TRANSMISSION RECORD

IMMIGRATION AND NATURALIZATION SERVICE

HEADQUARTERS
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WASHINGTON, D.C. 20536

TO: Steve Wamsley	FROM: Mike Becraft
ORGANIZATION: DAG, WH	ORGANIZATION: Chief of Staff, INS
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FAX TELEPHONE: 456-7028	DATE: 4/20/95

NUMBER OF PAGES (including cover sheet): 6

COMMENT/MESSAGE:

Steve, per your request the DRAFT Worksite Enforcement paper. Annotated changes are from Doris Seth Waxman has a copy also.

Mike Becraft

Utilizing the FY 1995 Appropriation for enhanced employer sanctions and fraud activity, we are focusing in New York City and Los Angeles on repeat sanctions violators and targeting major producers and suppliers of fraudulent documents. This pilot project is expected to demonstrate the effectiveness and benefits of targeted interior enforcement actions. This data will be used to develop and implement similar projects in other areas where the employment of illegal aliens is a chronic problem.

Already this year, we are working cooperatively with the Department of Labor (DOL) and state employment agencies to target businesses and industries where substantial numbers of unauthorized aliens are employed. Recently, INS and DOL Employment Standards investigators, armed with a warrant, went to the worksite of a Newark manufacturer of garden hoses and other plastic products. They arrested 60 unauthorized aliens, most of whom had secured their jobs using false documentation. Twelve vehicles were seized, based on evidence that they had been used to transport these unauthorized aliens within the United States. The Department of Labor is reviewing the payroll records of the business to determine whether it was complying with federal laws. The New Jersey state employment services offices were advised of the vacant positions at the company, which were paying _____ per hour.

The Administration plans to invest an additional $79.5 million in FY 1996 for INS' worksite enforcement along with verification of

ADDITIONS TO WORKSITE MEMO

Our FY 96 budget request contains funding for 365 new INS investigations personnel and 202 new Department of Labor Wage and * Hour and other personnel to enhance worksite enforcement. As a result, INS investigative staff will increase a dramatic 85% increase over 1993 levels.

We expect apprehensions of illegal aliens at worksites to increase by more than 60% in FY 96.

* this is from the AG's 3/14 testimony, but the #s are higher than in the memo this week - 365 → 340 -- 50
202 → 186

I need INS to say if the #s should have dropped & if 85% is still true.

investigations. Asylum reform should help alleviate the problem as well.

Q: Why did you choose to do the employer sanctions pilot in Los Angeles (and New York) and not in San Francisco?

A: Both districts were considered for the pilot. Although they are alike in many ways, the Los Angeles area will most likely feel the impact of the increased illegal border crossings more directly and immediately than San Francisco, due to its southern California location.

* In addition, The Los Angeles area is one of the primary manufacturing locations for counterfeit and fraudulent documents. The INS Forensic Document Laboratory estimates that between 1/4 and 1/3 of the counterfeit I-551s and I-688s received by them can be traced back to common sources in the Los Angeles area.

Q: What will the Worksite Enforcement and Verification initiative accomplish?

A: The increase will permit INS to increase efforts in several areas that will have a strong deterrent effect on the employment of illegal aliens -- generally recognized as the major "pull factor" for illegal immigration.

Resources will be committed to the investigation of individuals and groups that produce and market fraudulent documents used by illegal aliens in obtaining employment.

In addition, the INS will increase the security features of work authorization documents to make them more difficult to counterfeit.

Additional investigators will be added to expand efforts against employers of unauthorized workers. The enforcement strategy will also target high-risk industries which have historically relied on unauthorized workers. The INS will also conduct follow-up investigations of previously-sanctioned employers. Finally, INS will do more to follow-up on DOL leads. The expanded enforcement presence directed toward known violators and non-compliant employment sectors will raise voluntary compliance among the nation's employers by increasing the price of employing illegal aliens to the point it is no longer an unacceptable cost of doing business.

These efforts combined with an expanded Telephone Verification System (TVS) will enable employers to obtain accurate information from INS regarding the immigration status of the declared alien seeking employment.

Q: How will the employer sanctions initiative help reduce the hiring of illegal aliens by U.S. employers?

A: Moving against manufacturers and vendors of fraudulent documents, making INS work authorization documents more secure, and expanding TVS will help employers identify fraudulent documents during the hiring process. This will limit the ability for aliens to gain employment through the use of fraudulent documents.

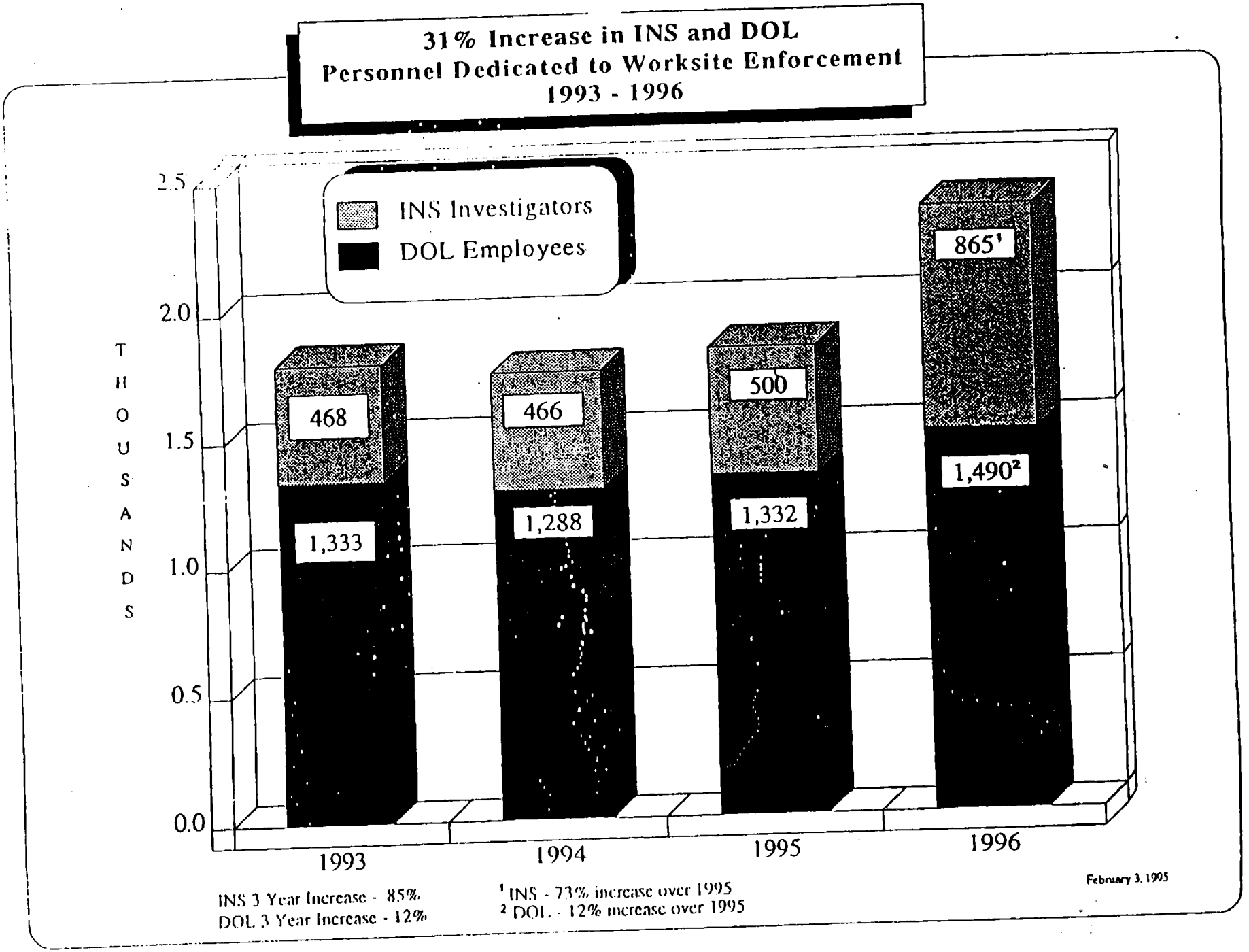
The increase in enforcement actions against employers of unauthorized workers, coupled with follow-up investigations of knowing violators, will serve as warning to potential violators that there is a greater chance of being discovered and penalized.

Since most employer comply with the statutes, INS enforcement efforts will focus on those areas where non-compliance is highest. The expanded enforcement presence directed toward known violators and non-compliant employment sectors will increase the price of employing illegal aliens to the point it is no longer an acceptable cost of doing business.

Q: Do you plan to target these resources against certain high-risk industries? If so, which ones?

A: The INS plans to target high-risk industries as a part of the implementation strategy for this part of the immigration initiative. The INS analyzed its past enforcement actions to determine those industries which have a known history of non-compliance. This list includes, but is not limited to the following:

Farm Labor & Management	Roofing, Siding & Sheet Metal	General Farm & Field Crops
Misc. Food Preparation	Nursing & Personal Care Facilities	Heavy Construction, not Bldgs
Apparel/Garment	Landscape & Horticultural Services	Hotels & Motels
Meat Products	Services to Dwellings & other Bldgs	General Contractors
Forestry	Masonry, Stonework, Tile & Plaster	Eating & Drinking Places



OFFICE OF THE DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C.

FACSIMILE TRANSMISSION SHEET

TO: mike Becraft 7-9911

Steve Warnath 456-7028

Fax #: ( ) _____ Voice #: ( ) _____

FROM: Gerri L. Ratliff, Counsel to the Deputy Attorney General
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THIS TRANSMISSION CONTAINS 5 SHEETS INCLUDING THIS SHEET

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Special Note (s): mike - this is what I have in my files - see note on next page - -
Steve Warnath advises he needs the rest of the info on Sunday — is that do-able? His fax # is 456-7028 + phone is 456-5576.

If any page (s) are missing, please call sender at the above voice number for re-transmission.

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April 24, 1995

TO:

FROM:

SUBJECT: Summary of Strategy for Strengthening Interior Deterrence Through Coordinated Worksite Enforcement

I. INTRODUCTION

This Administration has undertaken the most ambitious effort by any administration to address the role of employment as the single most important incentive for illegal migration to the United States.

Our strategy includes five major components:

1) Unprecedented enforcement coordination between DOL and INS;

2) Targeted enforcement and establishment of Targeted Deterrence Zones;

3) Meaningful work authorization verification reform; and

4) Increased Penalties To Deter Violations.

5) Actively publicize to maximize deterrent effect.

The framework of this strategy is contained in the Presidential Directive of February 7, 1995 (Items 1, 2, & 3) and the Administration's legislative proposal (Items 3 & 4).

II. STRATEGY

This strategy departs in a number of significant ways from past approaches that have not worked adequately:

First, the Department of Labor has not been utilized in any significant way in the past to fight illegal immigration. INS and Labor historically have viewed their missions as largely incompatible. This is well-illustrated by a labor raid televised by a prime-time news show this past year during which labor investigators shouted "We are not the INS" so that aliens who could be witnesses to labor violations would not flee.

Second, ~~making targeted enforcement a strategic priority~~ too heavily rather than targeted enforcement INS has been criticized for relying on random investigations. Targeting, as described more fully below, will be done geographically and by industry. Also, by reducing random enforcement and increasing lead-based enforcement, INS will increases the likelihood of successfully enforcing against violators.

Third, the Administration's efforts to verification.

A 10-month INS investigation was completed recently found about 10% of 50,000 employment papers agents reviewed in Arizona were held by illegal aliens.

Fourth, previously, INS stressed voluntary employer compliance and enforcement has been criticized as focusing largely on paper violations. Our new strategy -- while seeking voluntary employer compliance -- will make clear that we intend to enforce this nearly decade-old law that employer sanctions has been the law of the land for nearly a decade there has been adequate notice and if you are violating the law by hiring illegal aliens, we will enforce the law and you will be sanctioned. Underscoring this is the significantly increased penalties.

To make this work, the Administration's FY 1996 budget contains $96 million for enforcement of labor standards and employer sanctions. We would add 340 INS officers to enhance sanctions enforcement and 186 DOL compliance officer for labor standards enforcement.

28 million for pilots?

These efforts are not only significant in their own right, but will support and reinforce our border control efforts and our developing strategy to begin to address the problem that has been neglected until now of visa overstayers.

II. STRATEGY

A. Coordination

INS and DOL have begun to implement the Presidential Directive "to expand their collaboration in cracking down on hiring illegal aliens." The agencies have established a joint working group to coordinate efforts to effectively carry out the worksite enforcement initiative through jointly developed enforcement strategies.

MOU to enhance Wage-Hour role in enforcement of employer sanctions, while at the same time training INS to be alert to and refer potential wage -hour violation to DOL. Wasage-Hour will issue warnings and furnish INS with better information about its findings, and INS will follow-up on certain categories of Wage-Hour referrals and advise Wage-Hour of the action taken.

LABOR'S ROLE

DOL can make an important contribution to reducing incentives for illegal immigration. Curbing illegal migration an enforcing worker protection laws have a direct policy connection.

Illegal immigrants are frequently subjected to subminimum wages, dangerous workplaces, long hours , and other poor working

conditions because theya re desperate for work and in a weak position to insist on their rights as workers. knowingly hiring illegal immigrants both reveals, and rewards, an employer's willingness to break the law, and undermines wages and working conditions for authorized workers.

Vigorous enforcement of employment standards serves as a meaningful deterrent to illegal migration by denying some of the business advantage that might be gained thought he momployment of highly vulnerable and exploitable workers at substandard wages and working conditions. Labor law enforcement not only helps ensure fairness and minimally acceptable reemployment standards in the workplace, but also helps foster a level competitive playing field for employers who seek to compy with the law.

3. TARGETING

This new strategy will target strategically selected metropolitan areas and industries. These cities will be those with _____ . The industries will _____. focuses efforts precisely where many illegal immigrant workers concentrate in the workforce. This strategy increases the proportion of its compliance activities that are targeted Within those cities and within those industries, the new strategy will target likely violators by following leads and following-up with past violators.

- Intensifying follow-up inspections of employers previously fined or warned to aggressively pursue employers who continuously and repetitively violate the law.

- Targeting major suppliers of fraudulent documents

Also using States and Local assistance/cooperation etc.

By Geography

The INS has identified (not yet public) the following areas to be Targeted Deterrence Zones: Los Angeles, Miami, San Francisco, Chicago, New York, Newark and Houston. DOL is now reviewing this proposal.

By Industry

The Department's Wage and Hour Division has developed a strategy that focuses efforts precisely where many immigrant workers concentrate in the workforce. This strategy increases the proportion of its compliance activities that are targeted to low-wage industries -- such as agriculture . . . and bring a wider variety of enforcement tools to bear to promote higher levels of compliance and deter violations.

The targeted industries include: Agriculture; Apparel/Garment; Meat and Food Products; Forestry; Roofing, Siding & Sheet Metal; Nursing & Personal Care Facilities; Landscape & Horticultural Services; Services to Dwellings & other Buildings; Construction; Hotels & Motels; Contractors; and Restaurants.

- Within each deterrence zone, INS and DOL will for the first time establish coordinated Task Force working relationships. To facilitate joint planning of operations these groups will share information, leads , and investigative results, as well as participating in joint INS/DOL investigations targeting industries.

- Field offices within the deterrence zones will regularly utilize the provisions of Section 274C of the Act, Civil Document Fraud, as an additional tool while pursuing employer sanctions investigations. Civil document fraud investigations will be initiated against employees who use fraudulent documents ot obtain unauthorized employment, and against employers who knowingly accept fraudulent document in order to "comply" with the provisions of the Act.

- [State fact sheet re: jobs] One goal of the Employer Sanctions program is to ensure jobs are not taken from American workers and aliens with work authorization. Therefore, when unauthorized aliens are removed from the workplace and job sites, the INS will appropriately notify and coordinate with state and local employment agencies and employers to make the vacated jobs available to unemployed U.S. citizens and those aliens authorized to work in this country.

Although it is extremely early in the planning process, examples of the types of enforcement activities that can be anticipated, with intensified focus within the Targeted Deterrence Zones and at the Targeted industries are identified in Attachment 1.

C.X. Verification pilots: Los Angeles and New York

for 200? for 1000?

It is anticipated that this will be further expanded to locations in other states of high illegal immigrant population.

Part of visa overstay enforcement strategy that DPC is developing with INS.

D.K. SIGNIFICANTLY INCREASING PENALTIES

The Administration's Immigration Enforcement Improvements Act Of 1995 calls for significantly increased penalties to be imposed in this area, including:

- More than doubles civil penalties for employer sanctions [for first violations from the current levels of $250 - $2000 to $1,000 - $3,000; for second violations from the current range of]

- Authorizes doubling civil penalties for employer sanctions if the employer also violates labor standards.

- Increase criminal penalties to make it a felony with the sentence increased from not more than 6 months to not more than 2 years.

- Paperwork violations are increased from the current range of $100 - $1000 to $200 - $5000.

- Doubles criminal penalties for document fraud (from 5 to 10 years), triples the term of imprisonment if document fraud is committed to facilitate drug trafficking (15 years), and quadruples if done to facilitate and act of international terrorism (20 years). Civil penalties for document fraud are also increased and applies penalties to those who assist others.

- Asset forfeiture when smuggling involved. !

A POSSIBLE

Early stages, we are confident as compelling visible change as at the border.

My staff is presently working with INS and other agencies to analyze the implications of having you sign an E.O.
as recomm

JORDAN COMMISSION
Worksite Enforcement

Verification

Also, the Commission supports:

- Allocation of increased staff eand resources to enforcement of labor standards to complement employer sanctions enforcement.

- Vigorous enforcement, increases staff and resources, and full use of current penalties against those who knowingly hire unauthorized workders.

- Targeting of investigations to industries that have a history of using illegal alien labor.

- Enhanced enforcement efforts tartgeted at farm labor and other contractors who hire unauthorized workers on behalf of agricultrual growers wand other businesses.

- Application of employer sanctions to the federal government.

This Administration is poised to reverse these practices. Our new strategy brings DOL and INS together as never before to work together to
Presidential Directive

- Called for creation of TARGETED DETERRENCE ZONES which focuses on mutually reinforcement enforcement activities. TDZs will emphasize coordinating historic piecemeal enforcement efforts in selected metropolitan areas bymultiple federal, State, and local agencies. The first area that has been identified is L.A.

- Directed establishment of pilots.

. INS directed to finalize the Administration's reduction of doucments. With the Administration's proposed legislation, the number of documents would be reduced from 29 to 6, 2 immigration documents and 4 citizen documents. [Concurrently legislatively]

Also to make more secure: The INS is developing and implementing a new, tampaer-proof version of the Employment Authorization Document.

. DOL directed intensify its investigations in industries with patterns of labor law violations that promote illegal immigration.

. DOL, INS and other relevent federal agencies to expand teir collaboration in cracking down on those who subvert fair competition by hiring illegal aliens. This may include increased Federal authorityt to confiscated assest that are the fruits of that unfair competition.

visa overstayersbegun initial discussions to strengthen interior enforcement through jointly developed enforcement strategies.

These actions include building on the exiting Memorandum of Understanding between the two agencies to further improve communciations and datasharing at both the local and national levels. Referral will be made.

In an agricultural enforcement initiative in California's Imperial Valley involving 23 farm labor contractors the DOL worked in cooperation with the INS Border Patrol t, from 35 investigations

INS initiates this year an interior enforcement pilot which involves hiring new investigatos to focu on employment site and fraud enforcement in Los Angeles and New York. The $6.3 million enhancement received by INS this year will fund these pilots and add 24 investigative personnel in each Distric In FY 96, fuds requested would epand this pilot to the sevel states most impacted by illegal immigration on industries that have historically depended on an illegal workforce.

DOL in a joint effort with the Border Patrol, from an agriculture farm labor contractorenforcement initiative South Florida. In addition to labor violations, INS apprehended and deported 157 workers. The contractor allegedly took monies out of workers' wages to pay smuggling fees.

Although it remains early in the development of implementation,

this strategy already is being implemented. For example, recently INS and DOL Employment Standards investigators, went to the worksite of a Newark manufacturer of garden hoses and other plastic products. They arrested 60 unauthorized aliens, most of whom had secured their jobs using false documentation. Twelve vehicles were seized, based on evidence that had been used to transport these unauthorized aliens within the U.S. DOL is reviewing the payroll records of the business to determine wheth it was complying with federal laws. The New Jersey state employment serves were advised of the vacant positions at the company available to be filled by U.S. citizens and legal immigrants.

The General Administrative Plan (GAP) has been revised to devote more resources to lead-driven investigations. Requested budget ehancements for FY 96 will provide an andditional 243 immigration agents for emplyer sanctions enforcement. New Immigration Agent positions have been created to concentrate on compliance inspections, administrative sanctions, and deportaion processing in order t free special Agents for more complex casework.

E.G. garment firm in California last month

Operation Jobs, begun in January 1995, concentrates enforcement efforts throughout the 18 states of the INS Central Region (see Attachment A) that connect INS with cooperating agencies and organizations such as county welfare departments, State employment commissions, refugee and resettltement services, and international rescue services. Operation JOBS also targets industries and notorious employers that have traditionally relied upon unauthorized labor. Since January, it has resulted in 1, 166 alien apprehensions, 961 removals, 30 Notices of Intent to Fine, and (two final orders of deportation?). Since most illegal workders gain accesss to aAmerican jobs with fraudulent documents, Operation Jobs peruses criminal procsecution of couterfeiters and members of document fraud conspiracies. Since January, 84 civil document fraud actions have been initiated.

Not been much criminal enforcement -- we are first to bring case in So. Cal. We look to do more consistent with our targeted strategy.

