorized or inappropriate changes to system data. For example, any senior deputy can make changes to any case that is on the File Maker Pro system, regardless of whether he or she is responsible for that case.
- Some cases referred to the DLSE Collection Unit were not on its listing of cases. Case #35-64883-445-T-2, in the amount of \$5,000 and \$2,400, was referred to the Collections Unit on December 11, 2006, but was not included on its listing of open cases.

In addition to the File Maker Pro electronic database, the DLSE maintains its enforcement activity in monthly reports that are created manually through case status information reported by individual deputies. The information is summarized by each supervisor for all of his or her deputies and submitted to DLSE headquarters. All of the data is further summarized annually by the DLSE headquarters in a report submitted to the DIR Director for submittal to the California Legislature. Although case status information is summarized and reported, there is no

practical means to trace it back to individual cases because the summary data are not referenced to case numbers. Therefore, there is no audit trail linking the data in the reports to the cases.

The amounts of fines collected for issued citations as reflected in the DLSE's monthly reports in comparison to the File Maker Pro system differ substantially. From January 1, 2004, through December 31, 2006, the total difference in the amount of fines imposed was \$17.37 million between the two systems. The DIR could not explain why such a significant difference existed, as there has not been any effort to reconcile the differences.

According to DLSE staff, the manually-prepared annual reports are the more accurate and reliable of the two sources of information. However, no practical means exist to validate this assertion, as there is an insufficient audit trail to validate the accuracy, reliability, and completeness of data generated through a manual self-reporting system.

DLSE staff members informed the SCO auditors that the DLSE has been working on a new case management system to replace the File Maker Pro system. At this time, there is no estimate as to when the new system is expected to be completed.

**FINDING 3—  
The DIR's internal  
control over collection  
is weak because  
collection duties are  
not clearly defined  
and adequately  
segregated.**

We noted that DLSE collection duties are inadequately segregated. As noted under Finding 1 of this report, the DIR does not have a formal manual governing collection policies and procedures. The DLSE does not clearly define duties and responsibilities, and numerous individuals have involvement in the collection function and processes. At the DIR field office, we found that the DLSE deputies and senior deputies have access to all aspects of the collection process, including imposing fines, collecting fines, and recording and tracking the amounts of fines imposed and collected by the Department. This lack of duty segregation represents a serious internal control weakness, as it does not provide the adequate checks and balances that would prevent errors and irregularities. Some of the issues noted during our review include:

- According to the DLSE Collection Unit staff, all payment arrangements should be made by DLSE Collection Unit and not by the deputies working the case. However, we found that some deputies have made payment arrangements with employers (Case #35-62034-773-T-3). This practice could further delay the Collection Unit's efforts to file judgments, as deputies keep case files until the employer pays in full or stops making payments. Moreover, DIR management should be concerned that some deputies apparently knowingly ignored the established policies.
- We also noted a case in which a deputy unintentionally reduced the citation amount and instructed the DLSE cashiering unit to refund one-half of the citation amount to the business owner. As the deputy does not have the authority to unilaterally reduce the citation amount, the DLSE cashiering unit should not have acted on the deputy's instruction. The DLSE was not made aware of the transaction, and this raises the question of whether other such transactions have gone through the process undetected.

Although we did not find any improprieties, our review identified numerous situations that raised concerns about the adequacy of controls. This inadequacy is compounded by the fact that DIR management does not have accurate and reliable data to oversee and monitor collection efforts (discussed under Finding 1).

**FINDING 4—  
The accuracy and  
completeness of the  
DIR's accounts  
receivable balance  
resulting from  
DOSH-imposed fines is  
questionable.**

We noted discrepancies between DOSH's Integrated Management Information System (IMIS), used for federal reporting purposes, and Oracle, used by DIR accounting as an accounts receivable subsidiary system. A difference of \$3,857,203 existed in the dollar amount of citations issued that were reported by IMIS and accounts receivable that were reported by Oracle. DIR Accounting does not perform reconciliation of accounts receivable between IMIS and Oracle's subsidiary system for accounts receivable. On a limited basis, we compared the data in the two systems and identified the following discrepancies:

- One IMIS report includes some cases that are not included in the Oracle report. In this case, one reason could be that DOSH failed to submit a copy of the citation to DIR Accounting. The DIR does not have a system in place that ensures that all citations issued by DOSH are forwarded to DIR Accounting and entered into the Oracle system. Therefore, the accounts receivable may be understated in some cases.
- One Oracle report includes some cases that are not included in the IMIS report. In this case, DOSH submitted a copy of the citation to DIR Accounting but failed to enter it into IMIS.
- Some cases appear on both reports, but the amounts are different. In this case, any adjustments to the original citation were not entered into either IMIS or Oracle. This problem is compounded by the fact that adjustments to the citation amount on the Oracle system can be made only by the Occupational Safety and Health Appeals Board.

In addition, we found that DIR Accounting does not receive updated information from DOSH regarding any cases that have been appealed via internal hearings and/or the court system. Instances have occurred in which DIR Accounting was not provided with updates on the cases as they were going through the appeal process and final disposition. The lack of updates creates a problem when a citation amount is reduced or dismissed, because DIR Accounting is still carrying the original amount of the citation on the books. According to DIR accounting staff, the DOSH Appeals Board started inputting the case appeals information directly to accounting records in a timely manner after this was disclosed to DIR as a deficiency.

DIR staff members attributed the aforementioned variances to timing differences in entering data into the two systems. In the absence of periodic reconciliation of data between the two systems, no means exist to ascertain that this is indeed the case. Inaccurate recording of accounts receivable increases the risk of fines being overlooked and thus remaining uncollected. DIR informed us during the exit conference that DOSH did implement a weekly reconciliation in December of 2007 after these deficiencies were communicated to DIR staff.



**RECOMMENDATIONS**

1. The DIR should assess the efforts and results of the newly-created Collections Unit. If it determines that the Collection Unit's efforts are cost effective, the DIR should consider expanding the functions of the Unit to collection tasks currently being performed by field office personnel or by having the Collection Unit perform the collection of delinquent fines imposed by the DOSH that is currently being performed by a private collection agency on a contingency fee basis.
2. The DIR should consider sponsoring legislation to provide it with greater leverage in its collection efforts. For example, according to the DIR staff, the Department has been very successful in collecting fees from contractors by referring cases to the contractor's State Licensing Board, which has the authority to suspend or revoke a contractor's license. The DIR may also wish to consider pursuing a legislative change extending from one year to three years the statute of limitation period for filing a judgment on DLSE-imposed fines. For DOSH-imposed fines, the statute of limitation period is already three years.
3. The DIR should develop a formal manual for DLSE and DOSH that should include, but is not limited to, the following:
  - Procedures to be performed and a timeframe for completion of each procedure.
  - The roles and responsibilities for all staff members who are involved in the process.
  - The role and responsibilities of each unit within the department and the procedures for coordinating and communicating efforts.
  - Procedures for supervisor and management review of cases from the initial data entry to completion of the cases.
  - Procedures to ensure all deputies and legal staff members act in a timely manner on all cases by filing a judgment against an employer within the statutory timeframe.
3. The DIR should reassess its efforts and progress in implementing the new case management systems to determine whether the system is still viable. If the DIR determines that it is unrealistic to expect full implementation within the foreseeable future, it may wish to redirect its efforts from developing and implementing the new system to making improvements to the File Maker Pro system to ensure the data in the system is accurate, complete, and reliable.

**Appendix 1—  
 Department of Industrial Relations  
 Division of Labor Standards Enforcement (DLSE)  
 Summary of Citations Issued and Fines Assessed Since 2004**

<u>DLSE Citations</u>	<u>Amount Imposed</u>	<u>Amount Paid</u>	<u>Percentage Paid/Collected</u>
Issued 2004	\$ 27,783,475	\$ 6,438,074	23.2%
Issued 2005	21,953,673	5,661,013	25.8%
Issued 2006	<u>22,148,748</u>	<u>5,650,028</u>	25.5%
Total	<u>\$ 71,885,896</u>	<u>\$ 17,749,115 *</u>	24.7%

Source: Prepared based on data provided by DLSE staff.

