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COMMITTEES
CHAIR, LABOR AND EMPLOYMENT
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HUMAN SERVICES
INSURANCE
PRIVACY AND CONSUMER PROTECTION

March 19, 2024

The Honorable Gregg Hart
Chair, Joint Legislative Audit Committee
1020 N Street, Room 107
Sacramento, CA 95814

Dear Chairman Hart,

I respectfully request that the Joint Legislative Audit Committee approve an urgent audit of the Division of Occupational Safety and Health, or Cal/OSHA, to determine the cause(s) of the division's inability to protect workers from hazardous working conditions and the ineffectiveness of the fine collection process.

I am not looking to blame an understaffed or overworked public agency. I am interested in understanding structural deficiencies in the current inspection and enforcement models in order to develop more effective policies.

The Assembly Labor and Employment Committee held an informational hearing on February 7th where we heard from countless farmworkers about how Cal/OSHA has failed to protect them from health and safety violations. Workers testified to unsanitary working conditions, lack of personal protective equipment, employer retaliation, long delays in receiving a response after filing a complaint, and even never hearing from Cal/OSHA after filing a complaint.

Those stories were supported by research highlighting the differential in complaints and their resolution based on the educational and economic status of workers.

The pervasive problems within Cal/OSHA do not only affect farmworkers. These problems are systemic and prevent the division from adequately enforcing labor laws, leaving millions of Californians without support from the state agency that is designed to help them when they face unsafe and hazardous working conditions and placing additional stress on our Workers' Compensation system.

While we are all aware that the division has experienced persistent staffing shortages for decades, that is not the focus of this audit request. Cal/OSHA's inability to collect the fines it has assessed against offending employers is also undermining workers' health and safety. As reported by the Sacramento Bee, in 2021, Cal/OSHA inspectors ordered \$4.6

million in fines related to COVID-19 safety violations in approximately 200 workplaces. A year later, a meager 3% of the total fines had been paid. In addition, four out of five of the cited employers were in the process of appealing their citations. This means that employers fined by Cal/OSHA can wait out the appeals process, pay nothing in the interim, and ultimately settle for pennies on the dollar.

Based on the division's inability to enforce health and safety laws and protect workers in the most basic way, an audit is necessary to determine the root cause(s) of such failures. The issues I request that the audit review are as follows:

1. Determine the number of workplace complaints that were filed and how many were inspected in the most recent five years for which data is available.
2. Examine what kind of complaints were made.
 - a. Harassment, unsafe working conditions, etc.
3. Examine what factors determine which cases receive an investigation.
4. Determine how long the average complaint process takes from the filing of the complaint to the issue being investigated and then closed and how many complaints led to a citation and/or a fine being assessed to the employer.
5. Determine how many fines were assessed, how many fines were collected from employers, and the ratio of assessed fines to those collected in the most recent five years.
6. Determine the average fine amount assessed versus the fine amount collected for the most recent five years for which data is available.
7. Review the practice of employers negotiating down the amount of their fines.
8. Examine whether the current fine amounts serve as an effective tool to encourage greater compliance with health and safety laws.
9. Examine which industry(ies) has experienced the most frequent workplace violations (farmworkers, restaurant workers, construction workers, etc.) in the most recent five years for which data is available.
10. Examine the demographics of the workers making workplace violation complaints (race/ethnicity, age, gender, and immigration status).

11. Determine how much available funding there is due to staff vacancies and where that funding is.

- a. Is it being used for other department purposes? If yes, what are those purposes?

Thank you for your consideration of this request. For any questions, please contact my Legislative Director, Stephanie Gerstle Esparza, at Stephanie.GerstleEsparza@asm.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Liz Ortega", with a stylized flourish at the end.

LIZ ORTEGA
Assemblymember, 20th District