September 16, 1993
DRAFT

IV. ENFORCEMENT IN THE UNDERGROUND ECONOMY

In reviewing the enforcement of employer sanctions it is necessary to consider certain aspects of the underground economy in the United States as they relate to immigration and labor laws. The presence of illegal immigrants contributes to the expansion of the underground economy. These workers are more vulnerable than the average U.S. citizen to a variety of workplace abuses since they are often afraid to protest or report violations. Agriculture continues to be a major employer of illegal aliens as well as violator of other labor standards. A 1989 GAO report on employer compliance with IRCA found that 5 major non-agricultural industries regularly employ illegal aliens: construction, manufacture of food products, manufacturer of apparel and textiles, eating and drinking establishments, and hotel and lodging services. Many employers in these same industries are also involved in a variety of labor law violations. This places law-abiding employers at a serious competitive disadvantage. If employers were forced to comply with labor laws and reduce their reliance on unauthorized workers, it is likely that wages and working conditions would improve for a legal work force.

The Underground Economy

A broad definition of "underground economy" would consist of both legal and illegal industries which operate inside and outside of the market economy. They are characterized by the fact that their activities are unreported, unrecorded and operate outside of official regulations. In this paper, however, the term "underground economy" will be limited to legal enterprises whose activities are commonly unreported or unrecorded and operate outside of a number of government regulations. Examples of such regulations include regulation of the establishment and cost of doing business (such as permits, income and employment taxes), working conditions (wages, restrictions against homework in the garment industry, safety and health), work eligibility (restrictions on minors, aliens), and eligibility to conduct the business (registration, occupational licenses).[1]

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[1] U.S. Department of Labor and Mexican Secretariat of Labor and Social Welfare, The Underground Economy in the United States, Occasional Paper No. 2 (September 1992), pp. 2-5.

In particular, this section will discuss firms which operate "off-the-books," employing large numbers of immigrant or undocumented aliens, and operating in violation of a number of governmental regulatory requirements, such as preparation of I-9s, payment of minimum wages and overtime, employment tax withholdings, payment of workers' compensation insurance, and occupational safety and health requirements. Particular attention will be paid to the garment industry and agriculture. The Report on the Legalized Alien Population shows that of the immigrants legalized under the Immigration Reform and Control Act in 1986, 36 percent of their first jobs in the U.S. were in the service industries (such as private households, food services, cleaning and building services and other service industries), compared to only 13 percent of U.S. residents in these occupations[2]

Such establishments in the underground economy are often referred to as "sweatshops", characterized by low wages, long hours, and poor conditions.[3] This term was first used in the late 19th century, to characterize establishments in small factories or tenements where immigrant workers lived and worked, and has most often been used in connection with the garment industry. In 1901, there were 20,406 apparel shops in tenements with at least 50,381 employees registered in New York City. A common characteristic was the subcontracting of tasks to different groups of workers. Thus the term "sweating" described a system in which middle men earned their profit from the difference between the amount they contracted for and the amount they paid workers -- an amount which was said to be "sweated" from the workers because of the low wages, long hours, and unhealthful conditions. Other labor-intensive industries characterized by the "sweating" of workers included cigar-making, shoe making, and the making of artificial flowers.[4] It was because of such practices that the Fair Labor Standards Act (FLSA) was passed in 1938, resulting in the regulation of the minimum wage, overtime premiums, child labor, and homework in certain industries.

The legal industries of the underground economy are concentrated in small establishments in a few industries: agriculture, construction, labor-intensive

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[2] Immigration Reform and Control Act Report on the Legalized Alien Population, Department of Justice, Immigration and Naturalization Service, March 1992.

[3] U.S. General Accounting Office, "Sweatshops" in the U.S.: Opinions on Their Extent and Possible Enforcement Options, No. HRD-88-130BR (August 1988), pp. 8-11.

[4] It was in response to such abuses that the Fair Labor Standards Act was enacted in 1938, regulating the wages and hours of workers, and child labor.

manufacturing (food processing, apparel), and certain services (maintenance services, hotels and restaurants).[5] It is generally considered that immigrants, children, students, the self-employed, and others engaged in undeclared employment (moonlighters, homeworkers, temporary workers, the unemployed, pensioners, those on disability or welfare) are disproportionately represented. Both illegal and legal immigrants are subject to exploitation -- illegal because of their vulnerability to being reported to INS if they complain about pay or working conditions, legal because of language or cultural differences. Such establishments are concentrated in large urban areas, such as New York City, Los Angeles, and Chicago, and southern Florida,, often operating entirely in ethnic enclaves.

It has been suggested that a firm's compliance with government regulations depends on the following factors:[6]

- o understanding of the requirements of the law or regulations, or having legal counsel;
- o perceived costs and administrative burden of compliance or noncompliance;
- o perceived costs/risks of detection;
- o aversion to risk;
- o ethics of firm, including the willingness to hire illegal aliens;
- o number of employees and formality of personnel procedures;
- o location, with considerations of tightness of labor market, prevalence of illegal aliens, presence of enforcement personnel;
- o characteristics of industry, including applicability of the FLSA, level of enforcement of industry, unionization, strength of immigrant networks, skills required, wages, turnover, working conditions, etc.

For many such firms the risk of detection, and attendant penalties, are perceived as simply a cost of doing business.

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[5] The Underground Economy, pp. 21-23.

[6] Immigration Reform and Control Act: The President's Second Report on the Implementation and Impact of Employer Sanctions (July 1991), pp. 40-41.

GAO conducted a study of "sweatshops" in 1988 -- defined as businesses that regularly violate both safety or health and wage or child labor laws. Construction, agriculture, and industrial homework were excluded from the study. After conducting surveys of Federal and State regulators, and interviewing firms in investigations conducted either by DOL or by the New York State Garment Registration Task Force, GAO concluded that the restaurant, apparel and meat-processing industries were believed to have the most serious and widespread problems, and it is believed that the severity of violations in those industries had either remained the same or become more serious in the past ten years.[7] The dominant ethnic groups employed in the establishments were found to be Hispanics and Asians, with illegal and even legal immigrants being particularly vulnerable to exploitation. Violations found included failure to keep required records of wages, hours, and injuries; wages below the minimum wage and without payment of required overtime; illegal child labor;fire hazards from combustible materials and blocked exits; and crippling work procedures.

Federal officials identified the immigrant work force and the labor intensiveness and low profit margins as major factors for the violations. Other significant factors identified included competition from abroad, weak labor statutes, inadequate penalties, too few inspectors, and weak or non-existent unions.[8] GAO further concluded that the three factors historically responsible for sweatshop conditions continued today -- available supply of legal and illegal immigrants, especially in urban areas; reliance on low skilled and low wage labor, normally by immigrant workers; and a growing use of small subcontractors, with accompanying competition and low profit margins.[9]

GAO found that the effectiveness of enforcement was limited by the fact that the laws are enforced by three separate federal agencies[10] with limited emphasis on sharing information or joint efforts; insufficient staff resources and enforcement priorities not directed at sweatshops; and inadequate penalties to serve as effective deterrents. Suggested policy changes included increasing compliance staff or redirecting enforcement priorities; closer working relationships; and giving DOL the authority to assess civil money penalties for minimum wage, overtime and

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[7] GAO, pp. 20-21.

[8] GAO, p.33.

[9] GAO, p. 34.

[10] INS, the Wage and Hour Division (Wage-Hour), and the Occupational Safety and Health Administration (OSHA).

recordkeeping violations.[11]

The Garment Industry

A study of the garment industry by Carol Parsons for DOL's Bureau of International Labor Affairs[12] observed that immigrant women play a central role in employment in the industry, employing the greatest number of immigrant women of any industry in the economy. Parsons also observed that the industry is undergoing significant restructuring, resulting in declining employment and bankruptcies in established labor markets, and increasing employment in new areas, including in particular, Los Angeles.[13] Barriers to entry are low and diseconomies of scale discourage growth of establishment size.[14] Thus there are over 15,000 firms and 21,000 establishments in the industry, 25 percent of which employ fewer than five workers, and 70 percent of which employ fewer than 50.[15]

Three different types of production shops exist in the industry.[16] "Inside" shops perform as classic manufacturers, purchasing materials, manufacturing garments, and

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[11] Id. at 3-4. In 1989, the FLSA was amended to provide for assessment of civil money penalties for repeat or willful minimum wage or overtime violations. Unlike other DOL programs, penalties do not go to Treasury, but are used to reimburse the costs of the investigation, collection, etc. Regulations implementing this amendment were not published until October 1992.

[12] Carol A. Parsons, Immigration and Regional Labor Market Performance in the U.S. Apparel Industry, U.S. Department of Labor, Immigration Policy and Research Working Paper 7 (1990), p. 1.

[13] Between 1972 and 1984, apparel employment grew by almost 37 percent in Los Angeles, remained relatively constant in Miami, declined by 38 percent in New York and 20 percent in Dallas, and increased by 83 percent in Chicago. Id. at 25. It has been estimated that almost 15 percent of new manufacturing jobs in the Los Angeles area were in the garment industry, and that up to 80 percent of the workers in the industry are undocumented. Rolph and Robyn, in Fix, p. 98.

[14] Exceptions include men's/boys' wear (jeans, suits), and socks, hosiery and underwear.

[15] Id. at 7-8.

[16] Id. at 8-9.

selling the finished products. Such firms are generally considered to be the exception in this industry. Contractors assemble materials owned and ordinarily cut by others. Jobbers contract out most operations, but may perform cutting, finishing, packaging and shipping. Contractors compete to cut labor costs and increase production rates; jobbers pressure contractors to reduce contract amounts, to increase the work performed for the same price, and/or to increase turn-around time. The result is cutting of piece rates, and increased output requirements of the workers during the rush periods characteristic of the seasonality of the women's apparel industry. Furthermore, import competition has increased pressure for a low-wage work force, especially as clothing has become more casual.[17] This in turn has resulted in specialty production for the "spot market", which requires market proximity, short production runs, and external economies.

A study by Hill and Pearce of illegal workers in the U.S. work force based on the 1980 Census concluded that 460,000 of the 4 million illegal workers in the nonagricultural economy were employed in the apparel industry, for an average of 19 workers per establishment;[18] the concentration is probably greatest in the women's apparel industry. However, Parsons has expressed the view that there may be little difference among immigrants based on legal status, as distinguished from labor market experience.[19]

Industrial homework is also common in the women's apparel industry. In hearings before the Department of Labor concerning whether the ban on homework should be lifted for the women's apparel industry, Peter Schey of the National Center for Immigrants' Rights in Los Angeles, described the conditions as follows:

> We find that the average wage of these workers is generally between one and $2.00 an hour with many of the immigrants with whom we come into contact in fact earning less than $1.00 an hour doing piece work at

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[17] The average annual wage in apparel is lower than the poverty level for a family of four. Over the period that imports greatly increased, from 1968 to 1982, real hourly wages fell by 16 percent, dropping from 73 percent of the average manufacturing wage to 61 percent. Conditions are worst in the women's apparel industry, which is most impacted by imports. Id. at 35.

[18] John K. Hill and James E. Pearce, The Incidence of Sanctions Against U.S. Employers of Illegal Aliens, Working Paper, Federal Reserve Bank of Dallas (March 1987, revised June 1988), p. 11.

[19] Parsons, at p. 24.

> home. We find that people are working forty, fifty, sixty and even seventy hours a week in order to get by, in order to fed their families and in order to house themselves. Of course these people receive no compensation for their overtime work. To compensate for their low wages we consistently find that entire immigrant families are doing piece work at home. And not just the immediate family but the extended family. We find repeatedly that children are enlisted to do piece work at home. And of course we find that and we have observed that families engaged in this homework often show display [sic] medical problems with the repetitive work that they do for so many hours a day and so many hours a week. And we consistently in this population finds signs of inflammation of the wrists, muscular problems, allergy problems and other disorders related to the repetitive motion involved in their work.[20]

Miriam Muravchik, with the International Rescue Committee in New York City, describes her experience with resettled Asian families: First the families are settled into neighborhoods with their own ethnic groups, where homework is already deeply entrenched.

> Typically a more aculturated compatriot befriends the newcomer, takes her under her wing, provides advice and a series of generous gestures and small loans. Ultimately the friend recruits her for the homework.

This is accomplished by introducing the newcomer to a jobber, who directs the newcomer to a shop which sells industrial sewing machines ($1200 for a new machine). The friend then lends the newcomer the money to buy the machine, presumably for a fee from the jobber.

> This system of indebtedness and social obligation ties the homeworker to the industrial homework system for the initial periods when the earnings are so negligible that discouragement might otherwise have led her to try other paths.[21]

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[20] "Hearings: Homework in the Women's Apparel Industry" (Los Angeles, March 22-23, 1989), p. 47.

[21] "Hearings" (New York, March 29-30, 1989), pp. 510-11.

Mr. Schey observed that even with legal immigrants,

> it takes probably three to four to five years subsequent to a worker becoming legal before he or she feels enough sense of security in his or her status to avail themselves of protective labor legislation. There is always a notion in the back of the immigrants mind that their green card can be taken away. That if they hassle the federal government, if they hassle their employer that somehow they think they're still on suspended status or something.[22]

Agriculture

Farmworker conditions are described in the Report of the Commission on Agricultural Workers (November 1992). Labor-intensive crops (principally fruits, vegetables, and horticultural products) require a large work force at various times of the year. Growers try to ensure the availability of a work force to avoid labor shortages, while at the same time striving to keep labor costs low. On the other hand, seasonal farmworkers, who spend, on average, 49 percent of the year doing agricultural work,[23] try to coordinate a series of jobs to gain the maximum possible income during the growing season.[24] A multi-tier work force has resulted, consisting of core permanent workers, a preferred group of regularly returning workers, and temporarily contracted or hired workers, often recruited or employed by farm labor contractors (FLCs).[25] An increasingly large part of the seasonal work force is employed by farm labor contractors.[26] Often the FLCs provide jobs, supervise the employment, and also provide or arrange for housing, transportation, meals, loans,

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[22] "Hearings" (Los Angeles), p. 59.

[23] Findings from the National Agricultural Workers Survey (NAWS) 1990), p. 61.

[24] Id. at 41.

[25] Id. at 43.

[26] As discussed in section 1, employers who use contractors, rather than direct hire, are not obligated to comply with I-9 procedures, although they can be liable for knowing employment. Martin and Taylor, in Fix, 249-250, report that California Unemployment Insurance (UI) data from 1985 to 1989, show that the number of FLCs paying UI rose 1 percent, their wages rose 43 percent, and their average annual employment rose 36 percent.

etc. The percentage of unauthorized workers is highest in the southeast.[27]

As a result of informal migration from Mexico, Mexican workers now make up the largest portion of the agricultural workers' work force, and the labor supply has continued to grow since IRCA, as most seasonal agricultural workers (SAWs) have remained in agriculture.[28] Working conditions are characterized by low annual earnings, scarce housing, and limited health and educational services. Most tasks are paid on a piece-rate basis, with real wages falling by 1.8 percent over the period from FY 1989 through FY 1991, and nominal wages rising from $5.36 to $5.79 per hour. Real wages for employees of FLCs, however, fell 16 percent, from $7.11 per hour to $5.01.[29] Although there are some model private labor camps and government-subsidized housing development, most farmworkers live in overcrowded quarters which often lack adequate plumbing and sewage disposal. Growers may find it is not economically warranted to invest in housing for their work force.[30] Notwithstanding the field sanitation requirements imposed by OSHA, a significant percentage of seasonal agricultural workers continue to lack sanitary facilities: 12 percent lack access to toilets, 12 percent lack access to drinking water, and 24 percent lack access to water for washing.[31]

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[27] NAWS Survey, p. 97.

[28] Id. at 41, 132.

[29] Id. at 96, 121. Thirteen percent of legalization applicants employed in agriculture reported earning less than the minimum wage; however, 58 percent of agricultural workers are not covered by the FLSA's minimum wage requirements (and 96 percent are not covered by overtime requirements). President's Second Report, p. 36.

[30] Id. at 105-106. The Migrant and Seasonal Agricultural Workers' Protection Act (MSPA), requires providers of housing (except innkeepers serving the general public) to meet certain safety and health requirements, further deterring employers from providing housing.

[31] U.S. Department of Labor, Office of the Assistant Secretary for Policy, Findings from the National Agricultural Workers Survey (NAWS) 1990: A Demographic and Employment Profile of Perishable Crop Farmworkers, Office of Program Economics Research Report No. 1 (July 1991), p. 75.

Enforcement of Workplace Standards

A number of different workplace standards must be maintained by employers. Each is investigated and enforced by a specific federal agency, often in cooperation with state agencies.

Wage and Hour

The Wage and Hour Division, within the Employment Standards Administration of DOL, enforces an ever-increasing number of labor standards statutes with diminishing resources, including the Fair Labor Standards Act (FLSA) (minimum wage, overtime, child labor), various government contract prevailing wage statutes, the Migrant and Seasonal Agricultural Workers Protection Act (MSAWPA also commonly referred to as MSPA or AWPA), and the "whistleblower" provisions of various environmental statutes. IRCA added responsibility for I-9 inspections, H-2A work contract enforcement, and the reporting requirements for the SAW/RAW program (now lapsed). Since IRCA, Wage-Hour has gained enforcement responsibility for the Employee Polygraph Protection Act, the labor standards requirements of various additional non-immigrant programs (H-1A nurses, H-1B specialty workers, D-1 longshore limitations, F-1 students), and most recently, the Family and Medical Leave Act.

Although Wage-Hour received a slight increase in authorized investigators because of IRCA,[32] but it received no increases to administer the most recent statutes, and has been losing personnel since FY 1989, when staffing was at 970. In FY 1993, Wage-Hour was required to decrease the number of investigators from 835 at the end of FY 1992 to 820 (currently at 812 -- a 16 percent cut). For FY 1994, 797 investigators have been requested. As a result, Wage-Hour has had to resort to handling an increasing number of complaints by conciliation[33] rather than investigation, to referring more cases to the State labor department where there is dual coverage, and to desk audits conducted in the Wage-Hour offices where it is considered that full

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[32] Wage-Hour received an increase of 56 staff (not just investigators) in FY 1988, and 23 in FY 1989 -- to conduct I-9 inspections, to administer the worker protection provisions of the H-2A agricultural workers program, and to administer the SAW/RAW reporting requirements.

[33] Conciliations are telephone calls to persuade the employer to make restitution without investigation by Wage-Hour. They were originally intended to be used for complaints regarding failure to pay the last paycheck and similar complaints where there is no indication that additional violations or other employees may be involved.

investigations are not necessary. Cuts in staff from FY 1989 through the present, achieved through attrition, have ranged from 12 percent in Atlanta to 24 percent in Chicago.[34] Compliance actions conducted under the FLSA have dropped somewhat, from a high of 75,656 in FY 1988, to 60,457 in FY 1992; complaints received have dropped from a high of 63,965 in FY 1989, to 47,879 in FY 1992.[35]

Since 1982, Wage-Hour has had in place a Special Targeted Enforcement Program (STEP) in an attempt to ensure full labor standards compliance by employers of undocumented workers. Under Wage-Hour procedures, program plans called for specified numbers of directed investigations in industries and areas where employment of illegal aliens was considered likely. In 1989, program plans set by the National Office with numerical goals for the Regions and District Offices stopped, and local offices were instructed to develop their own programs and plans according to the needs of the area. As a result, reliable adherence to the instructions to record STEP investigations in WHMIS[36] may have decreased, and, especially as resources have declined, the priority to be given to STEP investigations may have decreased in some offices. Overall, however, total back wages found due in investigations recorded as STEP were at approximately the same level in FY 1992 ($89 million) as they were in FY 1990 ($87 million), when Wage-Hour resources were at a relatively high point (938 investigators).

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[34] There is significant variation in number of FLSA compliance actions per investigator, ranging from 45 to 50 in the Philadelphia, New York, Denver, San Francisco, and Seattle regions, to 90 to 100 in the Atlanta, Kansas City, and Dallas regions. Such variations are often a result of the ability of some regions, such as San Francisco, to make significant numbers of referrals to the State. Wage-Hour has also lacked the resources to make personnel moves around the country except in extraordinary circumstances.

[35] There are many possible explanations for this decrease in workload. There has likely been more rigorous screening of complaints -- compliance actions (conciliations and investigations) are taken only if there is a valid complaint, i.e., on its face there appears to be a likely violation, and referrals are often made to the State where State law provides comparable or more generous protection. The recession may also have caused a drop in complaints as workers fear loss of their jobs.

[36] Since a determination of what is a STEP investigation has always been left to the local office to determine, there has never been uniformity in the definitions and the numbers can only be used as a rough indication of levels of Wage-Hour enforcement and violations in areas and industries where employment of illegal aliens is likely.

It is widely assumed that firms that violate one workplace law are likely to violate others. The Department of Labor has conducted a study on the correlation between apparent I-9 violations in inspections conducted by Wage-Hour, and labor standards violations.[37] (See Table #1) The Department observed first that there are more STEP firms (64 percent) than non-STEP firms (58 percent) in apparent violation of work verification requirements. A comparison was then made of FLSA violations, and it was found again that more STEP firms (69 percent) than non-STEP firms (64 percent) were in violation of FLSA requirements. 46 percent of STEP firms, as opposed to 39 percent of non-STEP firms, were found to be in violation of both laws.

OSHA and the Minimum Wage Study Commission both report that labor law violations are more common by small employers. Similarly, the highest rate of IRCA violations, and of combined IRCA and FLSA violations, was among small firms.[38] GAO and DOL have also examined the violation rates by industries.[39] In the 5 non-agricultural industries identified by GAO as which were likely to employ large numbers of illegal aliens (construction, manufacture of food products, manufacturer of apparel and textiles, eating and drinking establishments, and hotel and lodging services), significantly more IRCA violations were found in Wage-Hour inspections (68 percent) than in other industries (58 percent). FLSA violations in these industries were 69 percent, compared to 66 percent for all industries.[40] (See Table #2)

Child Labor Violations

The child labor provisions of the Act and regulations restrict the hours and occupations which can be worked by children under 14 and 15, and the occupations in which children 16 and 17 can work. In particular, for example, children cannot work in any occupation in manufacturing or construction until they are 16. In agriculture, children can work if they are 12 except in prohibited occupations. In addition, children are exempt if they are employed on a farm on which their parents are employed, on which none of the employees are covered by the minimum wage. Civil money

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[37] President's Second Report, p. 46.

[38] Table 4.3 from the President's Second Report p. 51.

[39] Id. at 48-52.

