

**Department of Labor and Workforce Development
and Related Entities**

March 2004

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John G. Morgan
Comptroller

March 25, 2004

The Honorable John S. Wilder
Speaker of the Senate
The Honorable Jimmy Naifeh
Speaker of the House of Representatives
The Honorable Thelma M. Harper, Chair
Senate Committee on Government Operations
The Honorable Mike Kernell, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Department of Labor and Workforce Development and Related Entities. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the department and the related entities should be continued, restructured, or terminated.

Sincerely,

John G. Morgan
Comptroller of the Treasury

JGM/dlj
03-070

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
**Department of Labor and Workforce Development
and Related Entities**
March 2004

AUDIT OBJECTIVES

The objectives of the audit were to determine the department's and the entities' legislative mandates and the extent to which they have carried out those mandates efficiently and effectively and to make recommendations that might result in more efficient and effective operation of the department and the related entities.

FINDINGS

The Department Should Further Explore the Use of Direct Deposit or EBT (Electronic Benefits Transfer) Services for Its Unemployment Insurance (UI) Benefits Checks

The department's Employment Security Division is responsible for administering the Unemployment Insurance program that provides weekly benefits to unemployed individuals who have lost their job through no fault of their own and have qualifying wages in the base period. Between September 1, 2002, and August 31, 2003, the department issued over 3.5 million checks, amounting to over \$731 million. Several other states' Unemployment Insurance programs already use direct deposit for their UI benefits checks, and some other Tennessee state agencies (e.g., the Departments of Human Services and Treasury) use direct deposit or EBT services for their clients. When asked about the possibility of using direct deposit for unemployment compensation benefits checks, Department of Labor and Workforce Development management expressed concerns about the cost and feasibility of the process. However, the department was unable to provide documentation supporting its concerns. In addition, the department had not formally evaluated the costs and benefits of using direct deposit or Electronic Benefits Transfer for unemployment insurance benefits (page 30).

The Department Does Not Have a Formal, Written Conflict-of-Interest Policy for Its Board, Committee, Commission, and Council Members*

This is a repeat finding from the January 2000 audit of the Department of Labor. At that time, we recommended that the department develop a formal, written policy regarding potential conflicts of interest by its board members. The department concurred and indicated in its response to the audit that it would develop a written policy and disclosure statement. No statute requires written disclosure; however, without a means of identifying potential conflicts of interest and discussing and resolving them before they have an impact on decisions, members could be subject to questions concerning impartiality and independence (page 33).

The Labor Standards Division Needs to Be Consistent in Assessing Penalties and Needs Time Guidelines for Inspection Case Closure and Violation Correction*

The January 2000 audit found that the Labor Standards Division lacked guidelines concerning penalty assessments and time frames for investigations and correction of violations. We recommended that the division establish specific guidelines for assessing penalties for violations of the child labor and wage regulation laws and specific time guidelines for the handling and closure of investigations and for the correction of violations, depending on their severity. Based on our work during the current audit, we found that the Labor

Standards Division needs to be consistent when determining the amount of penalties to assess for violations of the child labor and wage regulation laws. In addition, the division needs written policies detailing time frames for investigation closure and correction of violations. Written guidelines could help ensure that penalties are assessed consistently and that violation correction time frames are applied consistently for similar violations. Guidelines regarding investigation time frames would help ensure that staff understand management's expectations and provide criteria for management in assessing program and employee performance (page 35).

As Previously Noted in Our 2000 Audit, the Labor Standards Division Is Still Not Assessing Penalties (Which Were Authorized in 1996) for Wage Regulation Violations*

During work on the 2000 audit, the division director stated that penalties had not been assessed because in most cases the employer immediately corrected the problem. Additionally, managers stated that the department's philosophy is to focus on achieving compliance with laws rather than punishing employers who do not comply. Auditors noted that this seemed to be a reasonable focus and that assessing penalties against unintentional, or even first-time, violators may be counterproductive. However, auditors recommended the department use its statutory authority to assess penalties in cases of

repeat violators or employers who clearly understood the requirements and chose to ignore them. Management concurred in part with the finding and stated that the Division of Labor Standards would make a concerted effort to more effectively utilize the penalty assessment authority granted by statute. Based on our review of a sample of wage regulation reports during the current audit, however, the division is still not assessing penalties for violations, even when the offenders are repeat violators (page 38).

The Safe Employment Education and Training Advisory Committee Has Not Met in Five Years and Apparently Is No Longer Needed Because the Grant Funds Involved Are No Longer Available

The committee's duties include making recommendations concerning occupational safety and health grant application procedures and criteria for grant approval; occupational safety and health grant recipients; and revocation of grants to recipients failing to comply with grant criteria. The committee is also responsible for receiving and processing occupational safety and health grant applications. Although the committee is mandated to meet at least annually, the last committee meeting was in October 1998. According to the administrator of the Workers' Compensation Division, the committee is not meeting (and is no longer needed) because occupational safety and health grant funds are not available and have not been available for several years (page 40).

* This issue was also discussed in the January 2000 audit of the department.

OBSERVATIONS AND COMMENTS

The audit also contains follow-up information on nine findings from prior audits (seven from the January 2000 audit of the Department of Labor and two from the October 1997 audit of the Department of Employment Security). In addition, the audit contains follow-up information on seven observations and comments from those prior audits (pages 12-30).

ISSUES FOR LEGISLATIVE CONSIDERATION

The General Assembly may wish to consider (1) terminating the Safe Employment Education and Training Advisory Committee because of its inactivity and the absence of a current need for that committee; (2) reviewing Section 4-3-1416, *Tennessee Code Annotated*, and clarifying the desired frequency for distribution of the sexual harassment rules/guidelines to the state's employers; and (3) deleting from statute the requirement that mine operators submit a mine map to the department (page 41).

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**Performance Audit
Department of Labor and Workforce Development
and Related Entities**

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**Performance Audit
Department of Labor and Workforce Development
and Related Entities**

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Department of Labor and Workforce Development and Related Entities was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. Under Section 4-29-225, the following entities are scheduled to terminate on June 30, 2004: the Department of Labor and Workforce Development, the Occupational Safety and Health Review Commission, the Prevailing Wage Commission, the Board of Employee Assistance Professionals, the Board of Boiler Rules, the Elevator Safety Board, the Occupational Safety and Health Administration Labor Advisory Council, the Advisory Council on Worker's Compensation, the Medical Care and Cost Containment Committee, the Safe Employment Education and Training Advisory Committee, the Board of Review, and the State Unemployment Compensation Advisory Council (formerly the Employment Security Advisory Council). The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the department and related entities and to report to the Joint Government Operations Committee. The performance audit is intended to aid the committee in determining whether the department and related entities should be continued, restructured, or terminated.

OBJECTIVES OF THE AUDIT

The objectives of the audit were

1. to determine the authority and responsibility mandated to the department and related entities by the General Assembly;
2. to determine the extent to which the department and related entities have fulfilled their legislative mandates and complied with applicable laws and regulations;
3. to determine the department's and related entities' progress in correcting the problems identified in the October 1997 Sunset audit of the Department of Employment Security and the January 2000 Sunset audit of the Department of Labor; and
4. to recommend possible alternatives for legislative or administrative action that might result in more efficient and effective operation of the department and related entities.