**Attachment A—  
Department of Industrial Relations’  
Response to Draft Report**

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DEPARTMENT OF INDUSTRIAL RELATIONS

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June 18, 2008

MIKE SPALJ, Audit Manager  
California State Controller's Office  
Division of Audits  
300 Capital Mall, Suite 518  
Sacramento, CA 95814

Dear Mr. Spalj:

This report presents the Department of Industrial Relations (DIR) responses to the State Controller's Office (SCO) review of the DIR collections and accounts receivables administrative practices, procedures and processes for accounting and collection of debt due the State.

The response particularly addresses the accuracy of the review findings as requested. DIR understands that the SCO may modify the report based on the DIR comments or presentation of additional data.

We understand this distribution is limited to designated persons within the SCO and DIR. We further understand that once the SCO issues the final report, it becomes public information.

If you have any questions or need additional information, please contact Skip Close, Chief, Division of Administration, 455 Golden Gate Avenue, San Francisco, CA 94102 or call 415-703-5064.

Sincerely,

A handwritten signature in black ink that reads "John C. Duncan".

**JOHN C. DUNCAN, Director**  
Department of Industrial Relations

## Findings and Recommendations

The following response to the State Controller's Office (SCO) review of the Departmental of Industrial Relations (DIR) is provided in accordance with the 15-day SCO time constraint. A more comprehensive response, including an update on DIR actions taken based on the SCO findings, will be provided within 6 months.

### FINDING 1 - The DIR is able to collect only a fraction of fines imposed.

#### DIR RESPONSE 1

The Division reports all citations issued regardless of their ultimate outcome. The Division's personnel issue citations "on the spot" and base the issuance upon the information available at the time of an inspection by a deputy. It is the Division's policy, for example, that those citations involving failure to carry workers' compensation insurance be issued immediately if no evidence is present at the work site to prove coverage is in effect. Often it is later determined that coverage was in effect but no certificate of coverage was at the job site (the Division finds this situation in many construction sites, agricultural settings, and in businesses with multiple locations). Once evidence is presented, the citation is administratively dismissed.

However, for statistical purposes, those citations are reported as being issued and the penalty amounts are counted as "assessed." The Division cannot, currently, track the amount of the penalties that are eventually dismissed. As a result, the amount of fines that could be collected is overstated and the collection rate (as identified in the audit) is therefore understated. The DIR is currently assessing the feasibility of tracking the amount of penalties "dismissed" in order to avoid these types of reporting concerns in the future.

The Division's Collections Unit collected \$1.334 million for FY 06/07 even though it was not completely operational until November 2006 when it became fully staffed and began entering judgments and taking other enforcement action. For FY 07/08, the Collections Unit has collected over \$2.8 million through May 2008.

#### DIR RESPONSE 1.1.

The report states that the Division "has not acted in a timely manner on a significant number of cases" by failing to file judgments within the one year statute of limitations. There is no definition of "significant" but the report cites six cases. The Division reviewed the cases specifically cited and found that the auditors may not have understood the entire process for citations issued by the Division. Of the four cases cited in this section, the following represents our review of the files. (1)

#### DIR RESPONSE 1.2.

In case #35-62014, the citation was issued for failure to carry workers' compensation insurance. A hearing was conducted and subsequently, the defendant filed a Petition for a (2)

Writ of Mandate with the County Superior Court. That matter is still pending and, therefore, the citation has not become final. Judgment cannot be entered until the Superior Court denies the defendant's Petition.

In a review of case #35-62034, the auditors accurately report that no judgment was entered against the defendant. While the defendant is making regular payments on the citation pursuant to an agreed payment plan, it is the Division's policy to enter judgment on all cases where a payment plan will be in effect more than 6 months, and thus a memorandum to the Division's staff will be sent to remind staff of this policy.

In case #35-62087, the citation was issued for failure to carry workers' compensation insurance. A hearing was conducted and the defendant filed a Petition for a Writ of Mandate with the County Superior Court. This matter is still pending and, therefore, the citation is not final. Judgment cannot be entered until the Superior Court denies the defendant's Petition.