[40] Table 4.7 President's Second Report p. 57.
As a general matter, violations are much more likely to be found in cases where complaints have been found, so this statistic reveals well. It seems likely, however, that the violations are more serious by employers who violate both laws.

penalties can be assessed for violations up to $10,000 per violation.

GAO's 1991 study of child labor investigations by Wage-Hour finds that low-income and minority children are less likely to be employed.[41] The study also found that 55 percent of violations found were in restaurants, as well as 37.5 percent of serious injuries; 3 percent of violations were in manufacturing, compared to 16.7 percent of serious injuries; and in construction, 1 percent of violations, compared to 10 percent of serious injuries. Overall, GAO estimated that 18 percent of all 15-year olds were working in violation of the regulations. Injury rates were higher in 1990, however, than they had been in 1983.

In 1990, a new approach to child labor investigations began to be used. Wage-Hour first increased its administrative penalty schedule, and then began a series of four highly publicized, nationwide strike forces, beginning in the spring of 1990, and lasting into the fall of 1990.[42] The investigations constituted only 23 percent of all the investigations conducted that year, but found 65 percent of the violations disclosed in all investigations that year.[43]

Since it is frequently said that child labor violations are common in the garment industry and agriculture, findings with regard to these industries are particularly interesting. Of 434 child labor investigations conducted in the garment industry during the strike forces,[44] violations were found in only 18 cases (four percent). These

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[41] GAO, Child Labor: Characteristics of Working Children, HRD-91-83BR, p. 4. This may suggest that illegal child labor practices are not a serious problem in industries which hire large numbers of illegal aliens. Popular wisdom, however, is to the contrary in the garment and agriculture industries.

[42] The strike forces targeted establishments considered by the District Offices to be likely child labor violators, companies which had violated in the past, and the construction and amusement park industries. Because of the high violation rates always found in restaurants, they tend to be heavily represented in the investigations conducted. At the same time, a garment strike force was conducted, which was especially directed at child labor violations, as well as intensive effort in agriculture.

[43] Id. at 43.

[44] Findings are based on investigations for which assessments had been issued as of November 1990. Since the strike forces were conducted in September, the assessments had not yet been issued on most of the violations in the last two strike forces.

findings are consistent[45] with the findings of the special garment industry strike force conducted in the New York metropolitan area from May 11 to June 22 of that year, which found a total of five minors employed in four cases out of 293 investigations,[46] and with a strike force conducted the first two weeks of August in El Paso.

With regard to agriculture, 439 investigations were conducted during the four strike forces, only 24 of which (five percent) found child labor violations. In both industries child labor violations are especially difficult to detect because "you have to see them to find them," because of the lack of records of age, and because traditionally investigations are conducted during working (i.e., school) hours.

Since the 1990 strike force, child labor enforcement has remained a priority. Thus child labor enforcement hours as a percent of total investigator hours increased from 6.5 percent in FY 1989 to 15 percent in 1990; in 1991 and 1992, child labor enforcement hours were 9.9 percent and 12.6 percent of total hours, respectively. Civil penalties assessed increased threefold from FY 1989 to FY 1990, increased another 50 percent from FY 1990 to FY 1991, and another 13 percent from FY 1991 to FY 1992.[47]

Safety and Health Enforcement

The Occupational Safety and Health Administration (OSHA) conducts worksite investigations to determine if employers have complied with standards issued by OSHA. Extensive safety standards apply in construction, for example. Health standards, on the other hand, regulate exposure to chemicals, air particles, etc., which

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[45] The strike forces did not include any homework investigations. Child labor violations are more likely to exist and more difficult to detect where homework is being conducted.

[46] 89 of these investigations overlap with the period of the first strike force and therefore are counted in both sets of statistics.

[47] The increased penalties from 1989 to 1990 were due to both the strike force activity and a substantial administrative increase in the penalty schedule, from an average of $123 per minor to an average of $212 per minor. Early in FY 1991, the FLSA was amended to provide a raise in the maximum which can be assessed from $1,000 per minor to $10,000 per minor. Actual assessments increased to $460 per minor in FY 1991, and $742 in FY 1992. However, the 1991 amendments also provided that the penalties would go into Treasury, removing the previous provision that the penalties go to child labor enforcement.

create short-term or long-term health hazards, such as risk of cancer. In addition to violations of specific standards, issued by DOL, an employer can also violate the general duty clause, which requires an employer to provide a workplace free from recognized hazards that are causing, or could cause, death or serious physical harm.[48] Appropriations riders passed each year prohibit OSHA from enforcing OSHA safety standards (as distinguished form health standards) for employers with ten or fewer employees, except on the basis of complaints. In agriculture, OSHA is prohibited from conducting any inspections of operations in which ten or fewer employees are employed, except for temporary labor camps.

Unlike the Wage and Hour programs, and other programs which are the subject of this paper, the ability of OSHA to conduct investigations is not significantly hampered by an employer's failure to keep records,[49] nor by the presence of illegal aliens in the work force, since violation findings do not ordinarily rely heavily on interview statements.

Industries which OSHA officials mentioned as likely to have large numbers of alien employees include construction, meatpacking, and agriculture. About half of all investigations and almost all inspections (see Chart #1) concern the construction industry. Meatpacking is another industry with particularly serious safety and health violations and a high injury rate[50], including, for example, slip and fall injuries, machine guards, and knife cuts. Lock-out/tag-out violations are also common, and can be a particular problem with a work force which does not speak English. These standards require an employer to ensure that hazardous machines are turned off prior to their cleaning or maintenance. Employers are required to have a procedure to identify hazards, to identify the power source, to train employees, and to enforce the procedures. In one recent case, a contractor who performed maintenance on machines after hours had four or five fatalities in the last several years due to failure

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[48] Significantly, OSHA is generally able to hold both the owner of the plant and the contractor responsible for such violations.

[49] Employers are required to keep records of injuries, and failure to do so may affect the likelihood of the employer being investigated, since OSHA targets employers in industries with high injury rates.

[50] Since meatpacking establishments are often very large establishments, it appears to be unlikely that they operate in the underground economy, and it may be that although the work force is made up of large numbers of alien workers, they are not unauthorized.

to train non-English speaking employees.[51]

Examples of safety standards which might apply in garment shops include standards relating to wiring, blocked fire exits, lack of safety or fan guards, crowded aisle space; ergonomic violations can also arise. It is alleged that exposure to formaldehyde, used to treat polyester and wash-and-wear fabrics, can also be significant, but there is no evidence that maximum levels are exceeded in this industry. There is little OSHA enforcement in the garment industry, in part because of the restrictions on inspections of small employers. However, Wage-Hour and the New York State Apparel Industry Task Force do make referrals to OSHA in the New York region, which are pursued. In addition, California OSHA[52] participates in the joint TIP investigations in the garment and apparel industries. As stated above, OSHA cannot inspect such establishments unless they have more than ten employees in the absence of a complaint.

There are two applicable sets of standards for agriculture -- standards for temporary labor camps, and the field sanitation standard. Standards for temporary labor camps apply to camps completed or being built before April 3, 1980, or under contract to be built before March 3, 1980.[53] Standards are set for the site and the shelter housing the workers, as well as for required water supply, toilet facilities, lighting, refuse disposal, construction and operation of kitchens, dining hall and feeding facilities, insect and rodent control, first aid, and reporting of communicable diseases. OSHA standards are also applied by Wage-Hour regulations to housing supplied to

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[51] Under the Occupational Safety and Health Act (also referred to as OSHA), several different employers at the work site may have varying levels of responsibilities and liability: the employer who creates the hazard, the employer who controls the hazard, and the employer who exposes workers to the hazard. In construction, for example, the general contractor is ordinarily the controlling employer, who has responsibility for the worksite; the drywall employer may create a tripping hazard by leaving wires or other materials in the way; another specialty subcontractor may expose its employees to the hazard by virtue of the employees walking through the area. (The exposing employer has a lesser duty -- the duty to alert the other employers to the hazard and to try to get it corrected.)

[52] Where a State law applies the same standards as OSHA, authority to enforce OSHA can be delegated to the State. In some other States, enforcement is also conducted by the State, by contract from OSHA.

[53] Facilities built before these dates can comply with either OSHA standards, or standards set by the Employment and Training Administration.

migrant or seasonal agricultural workers under MSPA. OSHA, Wage-Hour, and State officials share housing inspection responsibilities, including pre-occupancy inspections (normally performed by the State), and post-occupancy inspections.

The field sanitation standard requires that potable drinking water, toilet facilities, and handwashing facilities be supplied to farm field hands. Employees also have to be informed of the importance of hygiene and be given an opportunity to use the facilities without cost.

OSHA has devoted few resources to enforcement in agriculture, in part because worksites are spread out and hard to find. A proposal was made in the last Administration to transfer all OSHA responsibilities in agriculture to Wage-Hour.

Payroll Tax Payments

Employers have the responsibility to make a number of different tax payments to Federal and State authorities, either as deductions from employees' wages or based on their payroll. Employers are required to withhold income tax from employees' wages. Employers are required to withhold a percentage of pay from employees' earnings for the Social Security (FICA) and for Medicare. Employers are required to pay State and Federal unemployment taxes (FUTA), but receive a Federal tax credit if the State law was approved by DOL. And employers are required by State laws to maintain workers' compensation insurance and to make premium payments on behalf of their workers.

The Internal Revenue Service (IRS) has responsibility for collecting Federal payroll tax payments on behalf of Social Security and the unemployment compensation fund (administered by DOL). In December 1992, the position of the Director of the Office of Employment Tax Administration and Compliance was created. Staff in this office share responsibilities relating to examinations, collection, and employee plans exempt organizations, and the office reports to those three Assistant Commissioners. In the field there are 635 employment tax specialists who report to their District Offices, and receive policy direction from Washington.

The bulk of the time and attention of both the National Office and the District Offices is devoted to classification questions -- i.e., cases where the employer claims that his or her workers are independent contractors.[54] Beginning in 1978, because of

[54] Misclassification of employees as independent contractor is a common manner in which employers try to avoid liability under not only the IRS requirements, but also

concern that IRS was being over-zealous in its challenges to independent contractor status, Congress passed a series of one-year measures, generally prohibiting IRS from pursuing independent contractor cases, which became permanent in 1982. This provision, Section 530 of Public Law 95-600, as amended, prohibits IRS from issuing any guidance on determining employment status and permits an employer to permanently classify its employees as independent contractors if it has a reasonable basis for doing so, defined as long-standing industry practice, or if IRS has previously audited the employer and not challenged the independent contractor status of the employees (whether or not the question was looked at by IRS), provided the employer has consistently treated similarly situated employees as independent contractors.

Moreover, IRS loses revenue on employees who are improperly classified as independent contractors because the employee must pay his or her share of FICA, but the employer does not; nor does the employee have to pay FICA at the self-employed rate. The employee will then be eligible for social security, regardless of whether the required payments were made.

Up until 1987, pursuit of misclassified independent contractors remained a low priority. In recent years, however, Congressional hearings have addressed abuse by employers, and staffing has increased significantly. In spite of the potential breadth of the situations in which employers can maintain independent contractor status, such situations apparently represent the minority of all cases where the issue arises. Abuses are apparently increasing. For example, janitor companies, which hire large numbers of immigrants and illegal aliens, in some parts of the country are considering their workers to be independent contractors to underbid their competition.

Like the Wage-Hour laws, IRS advises that workers are eligible for social security regardless of their authorization to work, if they in fact worked the required number of quarters -- regardless of whether payments are made by their employers. As a practical matter, however, claims for social security by unauthorized workers are rarely made. Particularly important, however, is the concern that employers not be able to gain a competitive advantage over employers with a legal work force by not making payments to the Social Security and other funds.

IRS does not have a significant level of resources directed at attempting to locate and collect from employers who do not make payroll tax withholdings and payments. In fact, some IRS officials have suggested that if a company is not on paper, i.e., in IRS's files, it does not exist to IRS. IRS does, however, have a program

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wage and hour provisions.

to profile taxpayers who most likely should have made quarterly tax payments -- i.e., people who would be likely to employ caregivers.[55]

IRS is, however, attempting to focus attention on improving the collection process for workers in agriculture. As discussed below, IRS has increased its attempts to cooperate with other agencies to more effectively utilize the resources of all agencies.

Recent Initiatives to Improve Worksite Enforcement

Both the garment industry and agriculture have been the sites of new cooperative efforts to enhance enforcement of workplace standards in the underground economy.

Garment Industry Initiatives

Wage and Hour investigations in the underground economy are very labor-intensive. Since accurate records are not kept of hours worked, they must be reconstructed, primarily through interviews. In industries such as the garment industry with large numbers of immigrant workers, however, gaining the cooperation of employees can be difficult. Investigators often do not speak the language,[56] so they must either bring along interpreters or gain the cooperation of others in the workplace to perform that function. Furthermore, undocumented workers fear that they will be turned in to INS. Homeworkers have reason to fear their employer's whole operation will be shut down. In addition, the immigrant community can be close-knit, especially in the Asian community if the employer and the employees are of the same ethnic group. Employees may then be family, friends or neighbors of their employer. However, Wage-Hour offices report that they have had increasing success in gaining worker cooperation through referrals from, and the assistance of, community groups, such as the Chinese Staff Workers Association in New York City.

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[55] Services supplied by individuals to homeowners, especially on an irregular or intermittent basis, is another area of the underground economy which we have not explored. It is not unusual for such individuals to be casually treated, without regard to verification requirements or authorization to work, and without social security payments, FUTA, etc.

[56] This is especially a problem with Asian workers who represent an increasing percentage of the work force in the garment industry in many major cities.

In early 1992, Wage-Hour began a major new initiative in the garment industry. At that time there were approximately 1800 manufacturing establishments[57] in the country, but approximately 20,000 sewing and cutting shops producing goods for the manufacturers. There were then approximately 6,000 contract sewing shops in New York, 5-6,000 in Los Angeles, 2,000 in New Jersey and in San Francisco, 2-3,000 in Texas, and 1,000 in Florida. Because of the low cost of capital investment required (about $2,000), firms enter and leave the industry easily, and are highly mobile. So although Wage-Hour had been concentrating on uncovering violations in the industry for some time,[58] back wages were difficult to collect and increased compliance difficult to achieve. A survey of district office personnel indicated that almost 90 percent of the shops had recordkeeping violations (including missing records, employees not recorded on the payrolls, or falsified records); more than half paid some or all of their employees "off the books", in cash; about two-thirds of the firms did not take payroll deductions or pay required employee taxes; more than 40 percent of the shops investigated had minimum wage violations; more than half had overtime violations; about 20 percent employed illegal homework; and about 7 percent used illegal child labor.

As a result, a task force developed a five-year initiative to focus on five regions of the country -- New York (New York and New Jersey), Philadelphia (Virginia), Atlanta (Miami, North Carolina), Dallas (Dallas, Houston, El Paso, and Oklahoma), and San Francisco (San Francisco and Los Angeles). The express purpose of the initiative was to trace relationships to the manufacturers and enlist them in efforts to promote and police labor standards, through the signing of compliance agreements with Wage-Hour. Where this cannot be achieved, and violations continue among the manufacturer's contractors, "hot goods" actions would be sought against the movement of the illegally produced goods in interstate commerce.[59]

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[57] The term manufacturer is used in the garment industry to refer to the designer of the garment, who ordinarily sells the completed product to the retail stores. The designer commonly owns the garment through the assembly process, furnishing the fabric (usually pre-cut, perhaps pursuant to another contract) to jobbers or contractors for assembly.

[58] In the early years of the Reagan administration, Secretary Donovan accompanied Wage-Hour officials on a raid on a sweatshop in New York City.

[59] It is a violation of the Fair Labor Standards Act for any person to move goods in interstate commerce which were manufactured in violation of the minimum wage, overtime, or child labor provisions of the Act. This can be a remarkably effective tool, especially in bankruptcies or in other situations where the employer is unable to pay

The first step of the initiative was to do a massive mailing to manufacturers, retailers, contractors, trade associations, unions, etc., alerting them to the initiative, and to the existence of the hot goods provision. It was then planned that every time an employer was found to have committed Wage-Hour violations, whether or not the employer agreed to compliance and paid the back wages, the manufacturer would be immediately contacted. Where the violations had not been remedied, the manufacturer would be advised that the goods were "hot" and could not be shipped.[60] Manufacturers would be requested to sign Assurance to Comply forms, and Wage-Hour would assist manufacturers in developing methods to oversee compliance by contractors. If additional violations occurred, manufacturers would be encouraged to sign the Compliance Program Agreements, agreeing to extensive monitoring of the contractors. If these efforts failed, hot goods injunctions would be sought.

Because of the circumstances of the industry, Wage-Hour has also utilized new investigation procedures in conducting garment investigations, resorting to surveillance of establishments in the garment industry. Working in two-person teams, and by watching the establishments early in the morning, at night, and on the weekends, they are able to reconstruct the work schedule even where they are unable to obtain employee cooperation. Thus the Los Angeles District Office reports that it has reduced the number of visits to an employer from 4.8 to 1.1; increased the collections per investigative hour from $47.48 to $313.19, reduced the time an investigation is open from six months to two, and at the same time increased the number of interviews conducted from 7.8 to 11.2 per case.

Early in the initiative, in August 1992, Guess? Jeans,[61] with widespread publicity, agreed to pay $573,000 in back wages due as a result of violations by one of its contractors, and signed a long-form agreement, agreeing to take significant

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back wages, since it reaches beyond the employer to the holder of the goods. However, it has not been extensively used in the past, in part because it requires an immediate filing in court to prevent the movement of goods to a good-faith purchaser. The Act contains an exception for good faith purchasers who acquired the goods in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the Act, and who acquired the goods without notice of the violations.

[60] It is Wage-Hour practice to consider the violations to be "cured" and the "taint" on the goods lifted, if the back wages due are paid.

[61] Guess? utilized approximately 100 sewing contractors, with a work force of over 7,000 workers.

actions to monitor violations, including weekly review of payroll reports, and to educate employees and pay any back wages due by its contractors. In addition, because of child labor violations, the company donated $10,000 to Rebuild LA for youth employment, set up scholarships in the names of the children found in violation, and donated $25,000 in clothing to charitable organizations serving families with children.[62]

In the Los Angeles District, which has engaged in a particularly intensive effort,[63] 189 manufacturers have been contacted out of about 600 and have agreed to comply with the hot goods provisions. Eleven of the manufacturers have signed Assurances, three have signed consent judgments (agreed-to court orders requiring FLSA compliance), and three have signed the Compliance Program Agreement.

In the Chinese community in San Francisco, as a result of the garment initiative, two contractors' association have started and a dormant manufacturers' association has re-activated. Wage-Hour has worked with these associations to develop a master agreement which is designed to facilitate Wage-Hour compliance and addresses many of the problems between manufacturers and contractors. The agreement contains such features as an agreement to comply with all applicable wage and hour and safety and health laws; a provision that the contract would spell out all work to be performed, addressing such issues as rush work, delays, and repair or rework; a list of prices to be paid for all services; a warrant that the estimated minutes per unit represents their best estimate of actual time required (i.e., the agreement envisions performance of time studies); a warrant that the manufacturer will cooperate with the contractor to ensure that the work can reasonably be performed for the sums agreed, in substantial compliance with wage and hour laws; provision for prompt payment; and an agreement to resolve disputes by arbitration.

Based on information from reporting Regions, in the period since the initiative started in late spring 1992, more than 600 cases have been completed, with monetary violations found in over half of the investigations, totaling close to $4 million (of which $2 million was agreed to be paid). More than 25 consent judgments have

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[62] The $25,000 in clothing was agreed to as a means to lift the "taint" for the child labor violations. The donation to Rebuild America was to come from civil money penalty payments.

[63] In the Los Angeles District, 75 percent of time is allocated to the garment and agriculture industries, and to child labor investigations. Only 25 percent is devoted to responding to complaints. Unlike other offices, which have resorted to an increasing number of conciliations, LA has totally ceased conducting conciliations -- advising employees instead of their right to file a private action.

been signed (generally from contractors, not manufacturers), over 50 manufacturers have signed the Assurance to Comply agreement, 3 have signed the Compliance Program Agreement, and at least two temporary restraining orders have been obtained against manufacturers to prevent shipment of goods.

Wage-Hour has worked closely with the State of California, in conducting garment industry investigations. Pursuant to the Targeted Industries Partnership Program (TIPP), to be discussed further below, joint task forces were conducted with significant press attention, looking for wage and hour, child labor, licensing and registration, workers' compensation insurance coverage, Injury and Illness Prevention program, and unemployment tax contribution violations. $937,863 in back wages were found due in joint investigations for the period November 1992 to July 23, 1993.

Additional remedies, and special problems, arise under California state law. Garment manufacturers and contractors are all required to register with the State. A manufacturer who knowingly engages an unlicensed contractor is subject to joint liability for wage-hour violations and workers' compensation premiums. If a contractor or manufacturer is unlicensed, the goods can be seized, and are given to charity. Legislation is pending to make the manufacturer (and the grower in agriculture) jointly liable as a general matter.

All employers are required to have workers' compensation insurance and to post a copy at the worksite. Failure to do so can result in the State closing the business down, and penalties of up to $1,000 per employee. In the Los Angeles basin, however, private workers' compensation insurance has two to three hundred percent surcharges, or else require resort to the State insurance fund of last resort. In the garment industry in particular, private insurance is virtually unavailable. Post-termination claim fraud is widespread, with many workers routinely filing claims as soon as unemployment insurance runs out. It has therefore been suggested that workers' compensation premiums are driving firms in the area into the underground economy. Employers, for example, may make workers' compensation payments for some, but not all of the work force, and, if an injury occurs, backdate the records to show payment on behalf of the worker. Legislation was passed in July to reform the workers' compensation system, including a provision requiring that stress claims show that they are predominantly caused by the job (rather than ten percent -- the previous requirement).

Although details are not available, the Manhattan and Northern New Jersey District Offices have also gone on joint strike forces with the States of New York and New Jersey, respectively.