SCOPE AND METHODOLOGY

The activities and procedures of the Department of Labor and Workforce Development and Related Entities were reviewed for the period January 2000 through September 2003. The audit was conducted in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. The methods include

1. a review of applicable statutes and rules and regulations;
2. examination of the department's files, documents, policies, and procedures;
3. a review of prior performance audit and financial and compliance audit reports, audit reports from other states, and program reviews by the U.S. Department of Labor; and
4. interviews with department staff.

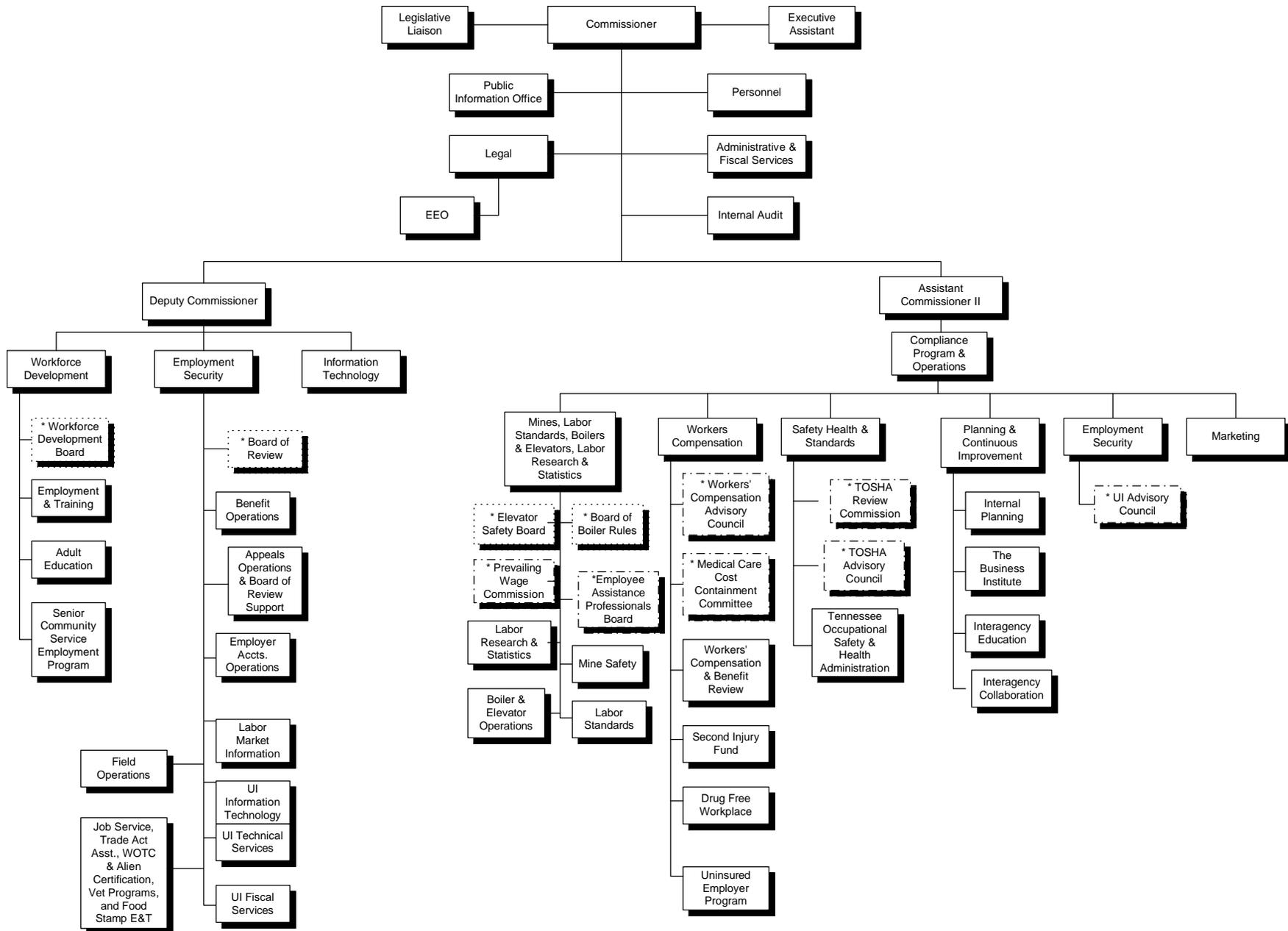
ORGANIZATION AND RESPONSIBILITIES

The Department of Labor and Workforce Development was created under Section 4-3-1403, *Tennessee Code Annotated*. On July 1, 1999, the Department of Labor and the Department of Employment Security were combined to form the Department of Labor and Workforce Development. The purpose of the department is to (1) provide integrated, effective, and efficient delivery of employment-related services and training in compliance with the Workforce Investment Act of 1998 and (2) meet the needs of employees, unemployed persons, and persons making the transition into the workplace through education, training, labor-market information, and an efficient unemployment insurance program. The department also is responsible for the state's Workers' Compensation Law. The department has six program divisions, each under the direction of an administrator:

- Workers' Compensation;
- Safety and Health Standards;
- Employment Security;
- Mines, Labor Standards, Boilers and Elevators, and Labor Research and Statistics;
- Planning and Continuous Improvement; and
- Employment and Workforce Development.

The Divisions of Employment and Workforce Development and Employment Security and their administrators report to the Deputy Commissioner. The other divisions and their administrators report to the Chief of Programs and Operations. An organization chart of the department is on page 3.

Tennessee Department of Labor & Workforce Development Organization Chart August 2003



* Administratively attached to department

Workers' Compensation Division

This division is responsible for administering and enforcing Tennessee's Workers' Compensation laws. (Employers purchase workers' compensation insurance from an insurance carrier. When an injury occurs, the employer files a form with its insurance carrier with information regarding the type of injury and the employee's wages. The insurer works with the injured employee to provide and pay for medical expenses and to compensate the employee for lost wages.) The division promotes workplace safety through information awareness programs for employees and employers, monitors injury claims and employer insurance coverage, mediates disputed claims, and assesses and collects penalties for non-compliance with the law.

The Drug Free Workplace Program promotes drug- and alcohol-free workplaces in an effort to decrease the number of work-related accidents resulting from employee substance abuse. Employers participating in the program receive a 5% premium reduction on their workers' compensation insurance. According to division staff, 3,296 employers (a little over 3 percent of total employers in Tennessee) had received certification as a drug-free workplace as of mid-October 2003.

The Second Injury Fund and program encourage the employment of workers with permanent disabilities from on-the-job injuries. The program limits an employer's liability only to the amount of disability caused by a new injury.

The Uninsured Employer Program, started January 2001, is responsible for identifying employers without Workers' Compensation insurance coverage. The process includes notifying employers of possible penalties, holding legal hearings, and assessing and collecting penalties.