In case #35-62084, the citation was issued for failure to carry workers' compensation insurance. A hearing was conducted, and the citation was reduced via stipulated agreement however, it was never paid. This was an oversight and not an indication of normal practice.

#### DIR RESPONSE 1.3.

The report indicates that "significant delays" occur in referring cases to the DLSE Collections Unit. The Division's policy is that referrals must be made as soon after a citation becomes final. It is impossible to make a policy that covers all cases since many of the cases do not follow the same path. Some citations are appealed and scheduled within a very short period of time. Other citations are appealed, scheduled for hearing and then subsequently delayed because of a defendant's request for a continuance. A citation may go through the hearing process, a decision rendered and then a Petition for a Writ of Mandate is subsequently filed with the Superior Court, thereby delaying the filing of a judgment against the defendant. In the cases cited, only one case was not properly referred pursuant to Division policy and, in that case, payments were being made.

(3)

#### DIR RESPONSE 1.4.

The Division does not have a single manual that outlines the responsibilities of all staff involved in case resolution (from establishing the citation through final resolution and/or collection). However, the Bureau of Field Enforcement has a policy manual that establishes procedures for staff and what is required, as well as a memorandum issued to staff providing instructions for referrals of cases. And the Collections Unit has a manual that describes its procedures and the specific duties the individual staff within that Unit are responsible for performing.

The report indicates that staff closes cases after the case is referred to the legal section. For statistical purposes, the Division's policy is that cases are to be closed (by the assigned deputy) once the matter is referred to our legal section for enforcement since to do otherwise would provide inaccurate information concerning current active cases. Once the case is referred to our legal staff, little or no work is performed by the original assigned deputy; therefore, we do not consider the case "active" for purposes of determining the caseload of our staff. The responsibility for resolving the case rests with our legal staff.

**DIR RESPONSE 1.5.**

The Division concurs; it does not have a reliable computerized case management system for tracking its cases.

**DIR RESPONSE 1.6**

DIR can calculate the percentage of collection using the daily summary report of the Cal-OSHA Oracle Subsystem, based on either the Total Original Invoice amount or on the Total Amount Collectible (Total Original Invoice less Appealed Amounts plus Final Decision Amount). Please refer to Attachment "A" for a history of collections for the last five years.

**FINDING 2 – The DIR is circumventing State control requirements by not establishing accounts receivable in its formal accounting records.**

**DIR RESPONSE 2**

The DLSE and the Department have discussed establishing an accounts receivable procedure in the past but budget considerations determined that our limited resources should be focused on enforcement issues. The Division will be assessing the feasibility of establishing an account receivable for its citations and when it would be appropriate (given the process DIR follows when issuing citations). However, as previously discussed, not every citation issued by the DLSE is enforceable and, therefore, collectible.

The Division is confident that the majority of the enforceable citations are being secured by judgments and it is actively attempting collection of those citations.

**DIR RESPONSE 2.1.**

There was and is no deliberate attempt to circumvent the Victim Compensation and Government Claims Board, the State Controller's Office or the Attorney General's Office. Judgments filed by the Division with the Superior Court are enforceable for up to ten years and can be renewed for an additional ten years. Additionally, the judgments are filed and recorded with the appropriate County Clerk/Recorder offices creating liens on real property owned by the defendant, and the judgments are filed with the California Secretary of State which creates the equivalent to a UCC-1 filing against the defendant. All outstanding judgments are maintained by the Division in anticipation that they will be collected at some future date.

(4)

**DIR RESPONSE 2.2.**

The DLSE has an electronic database but the information entered into the system is not always reliable. The Division does maintain a record of citation books issued and to which deputy the book is issued. The Division is requiring that its supervisors review the citation books to ensure that all of the citations are accounted for in its current database.