In 1985, New York State set up a special Apparel Industry Task Force, currently employing 20 investigators, mostly operating in the New York City area. Like California, New York has a law requiring all contractors and manufacturers to register, and requiring manufacturers to contract only with registered contractors. It is estimated that up to 30 percent of contractors are not registered. The Task Force enforces the registration requirement, as well as minimum wage, child labor, recordkeeping, homework restrictions, and a provision that an employer cannot pay by check unless it is registered. Civil money penalties (CMPs) are assessed for all of these violations except back wages. A manufacturer is prohibited from contracting with an unregistered contractor. If illegal homework is found, the goods will be tagged or seized, but will be returned if the employer signs a receipt (thereby identifying himself or herself as the employer of the homeworkers).

In the first six months of 1993, the New York State Task Force conducted 703 investigations, finding 257 registration violations, 28 homework violations, and 41 illegally employed minors in 26 firms. $353,450 in penalties were assessed, and $160,073 in wages. Twenty referrals were made to OSHA.[64]

There is one important garment case which was not conducted pursuant to any of the special initiatives or joint strike forces with the States. In 1991, DOL filed suit against six corporations run by Willie Tan in Saipan,[65] in the Commonwealth of the Northern Marianas.[66] DOL alleged that the employees, who were mainland Chinese workers operating under visas similar to the H-2B program, issued by the Commonwealth, were paid $1.75 an hour or less, and that they averaged eleven hours of work a day, six days a week. It was alleged that the difference between the amount paid and the required wage was kicked back to company officials.[67] During the investigation, Wage-Hour found that the workers were housed in fenced and guarded barracks, worked in fenced and guarded factories, and were required to turn

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[64] Typical OSHA violations include blocked fire exits, illegal wiring, safety guards, insufficient aisle space, lack of fan guards, not having illuminated signs.

[65] *Martin v. American International Knitters Corporation,* No. 91-0027.

[66] Employers in the Northern Marianas are subject to the FLSA's overtime requirements, but not the minimum wage. What this means as a practical matter, is that if an employer fails to pay overtime premiums, DOL has an action to recover at least 1 1/2 times the Commonwealth minimum wage of $2.15 per hour.

[67] The firm alleged these kickbacks were required by, and went to, the Chinese government.

their passports in to the factory on arrival. The Department estimated that these firms shipped about $100 million in duty-free garments, containing the "made in the USA" label, to the mainland each year. In its suit, the Department for the first time sought not only statutory double damages (known as liquidated damages), but also punitive damages, and succeeded in persuading the court that the punitive damages claim should not be dismissed. In 1992, the case was settled for $9 million, including back wages, liquidated and legal relief (i.e., punitive damages).

Investigations in Agriculture

As stated above, it has been estimated that 58 percent of agricultural workers are not covered by the minimum wage provisions of the FLSA. Exemptions from the minimum wage apply because of the requirement that an employer have used more than 500 man-days of labor in at least one quarter of the preceding year, and with respect to hand harvest laborers who live in the area and did not work more than 13 weeks in the previous year. In addition, virtually all agricultural workers are exempt from the overtime provisions.

The Migrant and Seasonal Agricultural Workers Protection Act (MSPA) also provides protection to farmworkers. The major provisions of MSPA require that FLCs register with DOL, that they provide proof that their vehicles transporting workers meet safety requirements; that they furnish proof of insurance; and that they identify any housing that will be furnished and show it meets Federal and State standards and is approved for occupancy. Employers also must provide written information to workers about the employment conditions, provide workers with a statement of earnings and deductions, and conform to the working conditions of the work contract, including contract wage payments.

Often Wage-Hour emphasizes what it considers the most serious violations -- unsafe or unhealthful housing conditions, and transporting of farmworkers in unsafe vehicles or without required insurance. rather than wage violations. And because housing and transportation investigations are often conducted away from the worksite,[68] Wage-Hour may conduct an investigation without ever going to the fields or interviewing an employee.

Wage-Hour does, however, find substantial back wages due in agriculture. In FY 1990, when staffing in Wage-Hour was still relatively high, Wage-Hour found $4.7

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[68] In some areas Wage-Hour goes out with the California State Highway Patrol on vehicle inspections.

million in wages due; in FY 1992, $5.2 million was found due; and in the first 10 months of FY 1993 (i.e., not including August and September, two of the heaviest employment months in agriculture), $4.4 million were found due.

Like the garment industry, Wage-Hour in California conducts TIPP investigations in agriculture with the State. Over the period from November 1992 to July 23, 1993, 214 joint investigations were conducted, in which $81,832 was found due in back wages, and civil money penalties of approximately $100,000 were assessed.

In August 1993, a major three-week strike force by about 50 Federal and State investigators was conducted in the San Joaquin Valley. Although the results are not yet available, the press release issued after the first week stated that 20 labor camps had been investigated, finding numerous housing violations, and that numerous unregistered FLCs were found to be crowding workers into vans operated by drivers who were not properly licensed. Penalties of up to $25,000 could be assessed for the housing violations, and of up to $50,000 for the transportation violations, found in Highway Patrol roadblocks. The release announced:

> ...Reardon said his agency [Sacramento Wage-Hour] is eager to work with housing providers to correct the unsafe living conditions. To encourage them to provide sanitary living conditions for the workers, Reardon's office will consider reducing penalties to help finance the cost of the improvements.

Reardon also suggested that the lower penalty assessment, compared to $135,000 in housing violations found in a one-month sweep in 1992, may have been a result of education and outreach.

DOL is aware of ten criminal prosecutions and one criminal contempt proceedings under MSPA, or related to MSPA over the twelve-year period prior to September 1992. In eight cases counts were filed under MSPA or its predecessor statute, FLCRA. In addition, four cases had illegal alien counts, and two had peonage counts.

A particularly significant case was the prosecution against Griffith-Ives, an ornamental flower grower and processor in southern California. From the time the complaint was first filed with Wage-Hour, the case was jointly investigated by Wage-Hour, the Border Patrol, and the FBI. Evidence disclosed the firm was engaging a "coyote" to smuggle workers from Mexico for $350, which was deducted from their pay. Workers were not allowed to leave the ranch during the week or at night, or to

leave at all until the debt was paid. Additional illegal deductions sometimes resulted in negative earnings. Ultimately, Ives pled guilty to corporate racketeering and three immigration felonies, and to payment of $1.5 million in FLSA back wages, in return for dismissal of extortion and slavery counts of the indictment. This apparently was the first time the Racketeering Influenced and Corrupt Organizations Act (RICO) was invoked in a civil rights case.

Most recently, an 18-month joint investigation by the Civil Rights Division of the Justice Department, the FBI, and Wage-Hour, led to an indictment against Carrie Bonds, et al. The Bonds are alleged to have recruited homeless people and promised high wages, free lodging, drugs, alcohol, etc. but the workers were kept in peonage conditions until their debts are paid off. The indictment included counts for violations of MSPA, peonage, and distribution of cocaine.

Pending Legislation

On January 5, 1993 a bill was introduced in Congress by Congressman Charles Schumer (D-NY). The bill (H.R. 341) is cited as the "Sweatshops Prevention Act of 1993" and would amend the Fair Labor Standards Act of 1938 (FLSA) by increasing penalties for employers who violate its provisions. Currently the bill has been referred to the Committee on Education and Labor.

On March 2, 1993 Congressman George Miller (D-CA) introduced major legislation titled the Agricultural Worker Protection Reform Act of 1993 which would amend the Agricultural Workers Protection Act of 1983 (AWPA). These amendments would strengthen basic protections for migrant agricultural workers and would be accomplished by holding growers liable for violations committed by farm labor contractors thus encouraging the growers to make sure the contractors are complying with the laws. It would also make employers responsible for meeting all local, state and federal health and safety laws and regulations, including child labor laws. This legislation is currently in the hearings stage and a field hearing was held on September 15 in Fresno, California.

Interagency Cooperation

A promising strategy to improve worksite enforcement involves greater cooperation among the various agencies responsible for investigating violations. INS and Wage-Hour have recently executed a new Memorandum of Understanding (MOU) to enhance Wage-Hour's role in enforcement of employer sanctions, while at the same time training INS to be alert to and refer potential wage-hour violations to Wage-Hour. Under the new procedure, Wage-Hour will issue warnings and furnish INS with better

information about its findings, and INS will follow-up on certain categories of Wage-Hour referrals and advise Wage-Hour of the action taken. It is anticipated that this will improve inter-agency relations.

Currently, relations between INS and Wage-Hour are variable from office to office, although some level of cooperation probably exists. Although it is rare, in some offices Wage-Hour is invited to, and often does, accompany INS on raids.[69] Or, pursuant to a cooperative arrangement with INS which has existed since before IRCA, INS will alert Wage-Hour when illegal aliens have been apprehended, especially where there are indications of violations, so that Wage-Hour can come and question employees and immediately try to recover wages due.[70] Some offices have developed employee questionnaires to facilitate this process. This is one circumstance in which gaining the cooperation of employees is not a problem, and Wage-Hour has apparently had significant success in obtaining wages due, frequently in the nature of the last paycheck.

Where illegal aliens are needed as witnesses, INS will often either hold the aliens in detention until depositions can be taken, or can stay the deportation order or allow voluntary departure with work authorization in the meantime, until trial. [ck]

Cooperation between States or local governments and INS can be more problematic. Chicago and New York City have issued executive orders prohibiting disclosure of information to INS,[71] and a similar policy exists in Los Angeles. In practice, New York State and California apparently have the same policy.

Cooperative arrangements, sometimes formalized and sometimes not, are common between Wage-Hour and State governments. For example, Dallas is developing an MOU with the State on child labor investigations, because the State

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[69] The Northern New Jersey District Office of Wage-Hour, which has a particularly close relationship with INS, has accompanied INS on 27 operations in the past two and one-half years. These operations have resulted in findings of more than $250,000 in wages due and apprehensions of almost 400 aliens.

[70] With respect to those employees for whom wages are not recovered until after their departure from the country, Wage-Hour has developed an arrangement with the Mexican Consulate in Dallas for distribution of back wage checks to Mexican nationals.

[71] Office of the Mayor, City of New York, Executive Order No. 124 (August 7, 1989); Office of the Mayor, City of Chicago, Executive Order No. 89-6 (April 25, 1989).

lacks a coverage threshold. Some Wage-Hour offices accompany the Highway Patrol on roadblocks, or health inspectors on housing inspections.

As mentioned above, Wage-Hour has entered into MOUs with the States of California, New York and New Jersey to conduct joint strike forces in the garment industry, and in California, in agriculture. The effort in New York and New Jersey has been much less intensive than the effort in California. In New York, joint investigations just started in a few pilot (especially flagrant) cases in the last six months. In New Jersey joint strike forces to conduct surveillance, made up of five bi-lingual teams, take place once a year.

The TIPP strike forces in California are much larger and more extensive. TIPP is a two-year pilot project, which began November 1992.[72]. The objectives of TIPP are to maximize Federal and State enforcement efforts in garments and agriculture, to increase the level of voluntary compliance through education, and the testing and refining of different ideas for enforcement, to be followed by recommendations for statutory change. Teams will be bi-lingual and will include at a minimum one Wage-Hour and one State labor department investigator. Investigators may also include officials from State OSHA and State workers' compensation.

These joint investigations have not been without their problems. There have been some rough spots regarding corresponding agencies' roles. Wage-Hour has had some concern that high penalties by States have impeded Wage-Hour's ability to recover back wages.[73] In at least one case, California shut down a project for lack of workers' compensation insurance, thereby for some reason preventing the employees being interviewed for Wage-Hour violations.

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[72] The TIP project is quite controversial with migrant worker advocacy groups, who contend that it is distracting effort from the need to reform the laws applicable to labor standards in agriculture, possibly allowing the State to argue that such reform is unnecessary.

[73] The New York Apparel Task Force, on the other hand, states that it will provide for payment of back wages first. Perhaps the difficulty is that the State assumes, but not correctly in every case, that the delay in processing and assessing penalty assessments is sufficient time to collect back wages. Certainly this would not be true if litigation is necessary. This is especially a concern because employers are also immigrants and lack funds to pay back wages, much less penalties.

Larger inter-agency groups have also been meeting in California in an effort to bring IRS and INS into the joint effort, to permit effective sharing of information and resources. The effort in the San Francisco area commenced with a meeting requested by Cesar Chavez, directed primarily at the problem of farm labor contractors who are not making social security payments. In the Los Angeles area, a multi-agency underground economy group has been meeting, including Wage-Hour, INS, IRS, the State taxation agency, the State labor commissioner's office, and the State workers' compensation fund. The effort is intended to move toward the goal of "one-stop shopping", so that agencies can gather information for each other, thereby conserving resources.

The major issue in these larger inter-agency enforcement efforts is the constraints put upon IRS by disclosure restrictions in Section 6103 of the Internal Revenue Code. IRS by law is unable to inform other agencies of its ongoing investigations thereby hampering its ability to participate in joint efforts.

Conclusions

Though many attempts have been made to eliminate the underground economy, it continues to exist in the United States and there are few signs of a decline. A variety of factors contribute to the underground economy, but three are particularly related to the availability of illegal alien workers:

First, many employers violate labor laws because either they do not take the laws seriously, they are not educated on the laws or because they feel forced to do the same as their competition to stay in business. Regardless of their reasons, the availability of an illegal workforce makes it far easier to make that decision. Illegal aliens are less likely to report violations of wage, hour, child labor and other standards because of their fear of apprehension and deportation.

Second, illegal aliens often come from countries where the best pay rates are far worse than the lowest pay rates found in the underground economy. Similarly, they have far lower expectations than do U.S. workers, even immigrants, about working conditions. They may not recognize the employer's violation of labor standards as an abusive practice.

Third, there is a shortage of government resources to keep up with the underground economy, necessitating greater cooperation among the federal and state agencies responsible for enforcement. Here, the involvement of INS in workplace standard violations causes some degree of apprehension on the part of other agencies. Most of the other agencies have an explicit mandate to protect workers,

regardless of their legal status, whereas INS' mandate is to locate and deport illegal aliens. Although INS' regulatory function in employer sanctions is similar to that of the other agencies, more discussion and greater coordination will be needed to develop a comprehensive enforcement approach in targeted industries.

Table 4.3 IRCA and FLSA Investigations and Percentage of Firms Apparently in Violation by Number of Employees

Number of Employees	Total Firms	Percentage of Investigated Firms Found Violating: Both IRCA and FLSA	IRCA	FLSA			
				Total	Minimum Wage	Overtime	Child Labor
Total	60,252	42.7	61.2	66.8	14.5	60.1	6.3
1-9	23,717	43.9	68.4	61.0	13.2	56.6	3.0
10-49	26,514	45.4	61.6	70.5	15.8	62.7	8.3
50-99	4,936	38.6	50.0	72.8	16.9	62.6	9.7
100-499	4,032	28.2	37.7	69.7	12.4	60.5	8.6
500+	1,053	23.1	32.2	64.3	10.7	57.9	6.2

Note: Chi-square tests indicate that for each type of violation the probability of the differentials between various size groupings of firms occurring randomly is less than 0.01.

Source: ESA Wage and Hour Management Information System. Data cover all nonagricultural investigations, opened and closed between October 1, 1987 and January 31, 1990, for which both IRCA and FLSA compliance ratings were recorded.

Table 4.7 IRCA and FLSA Investigations and Percentage of Firms Apparently in Violation by Major Nonagricultural Industry

Major Industry	Total Firms	Percentage of Investigated Firms Found Violating:					
		IRCA and FLSA	IRCA	FLSA			
				Total	Minimum Wage	Overtime	Child Labor
Total	60,256	42.7	61.2	66.8	14.5	60.1	6.3
Mining	378	50.5	63.5	76.5	13.0	74.3	0.8
Construction	8,662	54.7	71.5	73.8	8.3	71.1	3.0
Manufacturing							
Durable	3,367	33.6	55.5	55.4	7.2	52.8	4.4
NonDurable	2,710	31.5	57.3	51.1	9.5	47.3	4.5
Food	491	37.5	54.8	65.4	9.4	61.3	8.1
Apparel	757	32.2	65.9	44.4	15.6	39.5	3.0
Transportation and Public Utilities	2,131	43.3	59.3	70.3	16.1	64.9	1.9
Trade							
Wholesale	2,999	38.5	56.6	62.9	10.2	58.3	4.8
Retail	20,121	43.7	64.6	65.0	19.6	53.1	12.3
Eating Places	8,005	44.9	67.0	65.5	24.6	48.2	19.6
Finance, Insurance, Real Estate	1,934	40.3	50.9	74.5	11.2	72.0	1.7
Services Total	15,291	41.3	58.4	68.3	15.2	63.5	3.1
Hotels, Lodging	1,324	42.9	59.7	69.7	20.2	66.2	4.1
Personal Services	2,300	40.7	67.0	58.4	16.8	53.1	3.0
Private Household	43	67.4	79.1	81.4	62.8	34.9	2.3
Forestry, Fishing	48	25.3	64.6	43.8	8.3	39.6	6.3
Public Administration	2,346	32.0	41.8	75.8	14.5	69.3	3.8

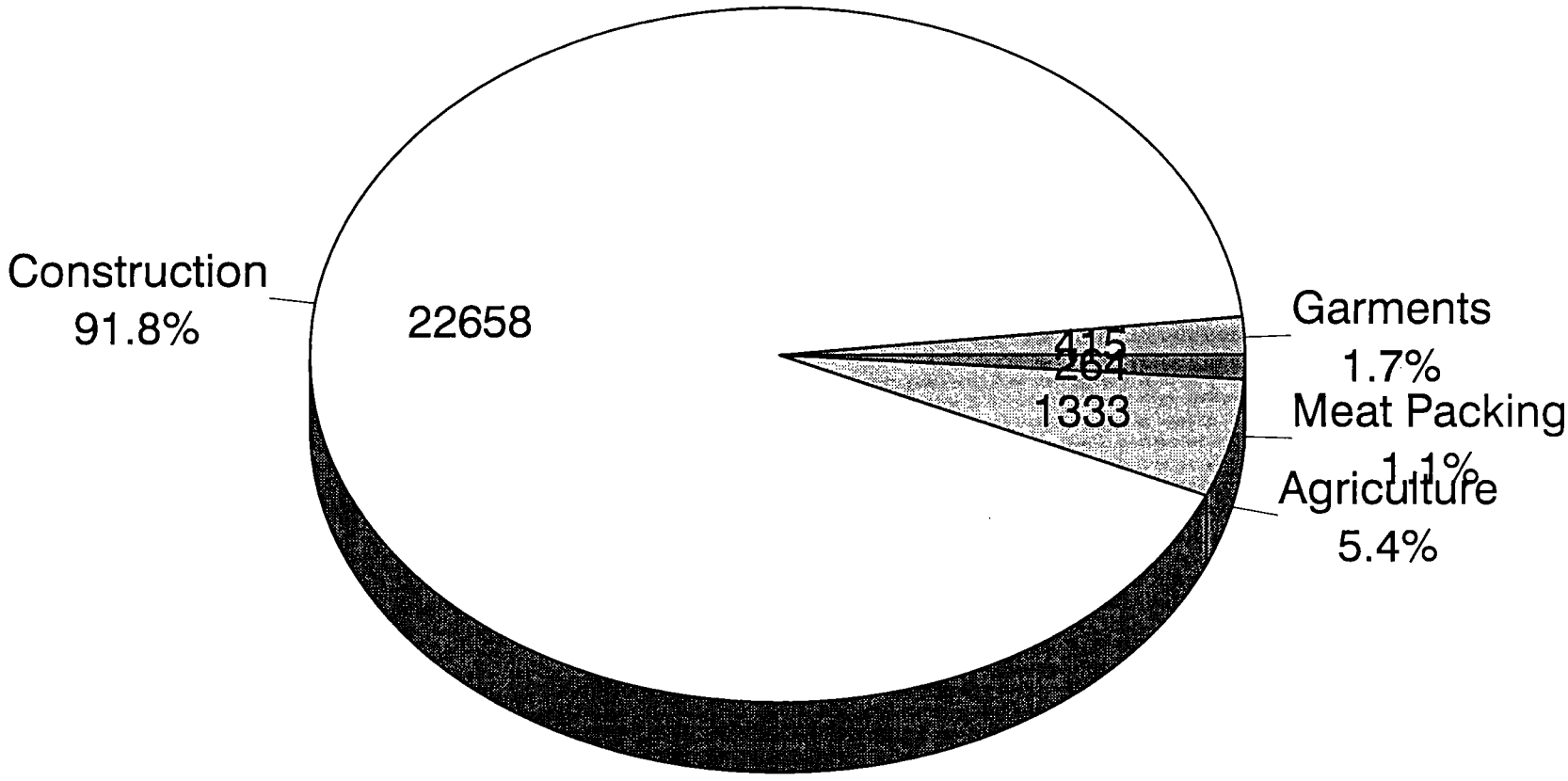
Note: Chi-square tests indicate that for each type of violation the probability of the differentials between major industry occurring randomly is less than 0.01.

Source: ESA Wage and Hour Management Information System. Data cover all nonagricultural investigations opened and closed between October 1, 1987 and January 31, 1990, for which both IRCA and FLSA compliance ratings were recorded.

Chart #1

Occupational Safety and Health Administration

Inspections for FY 1992



Everett, Wash.

2A Monday, December 12, 1994 The Herald

Dispute bares high-fashion's sweatshop underbelly

By KARYN HUNT
Associated Press

SAN FRANCISCO — Behind the Victorian lace and frilly ruffles of Jessica McClintock's gowns is either a steel-hearted exploiter or a model employer in the industry that gave birth to the term sweatshop.

Which description best fits the well-known San Francisco-based fashion designer is at the crux of a two-year wage dispute with 12 seamstresses.

The women, all Chinese immigrants, have campaigned hard for back pay and guarantees of two years' employment since they were left without work and holding more than $15,000 in bounced paychecks when their employer, a contractor for McClintock, went bankrupt in 1992.

They have been picketing her boutiques and her home in posh Pacific Heights and calling for a boycott of her clothes and signature perfume.

McClintock says she owes the seamstresses nothing because she had paid for the work they did on her dresses 18 months before their employer, Lucky Sewing Co., went out of business. She ended her contract with Lucky six months before it went bankrupt, said her lawyer, Wesley Fastiff.