The Workers' Compensation and Benefit Review section conducts benefit review conferences to help parties reach settlements, monitors claim progress, maintains records of claims filed, and processes employers' certificates of compliance with the Workers' Compensation laws. The Workers' Compensation Fraud Unit is responsible for investigating potential fraud cases and referring them to the appropriate authority for action. The Medical Case Management and Utilization Review section monitors and manages medical expense claims. (The section monitors claims when an injured employee requires hospitalization, related medical costs exceed \$10,000, and/or the employee misses eight or more weeks of full-time employment.) As part of the case management function, the section develops a treatment plan and monitors the plan's progress to ensure the employee follows the plan and receives all necessary medical services.

Safety and Health Standards Division

This division is responsible for administering the Tennessee Occupational Safety and Health Administration (TOSHA) program, which is designed to ensure safe and healthful on-the-job conditions for persons employed in Tennessee.

The Compliance Services section conducts safety and health inspections and investigations in both the private and public sector. TOSHA staff conduct general inspections, complaint inspections, follow-up inspections, and accident investigations.

General inspections are conducted from a list of high-hazard businesses identified by the federal Occupational Safety and Health Administration (OSHA). Complaint inspections are in response to complaints, but the inspectors have the option to expand their inspection to a full-scale general inspection if they feel such an inspection is warranted. Depending on the seriousness of the complaint, action by TOSHA can consist of anything from correspondence with the employer to an on-site investigation. Accident investigations are mandatory following incidents injuring three or more people or resulting in a death. Follow-up inspections may be done to ensure violations have been corrected.

Situations in which TOSHA has been made aware of imminent danger to employees are given first inspection priority; accidents are second priority; and general inspections are third priority. State agencies are inspected by TOSHA's Public Sector inspectors, and county/local government entities must choose whether to be treated as a public sector or private sector entity (Sections 50-3-906 and 50-3-910, *Tennessee Code Annotated*). See below for information on the number of inspections and violations and the dollar amount of penalties proposed.

**Safety and Health Standards Division
Safety and Health Enforcement
Fiscal Years 2000 Through 2003**

	2000	2001	2002	2003
Inspections Conducted	1,152	1,185	1,243	1,479
Number of Violations Cited	3,294	4,381	4,017	5,213
Proposed Penalties	\$1,354,279	\$1,844,794	\$2,563,182	\$1,944,772
Penalties Collected*	\$1,279,863	\$1,189,343	\$1,555,368	\$1,659,631

* These amounts collected do not tie directly to amounts assessed in the same year. For example, a penalty collected in 2003 may have been assessed in 2002.

The inspector discusses any violations found in a closing conference with the business's representatives after the inspection is completed. The business is provided with abatement measures and a date by which to correct the violations. A Citation and Notification of Penalty is issued within 180 days of the inspection. The business can request, in writing, an informal conference to discuss the penalties. (According to department staff, achieving compliance with requirements, rather than issuing penalties, is the department's first priority.) The informal conference is held within 20 calendar days of the receipt of the citation. If the business chooses to contest the violation, penalty, or abatement date, it must notify the department within 20 calendar days after the receipt of the citation. The TOSHA Review Commission hears contested cases and may uphold, modify, or eliminate any item of the citation. Penalties must be paid within 30 calendar days after the Citation and Notification of Penalty has been issued.

The Consultative Services section helps small businesses (250 employees or less) identify and correct existing and potential safety and health hazards. Consultative Services educates employers and employees through one-on-one training and on-site consultation as well as group

instruction at the employer's site, professional group meetings, and chamber of commerce meetings.

**Safety and Health Standards Division
Consultative Services
Fiscal Years 2000 Through 2003**

	2000	2001	2002	2003
Consultative Visits	235	318	379	403
Serious Hazards Identified	1,304	2,411	2,494	2,677
Safety and Health Program Evaluations/ Assistance	181	263	326	353

The Training Services section conducts seminars and publishes a quarterly newsletter to assist employers, employees, and their representatives in reducing safety and health hazards in their workplaces in order to comply with TOSHA requirements.

**Safety and Health Standards Division
Training Services Statistics
Fiscal Years 2000 Through 2003**

	2000	2001	2002	2003
Seminars/Programs Conducted	294	239	246	267
Number of Attendees	6,010	6,117	6,559	5,907

Employment Security Division

This division administers the Unemployment Insurance Program, a joint federal-state program. Each state establishes laws and regulations governing its program within guidelines set forth by the Federal Unemployment Tax Act (FUTA), administered by the U.S. Department of Labor.

The Appeals Operation and Board of Review Support section is responsible for conducting hearings of appealed claims for unemployment insurance—either the employer or the employee can appeal. Appeals of department decisions are first heard by the Appeals Tribunal. Further appeals may be made to the Board of Review, which may affirm, modify, or reverse any Appeals Tribunal decision.

The Benefit Operations section processes and pays unemployment insurance benefit claims. The Employer Accounts Operations section processes employer premium and wage reports and payments. Labor Market Information compiles economic and demographic information regarding the workforce and businesses in the state. Unemployment Fiscal Services provides financial management of the unemployment trust funds. Unemployment Information Technology is responsible for the mainframe computer system that processes data for the division. Unemployment Technical Services provides technical support to central and local office staff, claimants, and employers. This section is responsible for the child-support intercept

program, preparing procedural manuals, and maintaining a quality control system for the division.

Mines, Labor Standards, Boilers and Elevators, and Labor Research and Statistics Division

The Boiler and Elevator Operations section is responsible for the administration and enforcement of the Tennessee Boiler and Pressure Vessel Inspection Law and the Tennessee Elevator Inspection Law. Owners must pay a fee to the state for inspections of boilers and elevators. “Elevators” include dumbwaiters, escalators, construction and freight elevators, lifts in sewage systems, trams, and ski lifts in addition to regular building elevators. State inspectors conduct elevator inspections twice a year.

“Boilers” include fired and unfired vessels and low- and high-pressure vessels, ranging from air tanks at service stations to huge boilers used for heating. Boiler inspections are conducted by insurance companies or state inspectors. In addition, private businesses can conduct their own boiler inspections, if they have been certified by the National Board of Boiler and Pressure Vessel Inspectors and approved by the Tennessee Board of Boiler Rules. Boiler and elevator inspections are conducted according to national standards, such as those developed by the American Society of Mechanical Engineers. See below for the number of boiler certificates and elevator permits, inspections processed, and revenue collected for fiscal years 2000 through 2003.

**Mines, Labor Standards, Boilers and Elevators, and
Labor Research and Statistics Division
Information on Boilers and Elevators
Fiscal Years 2000 Through 2003**

	2000	2001	2002	2003
Certificates/Permits Issued	39,046	33,577	34,128	51,320
Inspections Processed	43,767	42,443	44,216	49,369
Revenue Collected	\$2,279,818	\$2,121,865	\$2,510,935	\$3,043,256

The Labor Research and Statistics section is responsible for compiling statistics on workplace injuries and illnesses for the U.S. Bureau of Labor Statistics. This section also advises employers in the state about keeping records of such incidents.