**DIR RESPONSE 2.3.**

The database may be updated by the Division's Bureau of Field Enforcement supervisors. There are currently 10 supervisors in the Bureau. These authorized supervisors may make changes to the data entered into the database as appropriate. (5)

**DIR RESPONSE 2.4.**

Again, the DLSE's Collections Unit has only been in place since November 2006. When it was first established, not all cases were being referred to the Unit for processing. The one case (35-64883-445) cited in the report as not being on the Collections Unit case listing was handled by our San Diego Legal Unit because at the time, the Collections Unit was not handling cases originating from our Economic and Employment Enforcement Coalition (EEEC) program. The cases have now all been consolidated in one location but they are maintained on a separate listing from those cases originally accepted and processed through the DLSE Collections Unit.

**DIR RESPONSE 2.5.**

The statistical reports generated by the DLSE can be traced back to the individual cases by tracing the information back to the monthly report and then to the individual deputy information submitted on a monthly basis to the supervisor. This would involve a great deal of human resources but it can be completed. The Division is implementing a requirement that each of the supervisors confirm that the wages, inspections and citations reported by each of the deputies assigned to his/her office occurred by reviewing supporting documents. Further, the supervisors will be required to ensure that the information is entered into the database.

**FINDING 3 – The DIR's internal control over collection is weak as a result of collection duties not being clearly defined and inadequately segregated.**

**DIR RESPONSE 3**

The Division of Labor Standards Enforcement does have a formal manual for case handling and a specific manual for the Collections Unit that was established in FY 06/07. The Division's Bureau of Field Enforcement policy and procedures manual outlines the responsibilities of the deputies and a memorandum to the staff provides instruction for referring cases to the Collections Unit. The DLSE's supervisors are responsible for conducting case reviews, responding to complaints from employers who have been issued citations and for the general operation of their assigned offices. In order to perform these duties, the local office supervisor must have access to the files assigned to the deputy and conduct regular reviews of the files.

**DIR RESPONSE 3.1.**

The DLSE's deputies are authorized to enter into payment plan agreements with employers who have been cited for a period not to exceed 90 days. All other payment plans must be approved through the Collections Unit after a judgment has been entered. In the case cited (35-62034/445), the deputy inappropriately entered into an agreement for payments beyond the Division's established policy. Appropriate action has been taken.



**DIR RESPONSE 3.2.**

The Division's cashiering unit staff is required to follow the instructions provided to them by the deputy. Any incidents such as that reported in the audit would normally be detected by the routine case reviews conducted by the cashiering unit supervisor. However, the Division concedes that additional controls may be warranted, and will be assessing whether or not such improvements will require a Budget Change Proposal in order to be implemented.

**FINDING 4—The accuracy and completeness of the DIR's accounts receivable balance resulting from DOSH-imposed fines is questionable.**

**DIR RESPONSE 4**

Regarding the discrepancies between DOSH's IMIS (used for federal reporting purposes) and Oracle (used by DIR Accounting as an Accounts Receivable Subsidiary System).

Currently, we have a system in place wherein DOSH issued citations are inputted into the IMIS by the district offices and that includes adjustments due to amendments and any additional information from the OSH Appeals Board. Beginning December 2007, DOSH field offices started producing a weekly list of citations issued during the week instead of sending the original notice of proposed penalty. This weekly list is stored in the Accounting server and downloaded by the Accounting accounts receivable unit and used to input into DIR's Oracle subsystem which in turn will be recorded as a receivable in CALSTARS. The downloaded weekly list is linked with IMIS for reconciliation purposes. Any reconciling item between the IMIS report and the downloaded weekly report is the amended amount due to an informal settlement or under appeal.

The OSH Appeals Board is currently up to date in posting data into their Oracle Subsystem and that the District offices are provided with a copy of the final order which in turn will be posted into the IMIS which is the basis of the weekly report submitted to DIR Accounting.

Updated information concerning DOSH appealed cases comes from two sources: One is from the IMIS where the DOSH district offices post all information provided to them by the OSH Appeals Board and the other is from OSHAB's Oracle subsystem where inputted data is processed overnight and up-loaded into DIR's Accounting Oracle subsystem. With the introduction of the weekly reconciliation of the IMIS and the DIR Accounting's Oracle subsystem, we'll be able to identify the differences and make the necessary adjustments or corrections.