But the seamstresses and the group backing them, Asian Immigrant Women Advocates, say clothing manufacturers such as McClintock should take more responsibility for the people who sew their designer gowns.

Many of them are forced to work for below minimum wage in shops that do not provide basic benefits or allow them the bathroom and meal breaks required by law, said Helen Kim of AIWA.

"Working conditions in the garment industry, whether in New York's or San Francisco's Chinatown, Guatemala or Hong Kong are some of the worst," Kim said.

Don't blame McClintock for that, her lawyer said. The designer has led efforts to reform the industry by insisting her contractors comply with state and federal labor standards, said Fastiff.

Even the U.S. Labor Department says McClintock has been a model in efforts to improve working conditions.

"From the Labor Department's point of view, yes, I would say she is very progressive," said Frank Conte of the department's wage and hour division in San Francisco.

The problem is in the way the garment industry is structured, Kim said. Designers sew only a few samples of any given item, then send it to an outside contractor to mass-produce the rest. Competitive bidding drives down the amounts contractors can ask and, consequently, the wages they pay workers.

Further competition from companies overseas that have no minimum wage requirements adds pressure for lower bids, squeezing working conditions even more.

Throughout, the manufacturers have no responsibility to ensure that contractors' employees are paid, get proper bathroom and meal breaks or are granted the benefits required by law.

The 12 women in the McClintock case worked for an Oakland-based contractor that made dresses for McClintock off and on for about 10 years, Kim said. Lucky began having financial problems in 1991 then went bankrupt a year later.

With no place else to go, the 12 women turned to AIWA, which decided to make their plight an example of the working conditions so many Asian immigrant women face.

The seamstresses claim that they are paid only $5 on dresses that sell for $175 in department stores such as Nordstrom and Macy's.

U.S. Targets Clothing Retailers

Labor Cracking Down On Illegal 'Sweatshops'

By Frank Swoboda
Washington Post Staff Writer

The Clinton administration is preparing to take legal actions against major clothing retailers that sell garments produced in U.S. "sweatshops" or home sewing operations in violation of federal labor law.

Labor Secretary Robert B. Reich will announce today that the department will seek court orders under what is known as the "hot goods" provision of the federal wage and hour law to prevent retailers from selling goods made under conditions that violate the law.

The move is the latest action by the department to curb what government investigators contend is a growing trend toward a return of the turn-of-the century sweatshops in the garment industry. These often are small businesses run out of inner-city lofts employing illegal immigrants who sometimes are paid as little as $1 an hour and are required to work more hours per week than the law allows.

The crackdown on the garment industry began under the Bush administration, along with tougher enforcement of child labor laws. The Clinton administration has accelerated these enforcement efforts after recent investigations showed an apparent rise in the number of illegal manufacturers operating in the industry.

A state and federal investigation of garment industry contractors in California last spring showed widespread labor law violations with approximately a third of the companies inspected operating as part of the so-called underground economy. A General Accounting Office study estimated nearly two-thirds of the garment shops in New York City are violating the law. The operations also are highly mobile, making them hard to find and prosecute.

Another target of the department's enforcement effort is the growing number of apparel contractors that hire people to sew at home, paying them a piecework rate that is well below the minimum wage. Federal labor laws prohibit such industrial work at home.

"We have two strategies," Reich said in an interview yesterday. The first, he said, is to get retailers to better police their manufacturers by using the hot goods provision of the Fair Labor Standards Act to block shipments from the manufacturer to the retailer. That provision allows the government to seek restraining orders prohibiting the shipment of illegal goods.

The second strategy, Reich said, will be to use the same clause to seek court injunctions to prevent retailers from selling any illegally produced goods they may have received. This would be the first time the federal government has taken this approach in the courts. He said that once a retailer has been warned about illegal manufacturers it will be liable under the law.

The government hopes that retailers will put pressure on their suppliers to ensure that the goods are manufactured legally. Labor Department officials said the program would encourage retailers and manufacturers to hire their own investigators to monitor subcontractors closely. It also will be up to the retailer to monitor the government's list of violators.

"The whole purpose of this is to leverage scarce enforcement resources by getting large retailers to take greater responsibility for the conditions under which the garments they sell are produced," Reich said.

John Dill, senior vice president for government affairs at the National Retail Federation, said he was unfamiliar with the Labor Department effort and could not comment. The federation represents most of the major retailers being targeted by the department.

The Labor Department estimates that while there are fewer than 1,000 major manufacturers in the U.S. apparel industry, there are 22,000 cutting and sewing shops that do the subcontracted work. The department has 800 wage and hour inspectors nationwide.

Feds succeed at cutting illegal garment work

By Jennifer Files
Staff Writer of The Dallas Morning News

U.S. Labor Department investigations are finding more underpaid garment workers and recovering more in back wages, a new government report shows.

"We're turning the corner on sweatshop labor after years of making very little headway," said U.S. Labor Secretary Robert B. Reich. Besides generally channeling more resources to industry violations, he said, the government is beginning to ask retailers to help make sure the clothing they sell is made legally and to enforce stiffer penalties if it is not.

The report reinforces local industry opinion that the Clinton administration is doing a better job than previous administrations of enforcing the Fair Labor Standards Act in Dallas, a hub of illegal home sewing.

"There's a great deal more activity," said Joe Allen, a local garment industry consultant. "I think it's going to make a difference."

Nationwide, the government said it identified 10,474 underpaid garment workers in the fiscal year ended Sept. 30, up 16 percent from fiscal 1993. The investigations secured agreements from employers to pay the laborers $3.1 million in back wages, a 35 percent increase.

In the five-state region that includes Texas, the department found 1,217 underpaid employees and secured agreements to pay back wages of $288,008. Roughly 90 percent of those employees were in the Dallas-Fort Worth area, government officials said, mainly Korean and Vietnamese women illegally sewing women's garments in their homes. The government did not provide regional figures for previous years on Wednesday.

Dallas has traditionally been a center of the ladies' garment manufacturing industry, but the large factories that used to thrive here have all but disappeared in favor of independent contractors that do the same work for lower costs.

Typically, contractors deliver fabric pieces to sewers' homes, paying wages by the item of much less than the minimum wage, without overtime and benefits. Even if the wages were not lower than the law permits, ladies' garment sewing is the only U.S. industry in which working at home is illegal, the department said

Garment manufacturers who have been shut out because of low-wage competition are working to encourage government crackdowns on home sewing. The underpaid employees themselves, however, tend not to complain because low English-language skills make it difficult for them to find better-paying work.

Government officials and industry experts agree that Texas, California and New York are major centers of garment industry labor violations, due largely to their importance to the garment industry. Estimates of the number of illegal home sewers in Dallas-Fort Worth range from 4,500 to 50,000.

Plano-based retailer J.C. Penney Co. officials, along with other retail executives, have met with labor officials to discuss ways retailers can make sure manufacturers they buy from obey the law.

Exactly how the retailers will be expected to do that has not yet been determined, a Penney spokesman said, adding he expects the government to schedule more meetings for that purpose.

The government is also beginning to stop manufacturers from shipping illegally made apparel. The tactic — typically viewed as a last resort — has not been used to date in Dallas.

Los Angeles Times - 4/15/94 (D1, D5)

Survey of Garment Industry Finds Rampant Labor Abuse

■ Workplace: The random inspections turn up numerous violations of state and federal laws. 4-15-94

By STUART SILVERSTEIN
TIMES STAFF WRITER LA

In a groundbreaking survey of workplace abuses, state and federal inspectors uncovered rampant violations of safety and labor laws among California garment makers, including cases of bosses locking fire exits and children as young as 13 working nine-hour days.

The study, released Thursday in Los Angeles, is based on random inspections this year of 69 garment manufacturers and contractors. The survey found that all but two of the firms were breaking either federal or state laws or both.

"This is an industry that ignores the law," said Maria Echaveste, the Labor Department enforcement chief for minimum-wage and overtime violations.

The statewide study—which covered garment manufacturers from San Diego to the Bay Area to Stockton—found the most widespread abuses in Los Angeles and Orange counties, which have the state's biggest concentration of garment sewing and fabric cutting shops.

State and federal authorities said the survey marks the first time government officials have taken a random look at an industry to determine the severity of its workplace safety and labor law abuses. They said they singled out the California garment manufacturing industry because of its size and rogue reputation.

The most serious violations were the use of child labor at two shops and about 10 instances in which workers were at risk of being trapped inside in the event of a fire because doors were either locked or blocked. In all, more than a third of the 69 firms were said to have serious safety

Please see GARMENT, D5

Workplace Abuses

In a recent survey of 69 California garment manufacturers and contractors chosen at random, investigators uncovered rampant violations of safety and labor laws. The following figures reflect the percentages of companies found to be violating the law.

Type of violations found:

Health and safety	92.8%
Record-keeping	72.5
Overtime	68.1
Minimum wage	50.7
Cash payments	30.4
Illegal work at home	14.5
Child labor	2.9

Violation facts:

■ Employers that were investigated had an average of 4.17 violations each.

■ On average, employers were found to owe $218.84 in back wages per employee for the period covering the 90 days preceding the investigation.

Source: Labor Department

GARMENT: Survey Uncovers Violations

Continued from B1

problems.

Officials said their discovery of garment shops with locked or blocked exits brought to mind such tragedies as the 1991 fire at the Imperial Food Products chicken-processing plant in North Carolina, where 25 people were killed after being trapped inside the building.

Also, officials said, the garment shops routinely failed to pay minimum wage and overtime. In one instance, a contractor paid as little as $3 an hour, far below the $4.25-an-hour federal standard.

"If our survey results are indicative of the industry as a whole, then garment workers currently working in the sewing shops are owed tens of millions in back wages," said William Buhl, San Francisco-based regional administrator of the Labor Department's Wage and Hour Division.

At the same time, at a number of the firms inspectors found only record-keeping problems or minor safety violations that did not pose serious risks to workers.

Bernard Lax, president of the trade group Coalition of Apparel Industries in California, countered that government officials "are painting the whole industry with the same brush, but I do think there are a lot of people who obey the law."

Lax said he had not seen the survey, but he questioned whether it is truly a random sampling of the industry. He also complained that while industry leaders want to clean up abuses, government officials have refused to work with them.

"Their attitude is they're going to go on their own agenda and do what they're going to do without any industry input," Lax said.

Among the 69 firms in the survey, seven were ordered closed by authorities because they failed to buy workers' compensation insurance to cover employees hurt on the job. In addition, penalties totaling $1.14 million were imposed.

Officials said they will use the study's findings to judge the effectiveness of future efforts to crack down on apparel industry sweatshops, the worst of which tend to be small contractors. Echaveste said one of the key enforcement strategies will be to pressure the contractors' customers, big and often well-known garment marketers and manufacturers.

To that end, she said she plans to expand use of a 1938 law known as the "hot goods" statute, which bars interstate transport of goods made at companies that violate federal labor laws. In a major precedent in 1992, the Labor Department investigated Guess Inc., Southern California's biggest apparel firm, under the hot goods statute and extracted an agreement making the company responsible for its contractors' labor practices.

California Labor Commissioner Victoria Bradshaw, while also promising stepped-up enforcement, said the problems of the industry will persist until the flow of illegal immigrants to the state is curbed. She said that few undocumented workers who work in the industry file complaints against abusive employers for fear their immigration status will be discovered.

"We have a whole pool of people who are very vulnerable" to abuse, Bradshaw said.

Officials contended that, notwithstanding the severity and frequency of violations found in the survey, there was some good news in the results.

For instance, they noted that a casual, non-random survey of garment firms in 1992 found that about 80% were failing to pay the minimum wage over proper overtime pay. By comparison, the survey released Thursday showed that 50% violated minimum-wage rules and 68% violated overtime requirements.

However, officials acknowledged that despite their efforts to ensure a random sampling of apparel firms, the biggest potential offenders—firms operating completely underground and not paying taxes—may have been underrepresented in the survey.

The study was conducted under the Targeted Industries Partnership Program, an educational and enforcement program involving the Labor Department and California's divisions of Labor Standard Enforcement and Occupational Safety and Health.

Garment industry reforms seen

Model contract provides for legal wages, shop profit

EXAMINER STAFF REPORT

Federal labor officials have successfully brokered a prototype contract designed to benefit all sectors of the $8 billion per year Bay Area garment industry.

The model contract provides legal wages for workers and a fair profit for business operators, according to U.S. Department of Labor officials who announced the terms of the contract Tuesday.

Use of the contract should eliminate misunderstandings and disputes between clothing manufacturers and sewing contractors who often go to work on nothing more than a handshake, officials said.

In the past, dozens of seamstresses have lost their jobs or back wages after unscrupulous contractors merely walked away from a dispute with clothing manufacturers.

Also, competition for business with the Bay Area's garment houses is so keen among manufacturers that even the slightest variance from production estimates can result in the loss of business, unpaid workers and declining product quality.

Supporters of the new federal contract said it would help protect as many as 25,000 Bay Area garment workers employed in an estimated 600 sewing shops.

Maria Echaveste, national administrator of the U.S. Labor Department's Wage and Hour Division, said having the contract in place would help move the largely unregulated garment industry into compliance with existing wage and worker hour laws.

Echaveste said the department has a particular interest in the garment industry because its workers often suffer most when a breakdown in communication between manufacturer and contractor occurs.

News

United States
Department
of Labor

Office of Information

San Francisco, CA 94105

Office of the Secretary

USDL-136/September 9, 1994

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FOR IMMEDIATE RELEASE

DEPARTMENT PREPARED TO TAKE AGGRESSIVE ENFORCEMENT ACTION TO COMBAT WIDESPREAD VIOLATIONS IN GARMENT INDUSTRY, SECRETARY ANNOUNCES

WASHINGTON -- Signaling an aggressive new effort to combat widespread wage violations in the garment industry, Secretary of Labor Robert B. Reich today urged major retailers to make sure the clothes they sell are produced in compliance with the Fair Labor Standards Act (FLSA).

Flagrant violations of wage and hour laws, such as failure to pay minimum wage and overtime, routinely occur in the contracting cutting and sewing shops where garments are produced.

"Many Americans do not realize that the fashionable clothes we buy in department stores may have been made in American sweatshops," Reich said. "We want to educate retailers about the persistent violations in the garment industry and to work with them in combatting the abuses.

"Today we are also serving notice. The department will take whatever steps are necessary to ensure that retailers and manufacturers take responsibility for not doing business with contractors who are breaking the law," Reich said.

Wage and Hour Administrator Maria Echaveste said conditions in many of the cutting and sewing shops are deplorable. "The nearly one million garment workers in this country are among our nation's most vulnerable employees, often working for substandard wages under terrible conditions," Echaveste said. Some production workers make as little as $1 an hour. The Wage and Hour Division, part of the department's Employment Standards Administration, enforces the FLSA.

The size of the U.S. garment industry is estimated at $45 billion a year, with nearly a million (984,600) employees -- approximately 78 percent (761,600) women.

The garment industry is organized as a pyramid, with an estimated 22,000 cutting and sewing shops competing for the business of fewer than 1,000 major manufacturers. The manufacturers in turn sell the goods to retailers.

One difficulty in enforcing wage and hour laws is that the sheer

number of sewing and cutting contractors greatly exceeds available government enforcement resources. In addition, contractors can be extremely elusive and financially unstable. It is not uncommon for them to close shop suddenly, remove the machines and disappear, only to reopen down the street under a new name.

"Focusing on the top, not the bottom of the pyramid, should give us the leverage we don't have when we simply concentrate on individual contractors," Reich said.

The department is planning to convene a retailers roundtable this fall as part of its effort to educate major retailers about the widespread violations in the industry and to enlist their cooperation in addressing the seemingly intractable problem of noncompliance by contractors. J.C. Penney and the Army Airforce Exchange Service have agreed to participate in the roundtable.

Other key strategies of the department's new enforcement initiative include: leveraging limited enforcement resources through partnerships with other state and federal agencies; widening the use of the "hot goods" provision of FLSA, which prohibits the shipment of goods produced in violation of the law; increasing the emphasis on manufacturers signing agreements which commit them to be more active in requiring their contractors to comply with the FLSA; and using concentrated sweeps or strike forces to investigate contracting shops.

# # #

News

United States
Department
of Labor

Office of Information

San Francisco, CA 94105

Wage and Hour Division

USDL-171/December 6, 1994

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FOR IMMEDIATE RELEASE

LABOR DEPARTMENT REPORTS FEWER UNDERPAID BAY AREA GARMENT WORKERS

SAN FRANCISCO -- The U.S. Department of Labor credits a combination of tough enforcement teamed with a program of education and cooperation with the industry for a dramatic reduction in the number of underpaid garment workers in the Bay Area.

Investigators with the department's Wage and Hour Division report finding significantly fewer violations of Fair Labor Standards Act provisions which require that employees be paid at least the $4.25 per hour minimum wage and receive overtime pay for hours in excess of 40 in a single workweek, prohibit industrial homework and restrict the types and hours of work which minors can perform.

During the 12-month fiscal year ending September 30, the Wage and Hour Division investigated 54 sewing shops, citing 30 and recovering $240,499 in back wages for 583 workers. In contrast, during the previous year the agency collected $692,529 for 1,297 workers.

Bill Buhl, regional administrator of the Wage and Hour Division here, credits aggressive enforcement by his agency, complemented with an equally intense effort to work within the industry to encourage voluntary compliance. "The Wage and Hour Division has been successful in getting the garment business leaders themselves to join the effort to improve compliance," said Buhl, "and the numbers demonstrate that the industry is definitely turning around."

A year ago, the agency and local trade associations representing manufacturers and sewing contractors unveiled a "master agreement." For manufacturers who use the model contract, such as women's clothing maker Jessica McClintock and children's wear label Mousefeathers, it standardizes and clarifies the working agreement between them and the sewing shops and averts much of the mid-production adjustments which often came out of the paychecks of workers.

More recently, at the urging of Wage and Hour officials, San Francisco-based manufacturers, including high-profile labels such as Byer California and The Gap Inc. have begun monitoring their sewing contractors to prevent violations of federal labor laws. Byer severed business ties with several contractors which failed to comply with wage and hour laws.

The department also contributed "seed" funding and technical assistance to the development of a garment industry curriculum at City College of San Francisco. In January, workers can attend classes to upgrade their skills in new cutting edge technology developed for the garment industry. State and federal workplace laws will be covered in classes for sewing shop owners and managers. The governing board overseeing the college program includes the Labor Department as an advisory

member, as well as the International Ladies Garment Workers Union and representatives of manufacturers and contractors.

Frank Conte, Wage and Hour district director here, heads the office responsible for the day-to-day monitoring and education of the mammoth Bay Area garment industry. His compliance officers keep tabs on the working conditions of an estimated 20,000 workers employed at some 600 sewing shops in the Bay Area's $6 billion-a-year garment business.

"Our efforts to bring this industry into compliance have taken Wage and Hour into areas not typically within the realm of an enforcement agency," said Conte, "but to get to the real problems facing workers we had to become educators and mediators to the industry."

This week Conte's office is presenting awards to the Chinese Bay Area Apparel Contractors Association, the Northern California Chinese Garment Contractors Association, and San Francisco Fashion Industries for convincing member manufacturers and contractors to take steps, such as adopting the master agreement, to see that garment workers are fairly paid.

In January, Conte will begin meeting with officers of major West Coast-based clothing retailers as part of a nationwide effort by the department to get retailers to take a more active role in combating wage abuses. "We want retailers to stop selling illegal goods," said Conte. "The first step is to encourage compliance by their suppliers."

The largest single backwage recoveries over the past year are from three San Francisco manufacturers of adult womens' clothing. They include $38,025 in unpaid overtime for 20 employees of Kwan's Sewing, 4 Duncombe Alley, SF; $31,934 in unpaid minimum and overtime wages for 90 employees of Apple Fashion Inc., 1019 Market St., SF,; and $28,025 in unpaid overtime for 92 employees of Person's Fashion, Inc., 1019 Market St., SF.

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Other garment shop operators who paid backwages include:
In San Francisco:

K & P Sewing	832 Mission Street.	$24,855
David Fashion	164 6th St.	$16,532
So Wan, Inc.	60 Federal St.	$15,249
Mary's Sewing Shop	650 Washington St.	$12,558
Skyblue Sewing Mfg. Co.	1019 Market St.	$8,900
So Chun Sewing Co.	1019 Market St.	$7,459
Wei Ching Sewing	60 Federal St.	$6,834
Sui Yu Sewing	55-A John St.	$5,304
Fashion Elite	60 Federal St.	$4,800
Y.K. Sewing Factory	1364 Pacific Ave.	$4,121
S & A Sewing Co.	1019 Market St.	$3,978
Cheung Fat Sewing	3370 18th St.	$3,264
Yu Lee Sewing	1019 Market St.	$3,094
New Pacific Sewing	722 Broadway	$2,500
Hom's Garment	1457 Powell St.	$2,500
Feigent	650 Washington St.	$1,989
Kimbo Sewing	1067 Market St.	$1,861
Heng Tat Factory	60 Federal St.	$1,547
Alde, Inc.	2525 16th St.	$1,339
Young Fa Sewing	876 Sacramento St.	$1,326

New Wing Sewing Co.	1226 Pacific Ave.	$1,195
Mei Sum Sewing	1019 Market St.	$1,017
Janet Sewing Shop	1356 Mason St.	$1,000
New Evergreen Sewings	1243 Pacific Ave.	$978
L.C. Garments, Inc.	1161 Mission St.	$866
Mansell Garment, Inc.	820 Mission St.	$751
Hikan & Co.	2343 3rd St.	$66
In Oakland:		
B & L Sewing	306 12th St.	$5,000
Linh Sewing Co.	315 15th St.	$1,224
Loong Hop Sewing	506 12th St., #26	$408

# # # #

This information will be made available to sensory impaired individuals upon request. Voice phone: 415/744-6673; OASAM TDD (Telecommunications Device for the Deaf) Message Referral phone: 1-800-347-1099.