The Labor Standards section is responsible for the enforcement of the Child Labor, Wage Regulation, and Prevailing Wage Acts, as well as providing administrative support to the Board of Employee Assistance Professionals (EAPs). The Child Labor Act restricts work-related activities of 14- to 18-year-olds. To enforce this act, the section conducts routine inspections, investigates complaints, and investigates work-related accidents involving minors. The Wage Regulation Act requires employers to inform prospective employees of their pay rate, to pay at least twice a month (applies to private employers only), and to provide break periods. The Labor Standards section is also responsible for investigating charges of sex discrimination in regard to pay. The third act that Labor Standards is responsible for enforcing is the Prevailing Wage Act, which requires a certain rate of pay on all state-funded projects over \$50,000.

**Mines, Labor Standards, Boilers and Elevators, and
Labor Research and Statistics Division
Labor Standards Statistics
Fiscal Years 2000 Through 2003**

	2000	2001	2002	2003
Number of Complaint Calls	80,860	76,483	85,527	83,650
Child Labor Inspections	2,156	1,090	642	1,049
Child Labor Citations Issued	607	361	176	259
Wage Complaints	1,158	1,457	1,420	1,115
Wages Recovered for Complainants	\$293,065	\$331,443	\$453,790	\$284,762
Penalties Assessed	*	\$320,500	\$237,800	\$298,800
Penalties Collected	*	\$232,700	\$195,300	\$219,896

* Information not available.

The Mine Safety section licenses underground and strip mines and trains miners, operators, and mine owners. The section also coordinates state rescue efforts in the event of a mine disaster and maintains two mine rescue teams. Mine Safety is also responsible for testing and certifying mine foremen and maintaining mine-related data and mine maps.

**Mines, Labor Standards, Boilers and Elevators, and
Labor Research and Statistics Division
Mines Safety Statistics
Fiscal Years 2000 Through 2003**

	2000	2001	2002	2003
Persons Receiving Mine Safety Training	3,163	3,093	2,402	2,041
Mine Operator Licenses Issued	35	37	38	37
Mine Foreman Certificates Issued	58	15	22	20

Planning and Continuous Improvement Division

This division coordinates and develops the department's strategic plan, identifies ways to educate employers about the department's services, and conducts safety and security assessments of the department's local offices.

Employment/Workforce Development Division

This division is responsible for coordinating the employment and education and training services to employers and job seekers. The division assists businesses in finding qualified and available workers. Job seekers can obtain information regarding jobs and assistance in preparing for job interviews and resume writing.

The Adult Education section provides basic skills, GED preparation, and work-related skills training. The Employment and Training section oversees the contracts awarded to the

Local Workforce Investment Areas and other state contracts that provide services to the state's workforce system. The Job Service, Trade Act Assistance, Work Opportunity Tax Credit, Alien Certification, Veterans Program and Food Stamp Employment and Training section provides services to individuals, employers, and special applicant groups.

BUDGETED REVENUES AND EXPENDITURES

The Department of Labor and Workforce Development has budgeted general fund expenditures of \$207 million for fiscal year 2003-04. The department expects to receive \$148 million in federal revenue, \$23 million in state appropriations, and \$37 million in other departmental revenue (e.g., interdepartmental revenue, current services revenue).

OTHER RELATED ENTITIES

Eleven additional entities are administratively attached to the Department of Labor and Workforce Development and assist the department's divisions in fulfilling their regulatory responsibilities. Five of the entities are strictly advisory, three perform a licensing/regulatory function, two review contested cases, and one entity sets the wage rate for state construction projects. The vast majority of the entities have only minimal expenditures, and only one generates revenues. However, the programs associated with two of the boards—Boiler Rules and Elevator Safety—generate substantial revenues. Each entity is briefly described below.

OSHA Labor Advisory Council (created by Section 50-3-919, *Tennessee Code Annotated*). The council advises the department on OSHA matters in Tennessee. It has six members appointed by the Governor and had no vacancies during our audit fieldwork. The council met twice a year in 2000, 2001, 2002, and 2003 as required. (Also see page 20). Based on our review of meeting minutes, the council discussed new penalty collection procedures implemented by the division, publishing the names of those companies who have not paid fines, and methods to reduce a backlog of contested case hearings. According to department staff, the council had no revenues or expenditures during fiscal years 2001 through 2003.

Occupational Safety and Health Review Commission (created by Section 50-3-801, *Tennessee Code Annotated*). The commission reviews citations and monetary penalties assessed by TOSHA. The commission, which consists of three members appointed by the Governor, meets as needed and had no vacancies at the time of our audit fieldwork. It met six times from August 2002 to May 2003. According to department staff, the commission had no revenues and the following expenditures for member travel and per diem: \$1,428 in 2001, \$2,453 in 2002, and \$4,081 in 2003.

Prevailing Wage Commission (created by Section 12-4-404, *Tennessee Code Annotated*). The commission determines the prevailing wage rate for state construction projects—set annually for highway construction projects and every two years for building construction projects. The commission consists of five members (no vacancies) and met as required in 2002 and 2003. Voluntary wage surveys are conducted every year to help establish rates. Based on a review of

2002 meeting minutes, the commission also discussed methods to improve the survey process and the number of survey responses and the possibility of establishing Internet submission of survey forms. According to department staff, the commission had no revenues and travel expenditures of \$1,767 in 2001, \$226 in 2002, and \$2,033 in 2003.

Elevator Safety Board (created by Section 68-121-102, *Tennessee Code Annotated*). The board regulates the operation, maintenance, construction, alteration, and renovation of elevators. It has five members appointed by the Governor and has one vacancy. The board met quarterly during calendar years 2002 and 2003. (There are no statutory meeting requirements.) According to department staff, the board had no revenues and the following expenditures for meetings and board member travel: \$385 in 2001, \$871 in 2002, and \$2,190 in 2003. (See page 7 for revenues collected by the Boiler and Elevator Operations section for inspections, permits, etc.)

Board of Boiler Rules (created by Section 68-122-101, *Tennessee Code Annotated*). The board creates definitions, rules, and regulations for the safe and proper construction, installation, repair, and use of boilers in the state. The board, which has six members, is required to meet four times per year. It had no vacancies and met the statutory meeting requirements. The meeting minutes document discussion of possible approval of variances, and erection, repair, and alteration licenses. During the four meetings reviewed, the board approved 11 licenses for the erection, repair, and alteration of boilers and pressure valves, and six variances to Boiler Attendant Rules. The board also discussed forming a task force to study the approval of variances. According to department staff, the board had no revenues, and board member travel expenditures of \$1,391 in 2001, \$3,203 in 2002, and \$2,451 in 2003. (See page 7 for revenues collected by the Boiler and Elevator Operations section for inspections, permits, etc.)

Board of Employee Assistance Professionals (created by Section 62-42-102, *Tennessee Code Annotated*). The board licenses and regulates employee assistance professionals who provide employees with services designed to assist in the identification and resolution of job-performance problems in the workplace. The board, which has five members appointed by the Governor, had no vacancies. It met two times in 2002, and as of August 2003, had met once in that year. (There are no statutory meeting requirements.) (See page 14 for additional information on the board.)