**RECOMMENDATIONS**

**DIR RESPONSE R-1**

The DIR is evaluating the effectiveness of the Division of Labor Standards Enforcement's Collections Unit to determine what further enhancements should be made and whether this model should be used throughout the department. The DIR is considering establishing a departmental-wide collections unit for all its units' debts. This action would require a Budget Change Proposal and would be implemented over a period of time yet to be determined.

**DIR RESPONSE R-2**

The DIR concurs. Efforts have been made to sponsor such legislation in the past without success. The DIR will consider suggesting legislation to provide greater enforcement opportunities for its collection efforts. The DLSE does not recommend a three year statute for entering judgments, since as pointed out in this report; the longer the delay in attempting collection the less likely collection will occur. One year should be sufficient for entering judgments and taking appropriate action.

**DIR RESPONSE R-3**

The DIR is currently preparing a manual for the DOSH collection efforts. The DLSE will further define its manual to more clearly delineate the responsibilities of each of the staff in collecting its debts.

We already have procedures in place and timeframes for completion of each procedure. Every staff member and unit within DIR Accounting knows their role and responsibilities. The following are just some of the processes we undertake:

**DOSH Accounts Receivable Set-up**

**Oracle Set up**

1. On the first business day of each week, a list of Cal-OSHA citations is printed. The list is verified against the US Department of Labor OSHA website for accuracy. The data being verified are employer's mailing addresses, numbers of citations in each case and penalty amounts.
2. The Supervisor must be notified regarding a discrepancy in the numbers of citations displayed for each case between the US Department of Labor web site vs. the Cal-OSHA weekly listing report.
3. The list of Cal-OSHA citations must be recorded into the ORACLE sub-system before the end of each work week.
4. **CALSTARS set up**
5. The "Cal-OSHA Accounts Receivable vs. Payment History Report" is generated daily from the Oracle subsystem. Based on this report, CALSTARS entries are recorded to reflect changes to the Accounts Receivable and appealed amounts (Contingent Receivables).
6. **Collections Process**
7. There are four lists of outstanding Accounts Receivables that are generated daily. The lists are generated for 60 and 90 days aged accounts for non-appealed Cal-OSHA citation. For appealed cases, a list is generated titled "post decision reminder" and also a "second (and the last) reminder" for the final penalty amount

due. In addition, reminder letters from the listings are generated and mailed to the employers.

8. Concurrently, copies of all 4 lists with reminder letters are referred to the DOSH Collections Unit for additional collection efforts.
9. The following are some of the actions undertaken by the Accounts Receivable Supervisor:
  10. Review the DOSH IMIS listing.
  11. Download the IMIS listing and link to the Oracle subsystem for comparison purposes.
  12. Reconcile the Oracle subsystem with the IMIS listing.
  13. Prepare a summary report of OSHA Penalties with the Percentage of Collections.
  14. Prepare a management report for Cal-OSHA's Accounts Receivable turnover of accounts.
  15. Follow up referred cases sent to the DOSH Collections Unit.
  16. Recommend uncollectible receivables for write off to the State Controllers Office (SCO) when all efforts have been exhausted to collect on the delinquent account.
  17. Forward the uncollectible receivables to the SCO for approval to write off.

**DIR RESPONSE R-4**

The DIR is in the process of evaluating whether or not to go forward with the DLSE Case Management System (CMS) at this time. An upcoming Project Implementation Evaluation Report (PIER) will address how DIR could address accounting weaknesses absent the CMS.

DIR anticipates submitting a BCP for FY 2009-10 requesting additional collections staff that will assist in addressing this issue.