News
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EMPLOYMENT STANDARDS ADMINISTRATION

USDL-161/November 2, 1994

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FOR RELEASE: Immediate

SWEEP OF LOS ANGELES AREA GARMENT SHOPS NETS MORE THAN $365,000 IN BACK WAGES AND PENALTIES

WASHINGTON -- Secretary of Labor Robert B. Reich said today that a recent week-long sweep of 44 Los Angeles area sewing shops uncovered $366,000 in back wages owed to more than 800 workers and that almost all of the shops had violated federal labor law.

Approximately $1.2 million in back wages were recovered for Los Angeles area garment workers in 1993 as a result of the department's aggressive enforcement. Nationwide, investigations covering California, New York and Texas identified 10,474 underpaid garment workers, a 52 percent increase over the 6,877 found in 1992. In addition, employers agreed to pay $3.1 million in back wages, up from $2.4 million in 1992.

"Many consumers do not realize that the clothes they buy in department stores may have been made in American sweatshops," Reich said. "We are serving notice that the department will take appropriate steps to assure that employers comply with federal labor laws that protect workers," he continued.

Reich said, "Strict enforcement can deter unscrupulous employers from abusing their workers and serve as a disincentive to employers who would hire illegal immigrants."

The department will also assess civil money penalties against employers previously cited for wage violations.

U. S. Labor Department Wage and Hour Division investigators conducted the unannounced sweep of sewing shops in Los Angeles, Orange and San Bernardino counties during the last week in September. Investigators found violations of the recordkeeping, minimum wage, overtime or child labor provisions of the Fair Labor Standards Act (FLSA).

-more-

The investigations were conducted as part of the Targeted Industries Partnership Program (TIPP) aimed at the garment and agricultural industries in California. Under TIPP, teams of compliance officers representing several state agencies joined with federal investigators and local agencies to check for compliance with a wide range of workplace laws.

Maria Echaveste, national administrator of the Labor Department's Wage and Hour Division, said the garment industry has been the target of an aggressive national program of enforcement and education for more than two years.

"The incidence of worker exploitation in the garment industry is too common and too pervasive to miss," said Echaveste, "and the stepped-up efforts by the Wage and Hour Division, working independently as well as with other agencies, will continue until that situation changes."

Typical findings in nearly all of the cases included employees paid in cash, inadequate records of hours worked and wages paid, employees paid a piece-rate which resulted in an hourly wage less than the federal minimum wage of $4.25 per hour, and improper overtime computations. One shop had no payroll records.

In addition to stepped-up enforcement in the sewing shops, Echaveste said the department is working with manufacturers and retailers to take some responsibility for the fair treatment of workers who produce the goods they sell. Manufacturers are routinely informed of violations by sewing shops working for them. In October the department began meetings with retailers to enlist their help in seeing that the goods they sell are not produced at the expense of underpaid workers.

The Wage and Hour Division is part of the department's Employment Standards Administration.

# # #

News

United States
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Wage and Hour Division

USDL-176/December 21, 1994

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FOR IMMEDIATE RELEASE

$1 MILLION IN BACKWAGES RECOVERED FOR LOS ANGELES GARMENT WORKERS LAST YEAR

SAN FRANCISCO -- During the year ending September 30, the U.S. Department of Labor recovered $1,079,473 in back wages for 3,202 employees of Los Angeles area garment shops.

Bill Buhl, regional administrator of the Labor Department's Wage and Hour Division here said this is the fourth year the garment industry has been the focus of a special effort to curtail the prevalence of underpaid workers. In 1993 Wage and Hour offices in Glendale and Santa Ana collected $1,055,791 for 2,716 workers.

Wage and Hour enforces the Fair Labor Standards Act (FLSA) which requires that workers are paid at least the $4.25 hourly minimum wage and higher pay for overtime work. The act also prevents industrial homework and restricts the type and hours of work minors may perform.

Linda Burleson heads the Wage and Hour district office in San Diego. Her jurisdiction includes the Los Angeles basin counties of Orange, Riverside and San Bernardino. "The causes of the widespread wage abuses in the sewing shops are so deeply imbedded in the nature of the business," explained Burleson, "that the agency has adopted a strategy that goes beyond traditional enforcement to the point of working within the industry to change the way it does business."

Virtually all wage violations occur in the thousands of small sewing shops under contract to assemble garments. The shops are the subject of ongoing, random investigations by federal compliance officers and those found underpaying workers are cited and required to pay backwages calculated by the department.

In addition to recovering backwages for workers, the Wage and Hour Division notifies manufacturers of any goods illegally produced under their name by suppliers. Manufacturers are informed of the "hot goods" provision of the FLSA giving the Labor Department authority to prevent the shipment or sale of any such goods until workers are paid in full.

During the past fiscal year, the division contacted more than 200 Los Angeles manufacturers and encouraged them to voluntarily postpone sale or shipment of goods until workers were paid, and to monitor their contract shops for compliance in the future. During the year, manufacturers advanced more than $250,000 to settle backwage claims against their sewing contractors in order to facilitate the sale of goods.

- more -

Many manufacturers have begun to monitor contractors. Seven have signed formal compliance agreements to collect weekly employment reports from contractors and to pay any wages due employees and not collectable from the contractor. Last week the U.S. District Court in Los Angeles ordered ladies apparel manufacturer Sung Do International, Inc., to sign such an agreement as partial settlement of a Labor Department contempt of court action against the firm for repeated failure to put into place an effective program to monitor suppliers.

Rolene Otero, Wage and Hour district director in Glendale, says contacting manufacturers is producing measurable success. "In our latest series of investigations, which targeted contractors of manufacturers whose contractors had found in violation in the past, we found violations in less than two-thirds of cases," explained Otero, "compared to the 90 percent we normally find in violation during random investigations." Otero attributes the improvement to monitoring on the part of manufacturers.

This fall Labor Secretary Robert Reich launched the newest component of the garment compliance initiative; getting retailers to take more responsibility for the fair payment of garment workers. Otero and Burleson have asked Los Angeles-based retailers to inform their suppliers of federal wage and hour laws; to be watchful for bids which seem too low to allow legal wages; and, to require suppliers to monitor sewing contractors for compliance with the law.

Buhl said Wage and Hour's enforcement activities in the garment industry reflect Labor Department policy of tough, responsible enforcement of laws protecting workers by targeting the worst offenders and deterring violations with significant penalties.

Most wage violations were uncovered as part of the Targeted Industries Partnership Program, or TIPP, strike force, a joint enforcement effort which combines the resources of the Wage and Hour Division, the California Bureau of Labor Standards Enforcement, and Cal-OSHA.

Employers or workers with questions about federal wage and hour laws can contact Wage and Hour Division offices in Glendale at 213/894-2685, San Diego at 619/557-5240, or Santa Ana at 714/836-2156.

# # # #

News

United States
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USDL-66/April 14, 1994

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FOR IMMEDIATE RELEASE

FEDERAL, STATE LABOR AGENCIES RELEASE RESULTS OF COMPLIANCE SURVEY ON GARMENT INDUSTRY

LOS ANGELES -- State and federal labor law enforcement officials today announced the results of a recent survey of basic labor law compliance within the California garment manufacturing industry. The survey indicates that there are widespread violations of the laws relating to employment in the state's sewing shops.

The agencies said a random survey of sewing firms in the state in February and March indicated that workers in this low-paying industry are often paid less than the current minimum wage of $4.25 an hour and often do not receive the appropriate overtime pay. The survey also indicates that nearly one-third of the companies investigated appear to be operating in the underground economy by paying their employees in cash without the appropriate deduction statements. In addition, a significant number of companies investigated had serious health and safety violations.

"It is apparent from the survey results that the employers operating outside of the law are having a significant negative impact on employees, law-abiding employers, and the California taxpayer," said Lloyd W. Aubry, Jr., director of the California Department of Industrial Relations, the parent agency for DLSE and Cal-OSHA. "Clearly, our agencies have been focusing much of our joint enforcement and educational resources on the right industry. While the compliance levels are still totally unacceptable, it is important to note that significant progress has been made over the past two years."

Informal surveys in 1992 showed the level of violations of minimum wage and overtime provisions to be approximately 80 percent. This new survey shows the noncompliance level reduced to 50 percent for minimum wage violations and 68 percent for overtime violations.

"The Labor Department's participation in the federal/state joint enforcement effort in California is part of a nationwide program of tough and responsible enforcement," according to Maria Echaveste, national Wage and Hour Administrator in Washington, D.C. Echaveste, who said she is beefing up the compliance staff of her agency in Los Angeles with five additional bilingual investigators, added that increased educational outreach to employers and employees is also needed.

- more -

The survey was conducted throughout the state by members of the Targeted Industries Partnership Program (TIPP), a joint educational and enforcement activity of the California Division of Labor Standards Enforcement (DLSE), the U.S. Department of Labor, Wage and Hour Division (DOL), and the California Division of Occupational Safety and Health (Cal/OSHA). The intent of the survey was to establish a baseline standard by which to plan future joint enforcement activities in the industry and also to create a standard by which to measure the success of such efforts.

Victoria Bradshaw, State Labor Commissioner, said, "It is apparent from the survey results that no single public agency alone can address the long-standing and wide range of problems found in the industry which were brought on over time by a host of demographic, economic and social forces".

"The industry has historically had a large number of compliance problems which is why we focused on garment manufacturing in the Targeted Industries Partnership Program," Bradshaw added.

TIPP was launched in November, 1992, as a joint enforcement vehicle by the state and federal agencies to increase enforcement efforts in the garment manufacturing and agricultural industries by maximizing existing publicly-funded resources and eliminating any piecemeal or duplicative enforcement efforts.

"If our survey results are indicative of the industry as a whole, then garment workers currently working in the sewing shops are owed tens of millions in back wages," said William Buhl, regional administrator of the Wage and Hour Division of the U.S. Department of Labor.

Governor Pete Wilson's Joint Enforcement Strike Force, created by Executive order W-66-93 to attack the underground economy, has had up to an additional twenty DLSE and EDD investigators doing inspections in the garment manufacturing industry since that joint enforcement program began in February, 1994.

"Although there is no quick fix under the Targeted Industries Partnership Program, we have struck upon an effective method of deterrence through enhanced enforcement using all of those public agencies which share jurisdiction in the garment industry," Bradshaw said. "In order for the garment industry to continue thriving in California, this deterrence must go hand in hand with increased educational and training opportunities for employers in the industry."

The participating agencies in TIPP will be holding a public focus meeting on April 25, 1994 in Los Angeles to continue the involvement of manufacturers and contractors in the process of finding solutions to the compliance problems in the garment industry. TIPP agencies have been working with manufacturers and contractors associations to facilitate compliance in the industry. Additional seminars will foster better compliance by improving the ability of the garment shop contractors to understand and comply with the state and federal labor laws. In conjunction with other state and federal agencies, TIPP is promoting a training initiative designed to upgrade the skills of the garment workers and to afford garment contractors basic management knowledge in operating a small business.

Workers with complaints or questions about their rights under the federal Fair labor Standards Act should contact Wage and Hour Division district offices in Los Angeles at (213) 894-1191 or San Francisco at (415) 744-6617.

# # # #

Bias Found Against Obesity

By Christy Harris
Federal Times Staff Writer

An obese U.S. Postal Service employee won his discrimination complaint before the Equal Employment Opportunity Commission.

John Kellus, who weighs 456 pounds, said he was illegally treated differently because of his disabilities when his human resources director gave him an ultimatum to lose weight or face a fitness-for-duty exam.

Kellus, a distribution clerk in Springfield, Ill., who has worked for the postal service more than 20 years, also has degenerative arthritis in his knees.

The director told Kellus in August 1990 he had three months to lose weight.

In issuing the ultimatum, the agency intentionally discriminated against Kellus because of his disabilities, according to the EEOC decision.

"No other individual, disabled or otherwise, was shown to have been afforded this form of blatant and unjustified disparate treatment," EEOC said.

The director said she was trying to help Kellus improve his health, according to the decision. She said she was concerned about his knee problem that had caused him to be on light duty for several months.

She had been informed by his physicians that he needed an operation, but that they could not perform surgery until he lost a considerable amount of weight.

The director was willing to indefinitely postpone the fitness-for-duty exam if Kellus was losing weight.

But EEOC said her attitude "clearly demonstrates discriminatory animus toward appellant's morbid obesity."

The agency cannot assume without conclusive medical evidence that Kellus' condition is totally voluntary, or that it has the right to force him to "cure" his problem, EEOC said.

> *'Morbidly obese people have the right to accommodation.'*
>
> **John Kellus**

Kellus is entitled to equal treatment in his employment under the Rehabilitation Act regardless of whether he chooses to pursue a particular form of treatment, the commission said.

EEOC ordered the postal service to restore any annual or sick leave Kellus used that was directly related to the ultimatum. The commission also ordered the director to attend training on her legal responsibilities.

"It is a great victory for overweight people," Kellus said in a letter to *Federal Times*. "Morbidly obese people have the right to accommodation."

Kellus lost on three other discrimination complaints based on sex, mental and physical disability and reprisal for EEO activity.

John A. Kellus Jr. vs. U.S. Postal Service, Appeal Nos. 01933281, 01933282, 01933284 and 01933285, June 23, 1994.

Fed. Times 10/26

Gay Policy Critic Reinstated

An Agriculture employee removed from his position because of anti-gay remarks he made on television has been reinstated.

Karl Mertz will be reinstated to his old job as an equal employment opportunity manager for the Agriculture Research Service in Athens, Ga., according to an Oct. 3 letter from Agriculture Secretary Mike Espy.

Mertz was reassigned last March after he told a TV reporter he disapproved of Agriculture's policies on sexual orientation.

Espy said Mertz's "public statements raise serious doubt as to his ability to serve as an EEO manager."

But Espy is reinstating Mertz, pending two actions, because of legislation passed by Congress. The legislation requires employees who have been removed for publicly criticizing department policies before a certain date to be returned to their former positions. These employees also cannot be removed without a public hearing, according to Espy's letter.

Mertz complained to the Office of Special Counsel that his transfer violated his rights to free speech and religious expression.

Meg Walker

Name Alone Can't Prompt Immigration Investigation, Court Says

SAN FRANCISCO, Oct. 22 (AP) — Investigations of people by immigration agents merely because their names sound foreign is unconstitutional, a Federal appeals court ruled on Friday.

The Court of Appeals for the Ninth Circuit also took the unusual step of overturning an order for the deportation of a Nigerian man because it found a serious constitutional violation in the seizure of the man in an apartment building and the search of his room.

The man, Jacob Orhorhaghe, was called to an immigration investigator's attention by a bank employee because his name sounded Nigerian, the court said.

"One cannot rationally or reliably predict whether an individual is an illegal alien based on the sound of his name," Judge Stephen Reinhardt wrote in the 3-to-0 ruling. "Many if not all Americans have 'foreign-sounding' names, depending on which countries of origin we consider foreign."

On Nov. 8, Californians will vote on an initiative that would require state and local officials, health workers and educators to report to immigration authorities anyone they reasonably suspected of being an illegal immigrant.

The ruling on Mr. Orhorhaghe's case should send a message to those responsible for enforcing the initiative, Proposition 187, said his lawyer, James Mayock.

"The proponents think you know an illegal alien when you see him," Mr. Mayock said. He said the ruling was "a protection for people who might have foreign-sounding names."

He said Mr. Orhorhaghe was married to a United States citizen and was seeking legal resident status.

Mr. Orhorhaghe entered the United States legally in October 1982 on a tourist visa that expired 18 days later, the court said.

He was living in Oakland in 1986 when his name was referred to an immigration officer by Karen Muth, a Bank of America investigator, who had encountered it during a credit card fraud investigation and thought it sounded Nigerian.

Michael Smirnoff, an investigator with the Immigration and Naturalization Service, decided to investigate Mr. Orhorhaghe after failing to find his name in a computerized list of those who had legally entered the country after January 1983, the court said.

Cont'd, p. 82

Strengthening Interior Deterrence through Coordinated Worksite Enforcement

Background

The magnet of U.S. employment continues to draw large numbers of illegal migrants. The best way to deter illegal migration is to control this job magnet through vigorous enforcement of employer sanctions and minimum labor standards, combined with strengthened border control. As an essential part of his efforts to reduce illegal immigration, President Clinton directed the Immigration and Naturalization Service (INS) and the Department of Labor (DOL) to establish complementary strategies to increase and improve worksite enforcement. The strategies will augment the existing Memorandum of Understanding (MOU) which fosters cooperation and coordination through Headquarters and field office liaison and joint training, directs improved information exchange and authorizes DOL to issue Warning Notices for Employment Eligibility Verification violations.

Strategy

Effective worksite enforcement must include more rigorous enforcement efforts against employers who knowingly hire unauthorized workers, as well as those who violate basic labor standards. Presently, the INS and DOL are operating under the Memorandum of Understanding noted above. The President's budget for FY 1996 includes a $93 million initiative to reverse years of inattention to enforcement of labor standards and employer sanctions.

Enhancing interior deterrence through coordinated worksite enforcement is a goal shared by both the INS and DOL. This year, INS and DOL are coordinating enforcement efforts by improving the quality of the information shared between local offices, establishing routine liaison, conducting joint seminars for employers, cross-training local INS and DOL investigators and conducting joint enforcement operations. The FY 1996 budget initiative will allow the Administration to (1) strengthen deterrence efforts within the employment community by adding 365 INS investigative personnel to enhance sanctions enforcement and 202 DOL personnel for labor standards enforcement, and (2) focus these intensified efforts within industries historically dependent on illegal labor and located in "targeted deterrence zones."

Implementing the Strategy

The FY 1996 budget initiative will allow the INS to build on activities currently underway in FY 1995 to reduce incentives for illegal migration. These activities include:

FY 1995

- The INS is expanding Operation Jobs within the INS Central Region, which includes Texas, New Mexico, Oklahoma, Colorado, Nevada, Wyoming, Idaho, Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Illinois, Indiana, Iowa, Nebraska, Kansas and Missouri. In this pilot effort, local INS offices coordinate between employers and state and local employment agencies when unauthorized aliens are removed from the workplace during employer sanctions operations. Based upon a thorough evaluation of the pilot, the INS will implement the program nationwide.

- The INS is targeting industries historically dependent on an illegal work force through its National Targeting Plan (NTP). Under this plan, the INS will focus enforcement resources on several of the following high risk industries which have a known history of non-compliance with the employer sanctions provisions:

Farm Labor & Mgt.	Roofing, Siding & Sheet Metal	Gen'l Farm & Field Crops
Misc. Food Prep.	Nursing Care Facilities	Heavy Construction
Apparel/Garment	Landscape & Hortic. Services	Hotels & Motels
Meat Products	Janitorial Services	General Contractors
Forestry	Masonry, Stonework, Tile & Plaster	Eating/Drinking Estab.

- INS has re-emphasized its focus on lead-driven employer sanctions investigations by further reducing the annual number of randomly selected compliance inspections from 3,000 to 500 nationwide.

- The INS is aggressively pursuing employers who continuously and repetitively violate the provisions of the Immigration and Nationality Act (the Act) by conducting follow-up inspections of those entities previously fined or warned.

INS Worksite Enforcement Strategy

- To help employers ensure a legal workforce, the INS is targeting major suppliers of fraudulent documents and employers/employees who knowingly use or receive, counterfeit or falsely make any document for the purpose of complying with employment verification.

- The INS is conducting an enhanced interior enforcement pilot in the Los Angeles and New York districts to determine the most productive and cost efficient ways to improve the effectiveness of employer sanctions enforcement. The comprehensive pilot is tackling the most persistent problems by targeting high-risk industries, repeat employer violators and major suppliers of fraudulent documents. Each office is hiring 15 Immigration Officers, 3 Special Agents, 2 Supervisory Special Agents and 3 clerks, who will focus on employer sanctions enforcement and immigration fraud.

- DOL and INS are building on the existing MOU between the two agencies to further improve communications and data sharing at both the local and national levels, by working to further improve the quality of the DOL referrals and the timeliness of INS feedback, exploring the feasibility of ongoing joint training opportunities, and coordination and development of joint strategies. Further, the INS is increasing enforcement efforts with DOL by dedicating additional investigative resources to pursue DOL referrals.

- The Telephone Verification System (TVS) pilot will expand from 9 to 200 employers concentrated in the Los Angeles area.

- Final regulations are underway to reduce the number of documents acceptable for Form I-9 purposes from 29 to 16.

- The INS is improving internal reporting mechanisms and data sharing, including expanding district and sector office access to the LYNX system, a national database of employer sanctions cases completed since August 1989.

- Through an independent contractor, the INS is developing an integrated interior enforcement strategy, which will clearly define the interactive roles of the various INS enforcement components.

- The Service is developing a new employer outreach and education program.

- The Service is developing and will implement a new Employment Authorization Card with enhanced security features to deter fraud and allow for easier detection of fraudulent documents. Centralized processing of the EAD at a single Service Center will begin in June and will lower production costs, increase service to the public and improve employers' ability to authenticate legitimate documents.

FY 1996

The FY 1996 budget initiative will more than double the investigative resources available for employer sanctions enforcement. The INS will expand its enhanced interior enforcement pilot in each of the seven states that are most heavily impacted by illegal immigration: California, Texas, Arizona, New Jersey, New York, Florida, and Illinois. The majority of the 365 new enforcement positions will be concentrated in these seven states.

- The INS will further expand the TVS pilot to approximately 1000 employers.

- To support the expanded TVS pilot and improve service to state entitlement agencies, the INS will improve the accuracy and timeliness of status information, making it easier for employers to keep a legal work force and for the government to restrict entitlement benefits to authorized individuals.

- The INS will implement several pilots with the Social Security Administration (SSA) to evaluate the feasibility and cost effectiveness of building a National Registry or an Alien Registry (based on the Social Security Number) capability.

- The INS has identified seven metropolitan areas as enforcement **deterrence zones** based on the following factors: (1) the large resident alien population, (2) the large number of employment sites, including a representation of non-complying industry groups, and (3) the relatively large staffing levels of Investigations. These areas include Miami, San Francisco, Los Angeles, Chicago, New York, Newark, and Houston. INS objectives in these areas include: preventing the illegal employment of unauthorized aliens; identifying and removing unauthorized aliens from places of employment; and pursuing an integrated interior enforcement strategy by targeting fraud facilitators and/or alien smuggling organizations having a direct nexus to employer sanctions violations (e.g., organizations that bring aliens into the United States and/or provide an illegal workforce to employers).