Advisory Council on Worker's Compensation (created by Section 50-6-121, *Tennessee Code Annotated*). The council was created to review workers' compensation issues in Tennessee. It submits an annual report to standing committees of the General Assembly with jurisdiction over workers' compensation issues. The council has seven voting members (three employer representatives, three employee representatives, and the State Treasurer) and seven non-voting members. It had one vacancy (a non-voting health care provider member). The council, which is required to meet at least twice a year, met seven times in 2001, five times in 2002, and four times in 2003. The meeting minutes indicate that the council heard presentations on a variety of workers' compensation topics, reviewed proposed workers' compensation legislation, and discussed providing a workers' compensation claims certification process. In 2002 and 2003, the council submitted annual reports as required; however, the reports were submitted after the statutory due date. In addition, in March 2003, the council submitted, as required, a special report to the General Assembly on several workers' compensation issues. Again, however, the

report was submitted after the statutory due date (December 2002). According to department staff, the council had no revenues and the following expenditures for one full-time and one part-time staff person and the costs of maintaining an office: \$208,611 in 2001, \$138,587 in 2002, and \$154,623 in 2003.

Medical Care and Cost Containment Committee (created by Section 50-6-125, *Tennessee Code Annotated*). The committee, which consists of eight members (no vacancies), advises the commissioner on issues related to medical care and cost containment in the workers' compensation system. The committee met twice in 2000, three times in 2001, twice in 2002, and as of August 2003, had met once in that year. (There are no statutory meeting requirements.) The committee reviews disputes between insurance carriers and providers regarding charges and payments. In 2002, the committee denied additional payments to insurance providers in 15 cases and approved additional payments in 12 cases. According to department staff, the committee had no revenues and board member travel expenditures of \$1,057 in 2001, \$717 in 2002, and \$120 in 2003.

Safe Employment Education and Training Advisory Committee (created by Section 50-6-503, *Tennessee Code Annotated*). The seven-member committee is mandated to meet at least once a year. Its duties are to recommend to the commissioner occupational safety and health grant application procedures and criteria, receive and process grant applications, and recommend grant recipients. According to department management, the committee has not met since October 1998 and, thus, had no revenues or expenditures. (See Finding 5.)

Board of Review (created by Section 50-7-601, *Tennessee Code Annotated*). The board, which has three members appointed by the Governor, reviews contested unemployment compensation claims of the department's Appeals Division. The board meets as needed and had met 19 times in 2003, as of October. In October 2003, one board member resigned. According to staff, however, the board is still able to perform its duties with two members. As of mid-January 2004, the vacancy still existed. According to department staff, the board had no revenues and the following expenditures (for staff and maintaining an office): \$395,003 in 2001, \$390,414 in 2002, and \$408,178 in 2003.

State Unemployment Compensation Advisory Council, formerly the Employment Security Advisory Council (created by Section 50-7-606, *Tennessee Code Annotated*). The duties of the advisory council are to aid the commissioner in formulating policies and discussing problems related to the administration of the employment security program. The advisory council has four members, with an equal number of employee and employer representatives as required by law. The statute also allows the commissioner to appoint public members, at his discretion. The council is mandated to meet at least twice a year with the administrator of the Employment Security Division. However, a review of council minutes indicated that the council met only once a year during 2000 through 2003. At the council's February 2003 meeting, members discussed proposed legislation regarding unemployment issues. According to department staff, the council had no revenues or expenditures during 2001 through 2003.

FOLLOW-UP OF PRIOR AUDIT FINDINGS

One of the major objectives of this audit of the Department of Labor and Workforce Development was to follow up on the findings in the October 1997 Sunset audit of the Department of Employment Security and the January 2000 Sunset audit of the Department of Labor. The majority of those findings have been resolved or partially resolved, and the results of our follow-up work are summarized below. Two of the prior findings have not been fully addressed, however, and are included in the findings and recommendations section of this audit.

THE DEPARTMENT DISTRIBUTED SEXUAL HARASSMENT RULES TO EMPLOYERS, BUT ADDITIONAL DISTRIBUTION APPEARS TO BE NEEDED

The October 1997 performance audit of the Department of Employment Security found that the department had not distributed sexual harassment rules to employers as required by state statute. The major impediment to the department's compliance with the statute was the fact that federal dollars, which were the primary source of funding for department administration, could not be used to draft, print, or distribute the sexual harassment rules. The department has since complied with Section 4-3-1416 (formerly 4-3-905), *Tennessee Code Annotated*, by publishing the Equal Employment Opportunity Commission's (EEOC's) Sex Discrimination Guidelines in its December 1997 newsletter to the state's employers. However, it is not clear whether the intent of the statute is for one-time distribution or for periodic distribution. According to department management, they interpret it to be a one-time requirement and believe that they have completed their responsibilities through distribution of the 1997 newsletter. Our review of the EEOC guidelines determined, however, that these guidelines were revised in 1999 because of Supreme Court rulings regarding employer liability. Therefore, the guidelines distributed in 1997 are no longer accurate.

The department should distribute the revised sexual harassment guidelines to the state's employers. Department staff should periodically review the EEOC guidelines to ensure that the guidelines distributed to employers are the most current. The General Assembly may wish to review Section 4-3-1416, *Tennessee Code Annotated*, and clarify the desired frequency for distribution of the sexual harassment rules/guidelines to the state's employers.

THE APPEALS DIVISION HAS AUTOMATED ITS PROCESSES BUT NEEDS TO CONTINUE EFFORTS TO MEET FEDERAL TIMELINESS CRITERIA

The October 1997 audit of the Department of Employment Security found that the Appeals Division needed to continue to automate, in order to address concerns raised by the U.S. Department of Labor. Based on our observations and review of documents during the current audit, the Appeals Division has implemented recommendations regarding automation of the appeals process. However, despite improvements in automation, the division's Appeals Tribunal has struggled to consistently meet federal criteria for timeliness of appeals decisions.

The Appeals Tribunal affords an appeals process for cases in which one of the interested parties to an unemployment compensation claim disagrees with the department's decision to pay or not to pay benefits to the claimant. After an appeal of an initial decision on a claim, the tribunal, pursuant to Section 50-7-304(c)(1), *Tennessee Code Annotated*, is to provide all interested parties an opportunity for a hearing and affirm, modify, or reverse the decision of the department. The Appeals Tribunal is the first level of appeals. A decision of the Appeals Tribunal may be appealed to the Board of Review.

The U.S. Department of Labor schedules a review of the Appeals Tribunal once every four years unless problems arise. In 1996, the USDOL recommended that the division automate by doing the following:

- dictate decisions;
- use automated call-in equipment for out-stationed or traveling referees in certain instances (nonappearances, withdrawals, etc.); and
- institute an automated system to track appeals cases from filing to decision.