**SUMMARY OF OSHA PENALTIES WITH PERCENTAGE OF COLLECTION FIVE YEAR ANALYSIS**  
 CALENDAR YEAR 2003-2007  
 (ORACLE REPORT DATED MAY 5, 2009)

**Attachment A**

CALENDAR YEAR ASSESSED	2007	2006	2005	2004	2003	GOVT	NON GOVT	GOVT	NON GOVT	GOVT
ORACLE DATE	01/01-12/31/07	01/01-12/31/06	01/01-12/31/05	01/01-12/31/04	01/01-12/31/03					
ASSESSMENTS (A)	\$31,942,734.50	\$35,648,038.50	\$32,379,232.43	\$32,517,262.00	\$33,732,377.55	\$289,280.00	\$52,447,892.00	\$289,280.00	\$52,447,892.00	\$289,280.00
LESS: APPEALS (B)	\$24,212,466.00	\$28,423,473.50	\$26,495,466.43	\$27,450,205.25	\$28,190,665.00	\$165,060.00	\$27,285,145.25	\$165,060.00	\$27,285,145.25	\$165,060.00
ADD: FINAL DECISION AMT ©	\$2,196,905.00	\$6,316,650.00	\$7,578,321.00	\$9,753,383.00	\$11,302,384.00	\$82,863.00	\$9,650,475.00	\$82,863.00	\$9,650,475.00	\$82,863.00
TOTAL COLLECTIBLE (D)	\$9,927,173.50	\$13,541,215.00	\$13,461,087.00	\$14,800,419.75	\$16,843,096.55	\$187,110.00	\$14,613,309.75	\$187,110.00	\$14,613,309.75	\$187,110.00
COLLECTIONS (E)	\$6,613,569.98	\$10,940,435.70	\$11,080,635.90	\$12,344,110.80	\$13,593,610.50	\$128,075.00	\$12,216,035.80	\$128,075.00	\$12,216,035.80	\$128,075.00
<b>NOTE: THE PERCENT OF AR TURNOVER CONSISTENT YEAR TO YEAR. COLLECTION BASING THE ASSESSMENT</b>										
% OF COLLECTION BEF APPEAL (E/A)	21%	31%	34%	38%	40%	48%	38%	48%	40%	52%
<b>NOTE: THE PERCENT OF AR TURNOVER CONSISTENT YEAR TO YEAR. COLLECTION BASING THE TOTAL COLLECTIBLE (AFTER THE FINAL DECISION)</b>										
% OF COLLECTION AFTER APPEAL (E/D)	67%	81%	82%	83%	81%	68%	84%	68%	81%	60%
<b>Summary</b>										
Assessments	\$31,942,734.50	\$35,648,038.50	\$32,379,232.43	\$32,517,262.00	\$33,732,377.55					
Less: Appeals	\$24,212,466.00	\$28,423,473.50	\$26,495,466.43	\$27,450,205.25	\$28,190,665.00					
Net Assessments (col appealed)	\$7,730,268.50	\$7,224,565.00	\$5,883,766.00	\$5,067,056.75	\$5,541,712.55					
Add: Final Decision Amt	\$2,196,905.00	\$6,316,650.00	\$7,578,321.00	\$9,753,383.00	\$11,302,384.00					
Total collectible	\$9,927,173.50	\$13,541,215.00	\$13,461,087.00	\$14,800,419.75	\$16,843,096.55					
Less: Collections	\$6,613,569.98	\$10,940,435.70	\$11,080,635.90	\$12,344,110.80	\$13,593,610.50					
Net collectible	\$3,313,603.52	\$2,600,779.30	\$2,380,451.10	\$2,456,308.95	\$3,250,286.05					
<b>Breakdown of Net collectible:</b>										
Bankruptcy	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00					
Payment Plan	\$431,989.41	\$37,174.35	\$18,962.16	\$246,197.30	\$117,055.00					
AR	\$2,881,614.11	\$2,654,939.95	\$3,361,268.94	\$2,702,505.25	\$3,427,148.65					
Total AR	\$3,313,603.52	\$2,692,114.30	\$3,380,231.10	\$2,456,308.95	\$3,250,286.05					
						\$59,035.00	\$2,397,273.95	\$59,035.00	\$2,397,273.95	\$59,035.00
										\$17,310.00
										\$17,310.00

Source: OSHA, Oracle subsystem reports Calendar Year 2003-2007 non case 05/05/08

## **Attachment B— SCO’s Comments on DIR’s Response to Draft Report**

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We are providing the following comments on the Department of Industrial Relations’ (DIR) response to our draft report. The comments below correspond to the numbers we placed in the margins of DIR’s response.