- Within the deterrence zones, INS and DOL will establish coordinated Task Force working relationships. These will include sharing information, leads, and investigative results, as well as participating in joint INS/DOL investigations targeting industries identified in the NTP. These investigations should result in civil and/or criminal violations under the jurisdiction of both the INS and DOL. The effectiveness of this operational strategy will be evaluated in one year.

- Field offices within the deterrence zones will regularly utilize the civil document fraud provisions of the Act, at Section 274C, as an additional tool while pursuing employer sanctions investigations. INS will initiate civil document fraud investigations against employees who use fraudulent documents to obtain unauthorized employment and against employers who knowingly accept fraudulent documents in order to "comply" with the provisions of the Act.

Conclusion

By focusing substantial resources on enforcement efforts within the identified high risk industries and concentrating these efforts in the locations most affected by illegal immigration, this plan will notably reduce employment opportunities for unauthorized aliens and reduce incentives for unlawful migration. Additionally, it will provide the INS with the necessary experience to develop and implement a national resource allocation model for the Employer Sanctions Program.

IMMIGRATION AND NATURALIZATION SERVICE

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NUMBER OF PAGES TO FOLLOW: 5

MESSAGE: Following is an updated version of the INS Worksite Enforcement paper which was faxed to you Saturday evening by Anne Veysey, INS Investigations. The update contains a technical change on page 4 that revises the figure of 340 new enforcement positions upward to 365, which is consistent with the figure cited on the front page. It should be noted that this is an aggregate figure which includes supervisors and support personnel in addition to the number of Investigators that will be added as a result of this initiative.

FROM: Park Bramhall, Special Assistant
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RM 7100

146TH STORY of Level 1 printed in FULL format.

States News Service

February 8, 1995, Wednesday

LENGTH: 654 words

HEADLINE: CLINTON BUDGET BACKS CALVERT'S WORKER VERIFICATION PLAN

BYLINE: By Peter Roberson, States News Service

DATELINE: WASHINGTON

BODY:
Among the reams of paper making up President Bill Clinton's budget proposal for 1996, Rep. Ken Calvert, R-Corona, found something he liked -an endorsement of his electronic worker verification program designed to thwart illegal immigrants.

The measure -which calls for a national toll-free number employers can use to verify worker social security numbers -withered in committee after Calvert introduced it late in the 103rd Congress' legislative session.

But now Republicans control Congress and the President's budget shows he's reversed his initial rejection of the system former Texas Congresswoman Barbara Jordan, a Democrat, also backed in a report to Congress last fall.

In the mean time, veteran Sen. Alan Simpson, R-Wyo., also joined the debate introducing his version of an electronic worker verification in a larger immigration bill.

Simpson's bill followed the reintroduction of Calvert's measure by a few weeks. Freshman Rep. Sonny Bono, R-Palm Springs, is a cosponsor.

"People are beginning to pick this up," said Calvert who developed the concept after a conversation with a border patrol agent in Laredo, Texas.

"I feel reasonably confidant we're going to get this thing done one way or another," he said.

Employing an illegal immigrant in the U.S. vilolates an immigration reform law passed in 1986. Sen. Simpson coauthored the measure that calls for employers to ensure tax documents reasonably "appear" to be genuine.

"The problem is, there's a business in this country of producing fraudulent documents," said Calvert.

Under the Congressman's bill, employers will dispense with the "I-9" form mandated by Simpson's reform bill in 1986 in favor of a toll-free call to a database where worker identification can be checked.

Employers will collect a worker's social security number and name matched by a piece of identification only after making the hiring decision. Shortly afterward -a Calvert aide suggests a three-day period -the employer must call the social security database.

If the name doesn't fit the number, the number has been used several times recently or some other problem surfaces, the new employee then has a few days to clear up the problems.

"It's a reasonable, nondiscriminatory way of checking worker eligibility," said Calvert. "It only verifies a document you already carry around in your wallet."

The program outlined in the President's budget proposes $28 million to help the Immigration and Naturalization Service overhaul its records database to make more efficient an existing telephone verification program for green cards.

But the part pleasing Calvert is a call for a pilot program affecting all workers, not just declared resident aliens. It asks the Social Security Administration "to determine how to use Social Security numbers to strengthen verification efforts."

On Monday, the administration trotted out INS Commissioner Dorothy Meissner to defend the new program against charges that making a wealth of personal information available to employers electronically is to invite abuse.

"You can't control how people will use this system," said Cecilia Munoz, of the National Council of La Raza here. "It provides a new vehicle . . . to single out and harass people simply because they look different. The problem is government is not going to be able to prevent that from happening."

A Calvert aide said the Congressman's bill has a provision for criminal penalties against employers who use the toll-free number to screen job applicants. And system users would have to identify themselves with a personal identification number, the aide said, so abuses could be tracked.

But Munoz -who attended the INS briefing where Meissner was delayed by a White House computer that took 50 minutes to clear her even though she's well known to the guards -is not convinced.

Databases often "have enormous amounts of mistakes in them," she said.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: February 8, 1995

164TH STORY of Level 1 printed in FULL format.

National Journal's CongressDaily

February 7, 1995

SECTION: JUDICIARY

LENGTH: 186 words

HEADLINE: Reich Announces Plan To Combat Illegal Immigration

BODY:

Labor Secretary Reich today said he is redirecting staff resources of his department to focus on hiring practices in seven states with the worst illegal immigration problems, and on industries that have historically hired illegal immigrants -- garment, agriculture, fast food and restaurants. At a White House briefing, Reich said the administration's plans "to go after sweatshops" would address the "demand" side of the immigration equation by reducing employer demands for illegal immigrants willing to work for "sub-minimal wages and conditions." INS Director Doris Meissner said the administration soon will submit an immigration bill seeking a national employment verification program, streamlining of deportation procedures, increased penalties for immigrant smuggling and document forgery, new border-crossing fees, wiretap authority for INS and asset forfeiture penalties for illegal immigrants.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: February 7, 1995

133RD STORY of Level 1 printed in FULL format.

December 3, 1994, Saturday, Home Edition

SECTION: Metro; Part B; Page 7; Column 1; Letters Desk

LENGTH: 380 words

HEADLINE: ENFORCEMENT OF LABOR LAWS

BODY:

While we are always appreciative of Robert Scheer's support of our multi-agency labor law enforcement program, we feel he overlooked several important issues in his article ("Instead of 187: Enforcement of Labor Laws," Column Left, Nov. 20).

Scheer recognizes that the almost unrestricted flood of undocumented workers into California has left the state with significant labor law enforcement problems. He then chastises the governor for not using more state taxpayer dollars to rectify a problem created by the failure of the federal government to enforce the borders. His statement that "for the entire state, on a good day, there are only 16 inspectors to enforce the labor laws" implies that these are the only investigators the state has. In fact, the Division of Labor Standards Enforcement currently has 173 professional employees who are responsible for such investigations.

What Scheer does not mention is that the U.S. Department of Labor, which is the federal partner in our multi-agency enforcement effort, has the mandate to enforce the federal wage and hour laws in California. Unfortunately, it has only 62 employees (including investigators, management and clerical staff) in the entire state. Unlike the state, these same Department of Labor investigators have the mandate to check immigration status during investigations.

We would be happy to see increased enforcement in industries attracting undocumented workers, but feel it is time the federal government steps up to the plate and either increases its own enforcement of labor laws or provides funding for the state to do so.

VICTORIA L. BRADSHAW

State Labor Commissioner, San Francisco

*

Once when appraising a factory building, I observed that most of the workers appeared to be Latinos. During the appraisal the owner left me to go speak to a worker whom he addressed in Spanish. When he came back he said, "Any time you can hire $12 worth of work for $6 an hour it's good business." Perhaps anticipating my thoughts as to who these workers were displacing, he said, "Look, you either import the cheap labor or you'll end up exporting the job."

If what this businessman said is true, it's hard to see how these Latino workers are a liability to California.

202ND STORY of Level 1 printed in FULL format.

GAO Reports

June 30, 1994, Thursday

SECTION: GAO REPORT

LENGTH: 21989 words

HEADLINE: WORKPLACE REGULATION - INFORMATION ON SELECTED EMPLOYER AND UNION EXPERIENCES

REQUESTOR: CONGRESSIONAL REQUESTERS

BODY:

Preface

This volume of GAO's report on workplace regulation identifies various characteristics of the 26 major statutes and 1 executive order comprising the framework of federal regulation of the workplace, including

* a brief summary of the statute or the executive order,

* scope of coverage,

* nature of penalties,

* reporting and disclosure requirements of each act or executive order, and

* enforcement.

The 26 statutes and executive order appear in the following order:

* Fair Labor Standards Act

* Davis-Bacon Act

* Service Contract Act

* Walsh-Healey Act

* Contract Work Hours and Safety Standards Act

* Migrant and Seasonal Agricultural Worker Protection Act

* Employee Retirement Income Security Act

* Group health plan continuation coverage provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985

* Unemployment Compensation Program provisions of the Social Security Act

* Family and Medical Leave Act

* Title VII of the Civil Rights Act

* Equal Pay Act (amendment to the Fair Labor Standards Act)

* Executive Order 11246

* Age Discrimination in Employment Act

* Americans with Disabilities Act

* Section 503 of the Rehabilitation Act

* Anti-Retaliatory provision of the Surface Transportation Assistance Act[Assistance Act[1]

* Occupational Safety and Health Act

* Federal Mine Safety and Health Act

* Drug Free Workplace Act

* National Labor Relations Act

* Labor Management Reporting and Disclosure Act

* Railway Labor Act

* Employee Polygraph Protection Act

* Veterans Reemployment Rights law as enacted by the Selective Training and Service Act and related statutes

* Employment provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act

* Worker Adjustment and Retraining Notification Act [[1] This provision is an example of similar provisions in many other statutes-such as the Fair Labor Standards Act, the Occupational Safety and Health Act, and the Employee Retirement Income Security Act-that prohibits employers from punishing employees for exercising certain rights.

A description of our methodology in selecting these statutes is in volume I.

Janet L. Shikles

Assistant Comptroller General

Health, Education, and Human Services Division

Contents

Abbreviations

ADA Americans with Disabilities Act
ALJ administrative law judge
COBRA Consolidated Omnibus Budget Reconciliation Act of 1986
DOL Department of Labor
EEOC Equal Employment Opportunity Commission Family and Medical Leave Act
INS Immigration and Naturalization Service
NLRB National Labor Relations Board
OFCCP Office of Federal contract Compliance Programs
OSHA Occupational Safety and Health Act
SAR summary annual report
SMM summary of material modification
SPD summary plan description

Fair Labor Standards Act (29 U.S.C. 201 et seq.)

Establishes minimum wage, overtime pay, and child labor standards.

Coverage

Covers all employees of employers engaged in interstate commerce or the production of goods for interstate commerce, and that meet a volume-of-business requirement; also covers all employees engaged in interstate commerce or in production of goods for commerce, or in domestic service covered by the law, and all federal, state, and local government employees. Does not apply to businesses with fewer than two employees. 29 U.S. C. 203, 206, 207.

Definitions

Employee: Any individual employed by an employer, including federal government employees, and state and local government employees, except for state and local elected officials and their staff members or personal appointees; but does not include anyone employed in agriculture by their immediate family. 29 U.S.C. 203(e).

Employer: Includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization. 29 U.S.C. 203(d).

Recordkeeping and Disclosure Requirements

Every employer must maintain and preserve payroll records with certain information, including names and addresses of employees, the time and day each employee's workweek begins, each employee's hours worked each workday, total daily or weekly hours, and total wages for each pay period. The records must be maintained for 2 or 3 years depending on the type of record.

Other requirements apply for certain types of employees, such as tipped employees. 29 C.F.R. 516.1.

Enforcement and Penalties

The Secretary of Labor is authorized to supervise the payment of the unpaid minimum wages and overtime compensation. The Secretary may bring an action in any court of competent jurisdiction to recover unpaid minimum wages, overtime compensation, and liquidated damages.

Penalties assessed may be deducted from any sums the United States owes to the person charged, or recovered in an action brought by the Secretary, or ordered by the court and paid to the Secretary. 29 U.S.C. 216(b).

There is a private right of action under the act. However, the employees right to sue is extinguished if the Secretary of Labor elects to sue on their behalf. 29 U.S.C. 216(b),(c).

Any person convicted of willfully violating the act is subject to

a fine of not more than $10,000, or to imprisonment for not more than six months, or both; except that imprisonment is only available when a person has been convicted of a prior willful violation. 29 U.S.C. 216(a).

Any employer who violates the minimum wage or maximum hours provisions is liable to the employee or employees affected in the amount of their unpaid wages and in an additional equal amount as liquidated damages, and is subject to a civil penalty not to exceed $1,000 per violation for repeated or willful violations. 29 U.S. C. 216(b).

Any employer who violates the provisions relating to retaliation against an employee is liable for such legal or equitable relief as may be appropriate, including employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. 29 U.S.C. 216(b).

Any person who violates the provisions of the act relating to child labor, or any regulation issued under that section, is subject to a civil penalty not to exceed $10,000 for each employee who was the subject of such a violation. 29 U.S.C. 216(e).

Davis-Bacon Act (40 U.S.C. 276a et seq.)

Provides for payment of prevailing local wages and fringe benefits to laborers and mechanics employed by contractors and subcontractors on federal government contracts for construction, alteration, repair, painting, or decorating of public buildings or public works.

Coverage

Covers laborers and mechanics of contractors and subcontractors of the United States and District of Columbia governments on contracts in excess of $2,000 for construction, alteration, or repair, including painting and decorating, of public works or public buildings. Does not differentiate by firm size. 40 U.S.C. 276a(a).

Definitions

Laborer or mechanic: Includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. It includes apprentices, trainees, and helpers. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Laborers and mechanics are covered without regard to the nature of their contractual relationship with the contractor or subcontractor. 29 C.F.R. 5.2(m).

Recordkeeping and Disclosure Requirements

Each contractor and subcontractor working on a contract covered by the act is required to furnish weekly statements on the wages paid

each employee. These records must be preserved for 3 years from the date of completion of the contract. 29 C.F.H. 5.5(a)(3).

Enforcement and Penalties

The Department of Labor is authorized to investigate allegations of violations of the act. The contracting agency is authorized to withhold from payment to the contractor amounts by which the contractor or subcontractor underpaid workers under the act. 40 U.S.C. 276a(a). The Comptroller General is authorized to pay underpaid workers from any payments withheld under the contract any wages found to be due. The Comptroller General is further authorized and is directed to distribute throughout the government a list of contractors and subcontractors he finds "disregarded" their obligations to employees under the act; the listed parties are ineligible to do business with the government for 3 years. 40 U.S.C. 276a-2(a).

Contractors and subcontractors who "disregard" the requirements of the act are subject to contract termination, payment of any additional cost for completion of the work, and ineligibility for federal contracts for 3 years. 40 U.S.C. 267a-1, 276a-2(a). Contractors and subcontractors are also subject to civil or criminal penalties for the falsification of records. 18 U.S.C. 1001.

Employees have a private right of action against the contractor to recover wages due when the amount the government has withheld is insufficient. 40 U.S.C. 276a-2(b).

Service Contract Act (41 U.S. C. 351 et seq.)

Provides for payment of prevailing local wages and fringe benefits and safety and health standards for employees of contractors and subcontractors providing services under federal contracts.

Coverage

Covers employees of contractors and subcontractors, the federal and District of Columbia governments on contracts in excess of $2,500 for the furnishing of services. Does not differentiate by firm size. 41 U.S.C. 352.

Definitions

Employer: Any contractor or subcontractor subject to the terms of the act; does not include the U.S. government, its agencies, or instrumentalities. 29 C.F.R. 4.1a.

Recordkeeping and Disclosure Requirements

Contractors and subcontractors performing work subject to the act are required to make and maintain for 3 years from the completion of work records containing basic employment information, including worker classification, number of daily and weekly hours worked, rate of pay and fringe benefits, and any deductions, rebates, or refunds. 29 C.F.R. 4.6(g)(1). The contractor must post notice in a prominent and

accessible place to all employees at the worksite of the requirements of the act regarding payment of compensation and fringe benefits. 29 C.F.R. 4.185.

Enforcement and Penalties

The Department of Labor is authorized to investigate and hold hearings and make findings of fact to enforce the act. The contracting agency has authority to withhold payment due the contractor in order to cover amounts owed underpaid workers. If the payments withheld under a contract are insufficient to reimburse all service employees, the federal government may bring an action against the contractor or subcontractor to recover the balance due. Any sums thus recovered shall be paid directly to the underpaid employees. 41 U.S.C. 352-354; 29 C.F.R. 4.187.

Any violations of the minimum wage or fringe benefit requirements of the act makes the responsible party liable for a sum equal to the amount of any deductions, rebates, refunds, or underpayment of compensation due any employee engaged in the performance of such contract. The contract may upon written notice be canceled and the original contractor will be liable for any additional cost incurred. Willful violators are subject to the sanction of being ineligible for federal contracts for a period of 3 years. 41 U.S.C. 352.

Walsh-Healey Act (41 U.S.C. 35 et seq.)

Provides for labor standards, including wage, hour, safety, and health, for employees working on federal contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment.

Coverage

Covers employees of contractors and subcontractors of the U.S. and District of Columbia government on contracts in excess of $10,000 for the manufacture or furnishing of materials, supplies, articles, or equipment. 41 U.S.C. 35. Protections extend only to employees engaged in or connected to the manufacture, fabrication, assembly, handling, supervision, or shipment of materials required under the contract. It does not apply to office or custodial work, nor to anyone in an executive, administrative, professional, or outside salesperson capacity. Does not differentiate by firm size. 41 C.F.R. 50-201.102.

Definitions

None relevant.

Recordkeeping and Disclosure Requirements

Contractors must keep basic labor records as well as a record of injuries. 41 C.F.R. 50-201.501, 502. Contractors must post notice of the requirements of the act in a prominent and readily accessible place at the worksite. 41 C.F.R. 50.201.101.1.

Enforcement and Penalties

The Department of Labor is authorized to investigate allegations of violations of the act. Any employer, employee, labor or trade organization, or other interested person or organization may report a breach or violation, or apparent violation to the Department. After a report or complaint has been filed, or upon his own motion, the Secretary of Labor may issue a formal complaint stating the charges. Charged parties have the right to a hearing before an administrative law judge. The administrative law judge issues an order including findings of fact and conclusions of law and the amount of damages due (if a violation was found) and whether debarment from federal contracting is warranted. The decision of the administrative law judge is final unless a petition for review is filed within 20 days. 41 U.S.C. 36; 41 C.F.R. 50-203.1-203.12.

Any breach of the act renders the responsible party liable for liquidated damages to the federal government plus whatever damages are owed to any employees under the contract. The federal government has the light to enter into open-market purchases for the completion of the contract and to charge the original contractor any additional cost incurred. 41 U.S. C. 36.

Contract Work Hours and Safety Standards Act (40 U.S. C. 327 et seq.)

Establishes standards for hours, overtime compensation, and safety for employees working on federal and federally financed contracts and subcontracts. It requires an employer on covered contracts to pay time-and-a-half for hours in excess of 40 in a week.

Coverage

Covers laborers and mechanics of contractors and subcontractors of the U.S. and District of Columbia governments and federally financed or assisted contracts and subcontracts except that it does not apply to contracts for transportation, or for transmission of intelligence information, or for purchase of supplies or materials or articles ordinary available in the open market; also does not apply to contracts covered by the Walsh-Healey Act. Does not differentiate by firm size. 40 U.S. C. 329.

Definitions

Laborer or mechanic: Includes at least those workers whose duties are manual or physical in nature, as distinguished from mental or managerial, and includes watchmen and guards. Laborers and mechanics are considered employed regardless of any contractual relationship with the contractor - even if they are independent contractors of the contractor, they are considered "employed by" contractors and are covered by the act to the extent that they perform the duties of a laborer or mechanic. 40 U.S.C. 329; 29 C.F.R. 5.2(m),(o).

Recordkeeping and Disclosure Requirements

Each contractor and subcontractor engaged in construction work covered by the act is required to furnish weekly statements of the wages paid each of its employees who worked during the preceding weekly payroll period. These records must be preserved for 3 years from date of completion of the contract. 29 C.F.R. 3.3.

Enforcement and Penalties

The Secretary of Labor has authority to sue to enforce compliance with safety standards. 40 U.S.C. 330.

Designated inspectors report violations to the government, together with names of workers who were permitted or required to work in violation of the act. Amount of unpaid wages and liquidated damages are administratively determined and that amount may be withheld from payment to contractor. Employers have the right to appeal the withholding of money as liquidated damages to the head of the agency for which the contract work was done. 40 U.S.C. 330.

Employers who fail to pay proper overtime wages are liable for unpaid wages and liquidated damages of $10.00 per day for each employee who should have been paid overtime wages but was not so paid. 40 U.S.C. 328(b)(2).

Anyone who intentionally violates any provision of the act is guilty of a misdemeanor and subject to a fine of up to $1,000, imprisonment for up to 6 months, or both. 40 U.S.C. 332.

For noncompliance with safety standards, contract may be canceled by contracting agency and contractor may be charged additional costs for new contract to complete the work called for under the old contract. 40 U.S.C. 333(b).

For aggravated or willful or grossly negligent violations of the act, contractor/subcontractor is subject to disbarment for a period not to exceed three years. 40 U.S.C. 330(d); 29 C.F.R. 5.12(a)(1).

Employees have a private right of action against the contractor to recover wages due when the amount the government has withheld is insufficient. 40 U.S.C. 330(b).

Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.)

Provides protections for migrant and seasonal agricultural workers in their dealings with farm labor contractors, agricultural employers, agricultural associations, and providers of migrant housing.

Coverage

Applies to agricultural employers generally-i.e., any person who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed, or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or

transports any migrant or seasonal agricultural worker. 29 U.S.C. 1802(2). Covers individuals employed in agricultural employment of a seasonal or other temporary nature, who are required to be absent oven-tight from their permanent place of residence; does not include any immediate family member of an agricultural employer or a farm labor contractor, or any temporary non-immigrant alien who is authorized to work in agricultural employment in the United States under the act. 29 U.S.C. 1802(8).