Based on our observations and a review of documentation, the Appeals Tribunal has been using a computer system, the Tennessee Appeals Processing System (TAPS), since July 1999. TAPS is a customized in-house software package developed specifically for the Appeals Division. It has modules for docketing, scheduling, and typing of case decisions. In a U.S. Department of Labor review dated July 2000, the review team commended Tennessee for its automation and the quality of its decisions. The review team did, however, raise concerns about Tennessee's time-lapse performance for appeals decisions. (Although the Appeals Tribunal met minimum federal criteria at that time, the review team believed timeliness needed to be improved.)

Federal criteria require at least 60% of appeals decisions to be made within 30 days and at least 80% of decisions to be made within 45 days. During 2002 and early 2003, Tennessee failed to meet the 30-day criteria and also failed to meet the 45-day criteria for a majority of months. A January 2003 federal review again raised concerns about problems with the timely issuance of decisions, which the review team attributed to understaffing and an increasing caseload. As a result, Tennessee implemented several corrective actions, including training employees from other units to conduct hearings, filling several vacant hearing officer positions, and creating and filling three new hearing officer positions. Time-lapse performance data for 2003 (through August 2003) indicates that the Appeals Tribunal met both the 30-day and 45-day criteria during May through August 2003. Division management should continue to carefully monitor the timeliness of appeals decisions and take prompt action if timeliness decreases, including using trained staff from other units in the department to conduct hearings.

SELF-SUFFICIENCY STATUS OF THE BOARD OF EMPLOYEE ASSISTANCE PROFESSIONALS (EAPs)

The January 2000 audit found that the board was not self-sufficient and recommended that the board work with department management to identify ways to increase revenues (for example, by increasing fees or increasing the number of licensed EAPs) or decrease expenses. Since that time, the number of licensed EAPs has remained about the same, but the board has taken actions to decrease expenditures. It is not clear, however, whether all the department's administrative expenditures related to the board are actually being charged to the board.

Board History

The board was created in 1993 to license and regulate employee assistance professionals who provide employees with services designed to assist in the identification and resolution of job-performance problems in the workplace. However, the law allows many others—licensed psychologists, psychological examiners, clinical social workers, nurses, physicians, attorneys, clergy, community mental health center staff as defined by title 56, and any other qualified member of another professional group licensed under Titles 33, 63, or 68—to advertise and practice as EAPs without licensure or regulation by the EAP Board. Because so many other types of professionals can practice as EAPs, it is not clear how many practicing EAPs are licensed in other professions.

Self-Sufficiency Requirement

Sections 4-3-1011 and 4-29-121, *Tennessee Code Annotated*, require that professional licensing boards attached to the Departments of Health and Commerce and Insurance be self-sufficient. Although the Board of Employee Assistance Professionals is not attached to either of those departments, the board has the same duties and responsibilities as other licensing boards, and it seems reasonable that this board should meet the same requirements.

Number of Licensees, Revenues and Expenditures

As of January 2000, there were 73 licensed EAPs expected to provide \$14,600 in revenues (i.e., by renewing their licenses for a \$200 biennial fee). Board expenses included one person's salary and benefits totaling \$27,377 a year, \$50 per meeting and travel expenses for each board member attending, the division director's time for supervision, and Fiscal Services' time for processing receipts and payments.

Management indicated in its response to the 2000 audit that it anticipated an increase in the number of licensees from 73 to 150 or 200 by 2001. As of October 8, 2003, however, there were only 72 licensed EAPs. To address its self-sufficiency problems, the board no longer has a full-time staff person. A part-time staff person's time is charged to the board for processing board paperwork, etc. To decrease operating expenses, the board is not meeting as often. In addition, some members have chosen not to take the \$50 meeting fee, and other members are attending the meetings by teleconference.

Based on the information presented in Table 1, revenues for fiscal years 2002 and 2003 (\$15,430) exceed expenditures for that two-year period (\$13,065). However, these expenditures do not include all departmental administrative expenditures on behalf of the board such as the division director's time for supervision and Fiscal Services' time for processing receipts and payments.

Table 1
Board of Employee Assistance Professionals
Revenues, Expenditures, Licensees
Fiscal Years 2001-2003

	Fiscal Year 2001	Fiscal Year 2002	Fiscal Year 2003
Revenues	\$1,223	\$14,630	\$800
Expenditures	35,253	8,096	4,969
Difference	(\$34,030)	\$6,534	(\$4,169)
Number of Licensees		80	72

The department should continue to monitor the board's revenues and expenditures, as well as the number of licensees. To determine the full cost of regulating employee assistance professionals, the department should review staff's activities related to the board and ensure that the board is allocated an appropriate portion of departmental administrative expenditures. If necessary, to meet self-sufficiency requirements, the board and the department should consider increasing licensure fees.

THE DIVISION OF WORKERS' COMPENSATION IS IDENTIFYING AND ASSESSING PENALTIES FOR EMPLOYERS WITHOUT WORKERS' COMPENSATION INSURANCE

Since the last audit, the Division of Workers' Compensation has begun identifying employers without workers' compensation insurance and taking action through assessing and collecting penalties from those employers.

Sections 50-6-102 and 50-6-405, *Tennessee Code Annotated*, require that all employers with five or more employees carry workers' compensation insurance. The January 2000 performance audit found that the department could not identify all employers required to carry workers' compensation insurance and that the department was not using its statutory authority to assess penalties for employers that it did find who were violating workers' compensation laws requiring coverage. The division now has a computer system that tracks coverage and automatically produces warning and penalty letters to employers whose coverage has lapsed or who do not have any coverage. In addition, the division uses the Employment Security Division's Employer Accounts Operations database of employers submitting unemployment tax payments. (Employers with three or more employees are required to pay unemployment insurance premiums.) Other means used by the division to identify employers without workers' compensation insurance include a national workers' compensation database and notifications from insurance carriers.

Section 50-6-132, *Tennessee Code Annotated*, requires that "no later than December 31 of each year, the division of workers' compensation shall produce a report that includes a listing

of the name of each covered employer that failed, during the preceding state fiscal year, to provide workers' compensation coverage or qualify as a self-insured employer as required by law." The division is to provide this report to the Advisory Council on Workers' Compensation, the Oversight Committee on Workers Compensation, and the chairs of the Senate Commerce, Labor and Agriculture Committee and the House Consumer and Employee Affairs Committee. According to division staff and documentation reviewed, the division identified 312 non-compliant employers in fiscal year 2001 and 364 in fiscal year 2002. In addition, the division began using its authority to issue penalties for employer violations of workers' compensation laws, collecting \$58,900 in fiscal year 2002 and \$164,093 in fiscal year 2003.

TOSHA HAS MADE SOME IMPROVEMENTS IN ITS PROCESS FOR SUBMITTING DELINQUENT CITATION CASES TO THE ATTORNEY GENERAL'S OFFICE

Section 50-3-107, *Tennessee Code Annotated*, requires that the department refer any occupational safety and health-related fine or penalty that remains unpaid for more than six months to the Attorney General's office for enforcement. The January 2000 audit found problems in the department's process for sending these cases to the Attorney General's Office. We recommended that management work to improve communication between TOSHA and the Attorney General's office, to ensure that the office is notified of delinquent penalties and that those penalties are collected. Additionally, we recommended that the department develop procedures for the preparation and submission of the information and that TOSHA management monitor the submission of the delinquent penalty information to ensure it is received by the Attorney General's office.