1. Because of the deficiency in the database system that DIR uses, we can use only the best available data, which is the report generated by File Maker Pro. One report showed that 199 cases (\$6.3 million) between February 13, 2006, and February 12, 2007, are still open. Another report showed a total of 508 cases (\$16.8 million) still open prior to February 12, 2007. Of the 508 cases, 309 cases were open for at least two years. We considered the number of cases and related amounts to be significant.

From the 508 cases, we selected six cases for testing. For each of the six cases, we reviewed the case file provided by the DIR and the data in the File Maker Pro system. We found that the DIR did not file judgments within the one year statute of limitation in four of the six cases, and that there is no documentation in the files explaining the reasons for not filing. We then reviewed and discussed each of the cases with the Senior Deputy Commissioner responsible for the operations of the Division of Labor Standards and Enforcement in the Sacramento Office. The Senior Deputy Commissioner concurred that the DIR had missed the one-year filing deadline.

In its response to our draft report, the DIR provided data and an explanation suggesting that it did not miss the one-year filing deadline in three of the four cases identified in our report. The DIR acknowledged that it had missed the deadline in the fourth case. As the information was provided after the completion of our fieldwork, we did not determine the validity of the DIR’s assertion. However, as noted previously, the DIR’s case files and its File Maker Pro system did not contain any data or explanation as to why the department did not file for judgment after the one-year filing deadline. The DIR needs to keep such data in order to effectively manage its collection system.

Of the 508 open cases over one year old, 309 cases were over two years old. The DIR should review all of the 508 cases shown as open for more than one year to determine the status of the cases and, if possible, file judgments before expiration of the statute of limitation.

2. For Case #35-62014, no indication existed in the case file, the File Maker Pro system, or our discussion with DIR staff that the defendant filed a petition for a writ of mandate. The case file showed only that the hearing resulted in an affirmation of the assessed fines.

For Case #35-62034, no indication existed in the case file, the File Maker Pro system, or our discussion with DIR staff that there was an agreed payment plan. It is our understanding that the DIR policy is that only the Collections Unit can make payment plan agreement. We did note in one case (from test of transactions) that a payment plan was made by the deputy for payments over six months, and the case was not transferred to the Collections Unit.

For Case #35-62087, no indication existed in the case file, the File Maker Pro system, or our discussion with DIR staff that the defendant filed a petition for a writ of mandate. The case file showed only that the hearing resulted in an affirmation of the assessed fines.

For Case #35-62084, the department acknowledged that the case was not transferred to the Collections Unit due to oversight.

3. According to the DIR staff, the field offices are to refer cases 60 to 90 days old to the Collection Unit. The sample of cases we examined was more than one year old, and there was no explanation in the case files or the File Maker Pro system as to why the cases were not referred. We did not suggest that the DIR needs to establish one policy to cover all cases. However, in light of the significant variation in circumstances that impact how cases are handled and processed, the DIR should issue guidelines and procedures to ensure that cases are consistently and properly referred by the personnel in the different field offices.
4. We did not state that there is a deliberate attempt by the DIR to circumvent state controls by not establishing accounts receivable. However, besides representing an obvious internal control weakness, the failure to record accounts receivable effectively resulted in such transactions not becoming subject to review by the Victim Compensation and Government Claims Board, the State Controller's Office, or the Attorney General's Office.
5. This is serious internal control weakness that may lead to malfeasance, especially because DIR's current system lacks controls, does not produce accurate data, and is not used by DIR management. Supervisors can make changes to any case—even cases they are not responsible for—and no notation indicates who makes the changes.

According to the DIR staff, there has been at least one instance of embezzlement/fraud by a DLSE deputy in the past. DIR management became aware of this problem only when an employer contacted DLSE alleging improper activity by the deputy. Given the internal control deficiencies that exist throughout the DIR's system, the same problem could exist and remain undetected in the department's collection system.

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