Definitions

Employer: Meaning as found in the Fair Labor Standards Act-i.e., includes any person acting directly or indirectly in the interest of any employer in relation to an employee.

Employee: Meaning as found in the Fair Labor Standards Act- i.e., any individual employed by an employer.

Recordkeeping and Disclosure Requirements

Each farm labor contractor, agricultural employer, and agricultural association that recruits any migrant agricultural worker is required to ascertain and disclose in wilting to each such worker who is recruited for employment the following information: place of employment; wage rates to be paid; crops and kinds of activities on which the worker may be employed; period of employment; transportation, housing, and any other employee benefits to be provided, and any costs to be charged for each of them; existence of any strike or other work stoppage, slowdown, or interruption of the operations by employees at the place of employment; and the existence of any arrangements with any owner or agent of any establishment in the area of employment under which the farm labor contractor, the agricultural employer, or the agricultural association is to receive a commission or any other benefit resulting from any sales by such establishment to the workers. 29 U.S. C. 1821, 1831.

Each farm labor contractor, agricultural employer, and agricultural association that employs any migrant agricultural worker is required to post in a conspicuous place at the place of employment a poster provided by the Secretary setting forth the rights and protections afforded such workers under the act, including the right of a migrant agricultural worker to have, upon request, a written statement provided by the farm labor contractor, agricultural employer, or agricultural association of the information described in this section. 19 U.S.C. 1821, 1831.

Each farm labor contractor, agricultural employer, and agricultural association that provides housing for any migrant agricultural worker is required to post in a conspicuous place or present to such worker a statement of the terms and conditions, if any, of occupancy of such housing. 20 U.S.C. 1821,1823.

Each farm labor contractor, agricultural employer, and agricultural association that employs any migrant agricultural worker is required, with respect to each such worker, to make, keep, and

preserve records for 3 years of the following information: the basis on which wages are paid; number of piecework units earned, if paid on a piecework basis; number of hours worked; total pay period earnings; specific sums withheld and the purpose of each withholding. The employers also are required to provide each worker, for each pay period, an itemized written statement of this information. 29 U.S.C. 1821,1823.

Each farm labor contractor is required to provide to any other farm labor contractor, and to any agricultural employer and agricultural association to which such farm labor contractor has furnished migrant agricultural workers, copies of all records with respect to each such worker that such farm labor contractor is required to retain. The recipient of such records is required to keep them for a period of 3 years from the end of the period of employment. 29 U.S.C. 1821, 1823.

Enforcement and Penalties

The Department of Labor has authority to enforce the act. The Secretary of Labor may petition any appropriate district court of the United States for temporary or permanent injunctive relief if the Secretary determines that the act, or any regulation under the act, has been violated. 29 U.S.C. 1852.

The Secretary may impose a civil money penalty of not more than $1000 for each violation of the act or any regulation. 29 U.S.C. 1853(a). The person assessed has the right to a hearing before an administrative law judge. If no hearing is requested, the assessment constitutes a final and unappealable order. If a hearing is requested, the initial agency decision is made by an administrative law judge, and such decision becomes the final order unless the Secretary modifies or vacates the decision. A final order may be appealed to federal district court within 30 days from the date of such order. 29 U.S.C. 1853(c),(d).

Any person who willfully and knowingly violates the act or any regulation under the act is subject to a fine of not more than $1000 or imprisonment for a term not to exceed one year, or both. Conviction for any subsequent violation of the act or any regulation subjects person to a fine of not more than $10,000 or prison for a term not to exceed three years, or both. If a farm labor contractor who commits a violation of section 1816 (prohibition on hiring illegal aliens) has been refused issuance or renewal of, or has failed to obtain, a certificate of registration, or is a farm labor contractor whose certificate has been suspended or revoked, the contractor, upon conviction, is subject to a fine of not more than $10,000 or imprisonment for a term not to exceed three years, or both. 29 U.S.C. 1851.

There is a private right of action for employees under the act. Any person aggrieved by a violation of the act or any regulation under the act by a farm labor contractor, agricultural employer, agricultural association, or other person may file suit in any district court of the U.S. having jurisdiction of the parties. If the court finds that the respondent has intentionally violated any

provision of the act or any regulation under the act, it may award damages up to and including an amount equal to the amount of actual damages, or statutory damages of up to $500 per plaintiff per violation, or other equitable relief. In determining damages to be awarded, the court is authorized to consider whether an attempt was made to resolve the issues in dispute before the resort to litigation. Any civil action brought under this section is subject to appeal. 29 U.S.C. 1854.

Employee Retirement Income Security Act (29 U.S.C. 1001 et seq.)

Establishes uniform standards for employee pension and welfare benefit plans, including minimum participation, accrual, and vesting requirements, fiduciary responsibilities, and reporting and disclosure requirements.

Coverage

Applies to any employer or employee organization, or both, engaged in commerce or any industry affecting commerce, that maintains a covered employee benefit plan. Does not differentiate by firm size. 29 U.S. C. 1003.

Definitions

None relevant.

Recordkeeping and Disclosure Requirements

Every person subject to a reporting and disclosure requirement must maintain records of sufficient detail for matters of disclosure for a period of not less than 6 years. Plan administrators must generally file an annual financial report (Form 5500) and file a summary plan description (SPD) every 5 years or every 10 years if no changes; receive a summary of material modification (SMM). The plan administrator is required to furnish each plan participant or beneficiary receiving benefits a summary annual report (SAR) of financial information and an SPD when he or she becomes a participant in the plan, or every 5 years if there have been modifications or changes in the plan, or every 10 years if there have been no changes; and must give an accrued benefit statement to the participant upon request. In addition, the plan administrator must disclose copies of the plan, relevant plan documents, collective-bargaining agreements, and certain other relevant materials upon request of plan participant or beneficiaries. 29 U.S.C. 1021-1027.

Enforcement and Penalties

The Department of Labor has authority to enforce the act. The Secretary may assess civil monetary penalties. There are no punitive damages available. Civil money penalties are available for failure to furnish participant requested materials, failure to file annual reports, and for prohibited transactions involving plans not covered by 4975 of the Internal Revenue Code. 29 U.S.C. 1132.

Willful violation of the reporting and disclosure provisions subject a person to a fine of not more than $5,000, imprisonment not to exceed 1 year, or both, except when not an individual, the fine may not exceed $100,000. 29 U.S.C. 1131.

There is a private right of action under the act. A civil action may be brought by a participant, beneficiary, or by the Secretary of Labor for civil or equitable relief or to enforce provisions of the law. 29 U.S.C. 1132(g).

Group Health Plans Continuation Coverage Under the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (29 U.S.C. 1161 et seq.)

Requires employer-sponsored group health plans to allow employees who would lose coverage as a result of certain events to continue coverage at their own expense for up to 18 months.

Coverage

Applies to all group health plans, except those for which employer maintaining the plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year. 29 U.S.C. 1161.

Definitions

None relevant.

Recordkeeping and Disclosure Requirements

None

Enforcement and Penalties

Under 162(i)(2) of the Internal Revenue Code, if an employer plan fails to comply with the continuation coverage requirements, the employer is subject to losing income tax deductions for all of its group health insurance expenses. A plan administrator who fails to comply With COBRA'S notice requirements is subject to a fine of up to $100 per day. 29 U.S.C. 1132(c).

There is a private right of action under the act, individual participants or beneficiaries may sue to enforce their rights to continuation coverage. 29 U.S.C. 1132(a).

Unemployment Compensation Act Provisions of the Social Security Act (42 U.S. C. 501 et seq.)

Authorizes federal grants for state unemployment compensation administrations and provides the general framework for the operation of state unemployment compensation program.

Coverage

Determined by state law.

Definitions

No relevant definitions in federal statute.

Recordkeeping and Disclosure Requirements

Determined by state law.

Enforcement and Penalties

Penalties against individuals are determined by state law.

Family and Medical Leave Act (29 U.S.C. 2601 et seq.)

Requires employers to allow employees to take up to 12 weeks of unpaid, job-protected leave to take care of a sick child, spouse, or parent; for the birth or adoption of a child; or for the employee's own serious health condition.

Coverage

Applies to all employers who have 50 or more employees who work 20 or more calendar weeks in the current or preceding year, and whose businesses affect commerce. 29 U.S.C. 2611(4)(A).

Definitions

Eligible employee: An employee who has been employed (i) for at least 12 months by the employer with respect to whom leave is requested and (ii) for at least 1,250 hours of service with such employer during the previous 12-month period; does not include any federal officer or employee covered by another law or any employee at a worksite where the employer stations fewer than 50 people if the total number of company employees within 75 miles of that worksite is fewer than 50. 29 U.S.C. 2611(2).

Employer: Any person engaged in commerce or in any industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year; includes (i) any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer; (ii) any successor in interest of an employer; and (iii) any "public agency" as defined by the Fair Labor Standards Act. 29 U.S.C. 2611(4).

Recordkeeping and Disclosure Requirements

Employers are required to make, keep, and preserve records pertaining to compliance with this act in accordance with the Fair Labor Standards Act. The regulations state that records will not be required for submission more than once during any 12-month period, unless there is reasonable cause to believe a violation of the act has occurred or the Department of Labor has a complaint. There is no order or form required. Employers must keep the following records:

(1) basic payroll and identifying employee data; (2) dates that leave covered by the act is taken; (3) if leave is taken in increments of less than one full day, the hours of the leave; (4) copies of the employee notices of leave furnished to the employer under act, if in writing, and copies of all general and specific notices given to employees as required under the act and the regulations; (5) any documents describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leaves; (6) premium payments of employee benefits; and (7) records of any dispute between the employer and an employee regarding designation of leave as leave under the act, including any written statement from the employer or employee of the reasons for the designation and for the disagreement.

Each employer is required to post and keep posted a notice, to be prepared or approved by the Secretary, setting forth excerpts from, or summaries of, the pertinent provisions of the act and information pertaining to the filing of a charge. 29 U. S.C. 2619.

Enforcement and Penalties

The Secretary of Labor has the same investigative authority as provided under the Fair Labor Standards Act. 29 U.S.C. 2616.

Procedures for complaint resolution and investigations under the Fair Labor Standards Act must be followed in handling complaints under the act. 29 U.S.C. 2616(b)(1).

District courts have jurisdiction, for cause shown, in an action brought by the Secretary (1) to restrain violations, including restraint of any withholding of payment of wages, salary, employment benefits, or other compensation, plus interest, found by the court to be due eligible employees; or (2) to award such other equitable relief as may be appropriate including employment, reinstatement, and promotion. 29 U.S.C. 2617(d).

Any employer who violates the rights provided employees under this law is liable to any eligible employee for damages equal to the amount of any wages, salary, employment benefits, or other compensation denied or lost due to a violation; or in a case in which wages, salary, employment benefits, or other compensation have not been denied or lost, any actual monetary losses sustained by the employee as a direct result of the violation, such as providing care, up to a sum equal to 12 weeks of wages or salary for the employee; and the interest on the amount described above calculated at the prevailing rate; and an additional amount as liquidated damages equal to the sum of the amount described above and the interest described above, except that if an employer who has violated the act proves to the satisfaction of the court that the act or omission was in good faith and that the employer had reasonable grounds for believing that the act or omission was not in violation of the act, the court may reduce the amount of the liability. 29 U.S.C. 2617(a)(1).

An action to recover damages or equitable relief may be maintained against any employer (including a public agency) in any federal or state court of competent jurisdiction by one or more employees for and on behalf of (a) the employees; or (b) the employees

and other employees similarly situated. 29 U.S.C. 2617(a)(2).

There is a private right of action under the act. Eligible employees who are not permitted to take leave or who are denied reinstatement at the end of the leave, in violation of the act, may Me a complaint with the Department of Labor or file a private lawsuit against the employer to obtain damages and other relief. However, this right is terminated if the Secretary of Labor elects to file suit. 29 U.S.C. 2617(a)(4).

Title VII of the Civil Rights Act (42 U.S.C. 2000e et seq.)

Prohibits employment or membership discrimination by employers, employment agencies, and unions on the basis of race, color, religion, sex, or national origin; prohibits discrimination in employment against women affected by pregnancy, childbirth, or related medical condition.

Coverage

Applies to all industries. However, does not apply to an employer with respect to the employment of aliens outside any state, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. 42 U.S.C. 2000e-1. Does not apply to employers with fewer than 15 employees for each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person. 42 U.S.C. 2000e (b).

Definitions

Employee: One employed by the employer, but does not include any person elected to public office in any state or political subdivision, or any of an elected official's personal staff, or an appointee on the policymaking level, or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. 42 U.S.C. 2000e(f).

Employer: A person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but does not include (1) the United States, a corporation wholly owned by the federal government, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service; or (2) a bona fide private membership club (other than a labor organization) that is exempt from taxation under the Internal Revenue Code. 42 U.S.C. 2000e(b).

Recordkeeping and Disclosure Requirements

There are several standard reports required by the Equal Employment Opportunity Commission. Employers having 100 or more

employees, certain joint labor-management committees, local unions that have 100 or more members, state and local governments, elementary and secondary schools that have 15 or more employees, and institutions of higher education that have 15 or more employees, are all required to Me different reports containing information relating to employment practices. The Commission retains the right to ask for additional information and requires employers to keep records for 1-3 years. 29 C.F.R. 1602.

Enforcement and Penalties

The act established the Equal Employment opportunity Commission, which is empowered to prevent anyone from engaging in unlawful employment practices, i.e., employment discrimination based on race, color, religion, sex or national origin. Aggrieved parties have the right to file a complaint with the Commission based on an unlawful employment practice. The Commission is empowered to investigate the claim, and if the Commission determines that there is reasonable cause to believe the charge is true, it is required to attempt to eliminate the unlawful practice by informal methods of conference, conciliation, and persuasion. If the Commission is unable to secure a conciliation agreement, it may bring a civil action against any respondent named in the charge. Where the respondent is a government, governmental agency or political subdivision, the Commission must refer the charge to the Attorney General, who may bring a civil action against the respondent. 42 U.S.C. 2000e-5(b).

In the case of an alleged unlawful employment practice occurring in a state or one of its political subdivisions, which has a state or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a state or local authority to grant or seek relief from such practice or to institute criminal proceedings. No charge may be filed by the person aggrieved before the expiration of sixty days after proceedings have been commenced under state or local law unless such proceedings have been earlier terminated. 42 U. S.C. 2000e-5(c).

If within 30 days after a charge has been filed with the Commission or within 30 days after expiration of any deferral period the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or a political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, government agency, or political subdivision. If a charge filed with the Commission has been dismissed by the Commission or if the Commission fails to file a civil action within a specified period, or the Commission has not entered into a

conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within 90 days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. 42 U.S.C. 2000e-5(f)(1).

Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of the act, the Commissioner, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of charge. 42 U.S.C. 2000e-5(f)(2).

If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay, or any other equitable relief as the court deems appropriate. 42 U.S.C. 2000e-5(g).

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full employment of any of the rights secured by the act, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights provided, the Attorney General may bring a civil action in the appropriate district court of the United States. 42 U.S.C. 2000e-6(a).

There is a private right of action under the act. In any case where the Commission or the Attorney General does not bring a civil action, the charging party may bring a civil action in federal district court against the respondent. 42 U.S.C. 2000e-5(f)(1).

Equal Pay Act (29 U.S.C. 206(d))

Prohibits discrimination on the basis of sex in the payment of wages.

The Equal Pay Act was an amendment to the Fair Labor Standards Act in 1963. For information, see the Fair Labor Standards Act discussions. Under 29 U.S.C. 206(d)(3), wages withheld in violation of the equal pay provisions are deemed to be unpaid minimum wages or unpaid overtime compensation under the Fair Labor Standards Act.

Executive Order 11246

Prohibits discrimination against an employee or applicant for employment on the basis of race, color, religion, sex, or national

origin by federal contractors and subcontractors, and requires the contractors and subcontractors to take affirmative action to ensure that employees and applicants are treated without regard to race, color, religion, sex, or national origin.

Coverage

Applies to contractors and subcontractors who perform government contracts or federally assisted construction contracts that total at least $10,000 in a 12-month period. 41 C.F.R. 60-1.1, 60-1.5. The order applies to firms of all sizes. Non-construction contractors with 50 or more employees and federal contracts in excess of $50,000 have greater affirmative action obligations. There are some exemptions. For example, religiously oriented schools may employ employees of a particular religion if the organization is, in whole or part, owned, managed, supported, or controlled by a particular religion or religious corporation. Contractors on or near Indian reservations may publicly announce a preference in employment for Native Americans living on or near the reservation. 41 C.F.R. 60-1.5.

Definitions

None relevant.

Recordkeeping and Disclosure Requirements

Covered employers are required to file Standard Form 100 (EEO-1) annually. 41 C.F.R. 60-1.7.

The Director of the Office of Federal Contract Compliance Programs (OFCCP) or the applicant (for federal assistance involving a construction contract) may require the employer to keep employment or other records and to furnish, in the form requested, within reasonable limits, such information as the Director or the applicant deems necessary for the administration of the order. 41 C.F.R. 60-1.7(a)(3).

Federal agencies are directed to require each bidder or prospective prime contractor and proposed subcontractor, where appropriate, to state in the bid or in writing at the outset of negotiations for the contract: (i) whether it has developed and has on file at each establishment affirmative action programs; and (ii) whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and (iii) whether it has filed all reports due under the applicable filing requirements. 41 C.F.R. 60-1.7(b).

Special recordkeeping requirements exist for nonconstruction contractors with 50 or more employees and a contract in excess of $50,000, for construction contractors, and with respect to employee selection procedures used by all covered contractors. 41 C.F.R. 60-2, 60-3, and 60-4.

Enforcement and Penalties

The Director of OFCCP, Department of Labor, is responsible for

enforcing the order. Violations of the order, equal opportunity contract clause, the regulations, or applicable construction industry equal employment opportunity requirements, may result in the institution of administrative or judicial proceedings to enforce the order. Violations may be found based on (i) a complaint investigation; (ii) analysis of an affirmative action program; (iii) the results of an on-site review of the contractor's compliance with the order and its regulations; (iv) a contractor's refusal to submit an affirmative action program; (v) a contractor's refusal to allow an on-site compliance review; (vi) a contractor's refusal to supply records or other information as required by regulations or construction industry requirements; (vii) any substantial or material violation or the threat of a substantial or material violation of the contractual provisions of the order, or of the rules and regulations. 41 C.F.R. 60-1.26(a).

If the investigation of a complaint, or a compliance review, results in a determination of violation, and the violations have not been corrected in accordance with conciliation procedures, OFCCP May institute an administrative enforcement proceeding to enjoin the violations, to seek appropriate relief (which may include back pay), and to impose sanctions. If the contractor refuses to submit an affirmative action program, or refuses to supply records or other requested information, or refuses to allow the compliance agency access to its premises for an on-site review, and if conciliation efforts are unsuccessful, OFCCP may go directly to administrative enforcement proceedings to enjoin the violations, and impose appropriate sanctions. 41 C.F.R. 60-1.26(a)(2).

Whenever the Director has reason to believe that there is substantial or material violation of the contractual provisions of the order or of the rules or regulations he or she may refer the matter to the Solicitor of Labor to institute administrative enforcement proceedings or refer the matter to the Department of Justice to enforce the contractual provisions of the order, to seek injunctive and/or other relief, including back pay. 41 C.F.R. 60-1.26(a)(2).

If it is determined after a hearing (or after the contractor has waived a hearing) that the contractor is violating the order or the regulations, the Secretary shall issue an administrative order enjoining the violations and requiring the contractor to provide whatever remedies are appropriate, and imposing whatever sanctions are appropriate. 41 C.F.R. 60-1.26(d).

Whenever a matter has been referred to the Department of Justice for consideration of judicial proceedings, the Attorney General may bring a civil action in the appropriate federal district court, requesting a temporary restraining order, preliminary or permanent injunction, and an order for such additional relief, including back pay, deemed necessary or appropriate to ensure the full employment of the lights secured by the order. 41 C.F.R. 60-1.26(e).

The Attorney General may, subject to approval by the Director, initiate independent investigations of employers he/she has reason to believe may be in violation of the order. If, upon investigation, the

Attorney General determines that a violation has taken place, he shall make reasonable efforts to secure compliance with the contract provisions of the order. If the efforts are unsuccessful, the Attorney General may, with the approval of the Director, bring a civil action in the appropriate federal district court. 41 C.F.R. 60.1.26(f).

The Director shall distribute periodically a list to all executive agencies and departments giving the names of prime contractors and subcontractors who have been declared ineligible for contracts under the regulations and the order. 41 C.F.R. 60-1.30.

Violations of the order may result in the institution of administrative or judicial enforcement proceedings. The order is enforced primarily through administrative proceedings instituted by OFCCP to enjoin violations, obtain make-whole relief, and impose federal contract sanctions, including contract cancellation, suspension, or debarment. Violations may be referred to the Department of Justice for enforcement. 41 C.F.R. 60-1.26(e)(3).

Age Discrimination in Employment Act (29 U.S. C. 621 et seq.)

Prohibits discrimination on the basis of age against people 40 years and older, in employment and employee benefits.

Coverage

Applies to all employers engaged in industry affecting commerce who have 20 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. Covers only employees aged 40 and older. 29 U.S. C. 623, 630.

Definitions

Employer: A person engaged in an industry affecting commerce who has 20 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. The term also means (1) any agent of such person and (2) a state or political subdivision of a state, and any agency or instrumentality of a state or political subdivision of a state, and any interstate agency, but such term does not include the United States or a corporation wholly owned by the United States. 29 U.S.C. 630(b).

Employee: An individual employed by any employer except that the term shall not include any person elected to public office in any state or political subdivision of any state by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set out above does not include employees subject to the civil service laws of a state government, government agency, or political subdivision. The term "employee" includes any individual who is a citizen of the United States employed by an employer in a workplace in a foreign country. 29 U.S.C. 630(f).