During the current audit, we reviewed TOSHA's policies and procedures, interviewed division management, and reviewed files to determine the status of this issue. Based on this audit work, we concluded that TOSHA has improved its process for sending delinquent penalties to the Attorney General's office. However, it appears that communication between the department and the Attorney General's office could be further improved.

We reviewed 37 TOSHA inspection files that were 180 or more days past due. Nine of those were inspections conducted from June 2001 through December 2002. Five of nine inspection files contained documentation stating that files were true and exact copies, which, according to division staff, indicates that the file has been copied and forwarded to the Attorney General's office. Of the four remaining files, one was overlooked for penalty calculation, one had no documentation stating when it was sent for collection, and two had settlement agreements signed and therefore did not need to be forwarded to the Attorney General's office.

We also reviewed four TOSHA Penalty Aging Reports—one each for June 30, 2000, through June 30, 2003. Based on written notations on these reports, 1,859 (82%) of 2,272 penalties 180 days or older were sent to the Attorney General's office for collection. (See Table 2.) The 2000 audit found 70% noted as sent to the Attorney General.

Table 2
Penalty Aging Report
Classification Distribution for Penalties Over 180 Days Past-Due
As of June 30, 2000, Through June 30, 2003

	2000		2001		2002		2003	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Collect (1)	470	82.0	493	81.0	479	81.6	417	82.9
Contest (2)	84	14.6	96	15.8	93	15.8	63	12.5
Decision (2)	13	2.3	8	1.3	6	1.0	7	1.4
Bankrupt (3)	1	.2	7	1.1	4	.7	12	2.4
Blank (4)	5	.9	5	.8	5	.9	4	.8
Total	573	100.0	609	100.0	587	100.0	503	100.0

Notes:

- (1) Sent to Attorney General's Office for collection.
- (2) Case is with the TOSHA Review Commission and therefore cannot be forwarded to the AG until after the Review Commission has completed its work.
- (3) Cited establishment is in bankruptcy.
- (4) Entry with no notations.

Although TOSHA files include documentation indicating that delinquent cases have been sent to the Attorney General's office, TOSHA still does not have a procedure in place that allows it to verify cases were received by that office. We spoke with the TOSHA Director and Assistant Director regarding this issue, and they stated they will include this receipting requirement in future policies and procedures.

TOSHA PENALTY ASSESSMENTS ARE NOW MORE COMPARABLE TO NATIONAL AVERAGES

The January 2000 audit found that TOSHA needed to monitor and improve its penalty assessment practices. That audit also found that the average assessed TOSHA penalties (which at the time were broken into two categories—safety and health) were 53% lower than the national average for safety penalties and 12.5% lower than the national average for health penalties. We recommended that TOSHA continue to address the U.S. Department of Labor, Occupational Safety and Health Administration's (OSHA's) concerns regarding penalty assessments and that TOSHA supervisors monitor penalty assessments to ensure that penalties reflect the severity of the violation and provide incentive for prompt correction by the employer. Based on information we reviewed during the current audit, it appears that TOSHA has made progress in addressing OSHA's concerns regarding penalty assessments.

In a February 1999 evaluation report, OSHA recommended that TOSHA supervisors review safety case files to assure that compliance officers assign proper values for frequency of exposure, proximity to the danger zone, working conditions, size, and other factors during penalty assessment. The report stated that penalties must be designed to provide an incentive for the employer to correct violations voluntarily. In the previous evaluation report, OSHA had

recommended that TOSHA reevaluate its penalty calculation practices and take appropriate steps to ensure that its penalty levels are more comparable to the national average.

To determine the current status of this issue, we reviewed the most recent OSHA Federal Annual Monitoring Evaluation Reports (FAME) of TOSHA. OSHA's FAME report evaluates state performance results and assesses end-of-year results for the OSHA State Activity Mandated Measure (SAMM) reports. We reviewed FAME reports for the federal fiscal years (i.e., October 1 through September 30) 1999-2000, 2000-01, and 2001-02. Of these three reports, only the 2001-02 mentioned TOSHA's penalty structure, stating

TOSHA maintained a penalty structure, which sanctioned employers who violate the state standards and fail to provide their employees with safe and healthful workplace. Penalties were assessed for first-time violators of the TOSHA standards where penalties were required by the nature of the hazard and the FOM [*Field Operations Manual*].

Additionally, we obtained and reviewed a copy of the OSHA State Activity Mandated Measures Report (SAMM) dated August 12, 2003. The SAMM report, which is produced quarterly, provides both quarterly and annual data for OSHA-mandated state programs. SAMM compares each state's performance to a standard. The report listed TOSHA's Average Initial Penalty for Serious Violations at an average of \$1,171 for the period April 1, 2003, through June 30, 2003, and \$1,234 for the federal fiscal year to date. This report listed the national average for the past three years as \$1,322. Therefore, the TOSHA average assessed penalty for the quarter ending June 30, 2003, was 11% lower than the national average for the past three years.

TOSHA'S ABATEMENT PERIODS HAVE SHORTENED

The January 2000 performance audit found that TOSHA's abatement periods exceeded OSHA's recommended time periods. Based on a review of the last three Federal Annual Monitoring Evaluation Reports and our analysis of a sample of citations issued since 2001, we determined that TOSHA has made improvements.

In a performance evaluation report for the period April 1996 through September 1998, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), criticized TOSHA for setting abatement periods that exceeded what OSHA thought should be standard for correcting some hazards noted by the compliance staff. OSHA recommended that serious safety violations should be abated within a maximum of 30 days and serious health violations should be abated within a maximum of 60 days. We reviewed the last three Federal Annual Monitoring Evaluation Reports covering federal fiscal years 1999-00, 2000-01, and 2001-02, and this issue is not repeated in these reports.

Per Chapter IV of the TOSHA *Field Operations Manual* (FOM), the abatement period is to be the shortest interval within which the employer can reasonably be expected to correct the violation. The citation is to state a specific date as the abatement date, not a number of days. The FOM states that the establishment of the shortest practicable abatement date requires the

exercise of professional judgment. It also states that abatement periods exceeding 30 calendar days should not normally be necessary, particularly for safety violations. When an initial abatement date is granted that is in excess of 30 calendar days, the reason, if not self-evident, should be documented in the file.

A TOSHA Area Supervisor is responsible for determining whether abatement has been satisfied. Per TOSHA Instruction CPL 2-0.114, effective March 30, 1999, abatement certification is required for all citation items that the employer receives except for those citation items which are identified as “Corrected During Inspection.” This instruction also states that abatement documentation, the employer’s physical proof of abatement, is required to be submitted along with each willful, repeat, and designated serious violation.

We reviewed a sample of 37 inspection files with penalties that were 180 days or more past due. We analyzed all citations in those files. Citations are violations noted by the inspector and are used in the calculation of penalties. We determined there were 9 cases with 63 citations issued since 2001. (One citation did not have an abatement date listed, only a notation that the violation had been corrected. Therefore, we considered this violation “Corrected During Inspection” and excluded this citation from calculations.) For the citations analyzed, we calculated an average abatement period of 29 days, with abatement periods ranging from 3 to 42 days following citation issuance and one file with an abatement period of 398 days. Fifty-six percent of abatement periods were less than 30 days, and 44% were greater than 30 days.

TOSHA HAS TAKEN ACTION TO REDUCE STAFF TURNOVER IN INSPECTOR POSITIONS

The January 2000 audit found that the department’s TOSHA program had high rates of staff turnover for the Industrial Hygienist and Occupational Safety Specialist positions. These staff are responsible for conducting public- and private-sector health and safety inspections. We recommended that the department make it a priority to fill vacant positions quickly and make salaries more competitive with private business and other southeastern states so it could attract and maintain trained officers. We further recommended that the department follow the June 1999 Tennessee Department of Personnel recommendation to increase salaries for these positions.

Based on our discussion with TOSHA management during the current audit, an analysis of personnel records, and a review of federal OSHA reports, turnover has decreased. We also found that the salary increases recommended by the Department of Personnel had been implemented. However, our review of inspector positions indicated that, as of July 2003, the division had nine vacancies for these positions—2 (of 32) industrial hygienist positions and 7 (of 43) occupational safety specialist positions. The department should continue to monitor turnover and salary levels for these inspector positions and should fill vacancies as promptly as possible.

THE OSHA LABOR ADVISORY COUNCIL HAS BEGUN MEETING AGAIN

The council was created by Section 50-3-919, *Tennessee Code Annotated*, to advise the department on OSHA matters in Tennessee. It has six members appointed by the Governor. In response to a finding in the January 2000 audit that the council had not met in seven years, department management indicated that it would revive the council. The council met twice a year in 2000, 2001, 2002, and 2003 as required. According to meeting minutes, the council discussed issues such as new penalty collection procedures implemented by the division, publishing the names of those companies who have not paid fines, and methods to reduce a backlog of contested case hearings.

FOLLOW-UP OF PRIOR AUDIT OBSERVATIONS AND COMMENTS

As part of the current audit of the Department of Labor and Workforce Development, we also followed up on the majority of the observations and comments in the October 1997 performance audit of the Department of Employment Security and the January 2000 performance audit of the Department of Labor. Updated information on those observations and comments is presented below. (However, because formal comments were not required from department management for observations and comments, no information on management's response to the prior audit is provided.) Because of time constraints, a few less important observations and comments were not followed up in detail, and no updated information is provided. One of the prior observations and comments, concerning Labor Standards' lack of guidelines for penalty assessments and time frames for investigations and correction of violations, is now discussed in finding 3.

THE DEPARTMENT IS MAKING STRIDES IN ACHIEVING WIA PERFORMANCE GOALS

In 1998, the U.S. Congress passed the Workforce Investment Act (WIA), replacing former government assistance programs offered under the Job Training Partnership Act. The primary objective of WIA is to provide a means for enhancing the quality of life for certain segments of the American population, in particular dislocated workers, the underemployed, welfare participants, and unemployed youth. The Workforce Investment Act seeks to provide individuals with financial and educational empowerment by helping them obtain the skills and credentials necessary for gainful employment.

To evaluate delivery of service, Section 136 of the Workforce Investment Act specifies core indicators of performance for workforce investment activities in adult, dislocated worker, and youth programs. Fifteen core measures apply to the aforementioned programs along with two measures related to customer satisfaction. The department negotiates performance standard levels with the U.S. Department of Labor each year. We reviewed the Tennessee Department of Labor and Workforce Development's Workforce Investment Act Annual Reports for the federal

2000, 2001, and 2002 program years and determined that program performance has improved since 2000.

Performance Results

Based on statewide surveys of a sample of employers and participants, the program exceeded employer satisfaction goals for 2000, 2001, and 2002, with improvement each year. The program also exceeded participant satisfaction goals for these years. (See Table 3.)

**Table 3
Customer Satisfaction
2000, 2001, and 2002 Program Years**

	Participants			Employers		
	2000	2001	2002	2000	2001	2002
Negotiated Level	70.0%	73.0%	76.0%	70.0%	73.0%	76.0%
Actual Performance	79.9%	78.7%	78.1%	75.2%	76.3%	76.9%
Survey Data						
Number of Completed Surveys	1,033	2,282	7,198	3,469	2,626	2,903
Number of Customers Eligible for the Survey	1,991	10,139	11,720	5,376	11,910	8,039
Number of Customers Included in the Survey	1,991	3,672	10,284	5,376	3,671	3,345
Response Rate	52.0%	62.1%	70.0%	65.0%	71.5%	87.0%

The USDOL stipulates in its Training and Employment Guidance Letter (TEGL) 6-00 that states complete at least 500 interviews each for both the participant and employer surveys and obtain a minimum response rate of 50% for both the employer and participant surveys. Based on the data in Table 3, Tennessee is meeting the sampling requirements.

The department also has 15 core indicator measures divided among the adult, dislocated worker, older youth, and younger youth programs. The department met or exceeded 7 of 15 (46.7%) of these goals during program year 2000, 14 of 15 goals (93.3%) in 2001, and 11 of 15 goals (73.3%) during 2002. Additionally, the department improved performance for 14 of 15 measures (93.3%) between the 2000 and 2001 program years and for 10 of 15 measures (66.7%) between 2001 and 2002. (See Table 4.) In 2003, Tennessee was one of 16 states to receive an incentive grant award based on the state’s performance during program year 2001. In order to qualify for a grant award, a state must have exceeded performance levels for outcomes in WIA Title I, adult education, and vocational education programs. Tennessee received \$2.6 million.

Table 4
Program Performance Measures
Program Years 2000, 2001, and 2002

	Program Year 2000		Program Year 2001		Program Year 2002	
	Negotiated Level	Actual Level	Negotiated Level	Actual Level	Negotiated Level	Actual Level
Adult Program						
Entered Employment Rate	74.0%	67.3%	70.0%	76.8%	71.0%	81.3%
Employment Retention Rate	80.0%	80.0%	81.5%	86.6%	83.0%	85.7%
Earnings Change in Six Months	\$3,172	\$3,418	\$3,219	\$4,124	\$3,300	\$3,103
Employment and Credential Rate	60.0%	51.5%	57.0%	72.6%	58.0%	77.3%
Dislocated Worker Program						
Entered Employment Rate	79.0%	76.9%	74.9%	80.4%	75.9%	83.5%
Employment Retention Rate	90.0%	86.6%	91.5%	92.2%	93.0%	92.4%
Earnings Change in Six Months	92.0%	96.4%	91.0%	102.9%	92.0%	86.7%
Employment Credential Rate	60.0%	51.7%	57.0%	73.8%	58.0%	74.4%
Older Youth						
Entered Employment Rate	70.0%	70.9%	66.0%	75.6%	67.0%	77.4%
Employment Retention Rate	80.0%	81.2%	81.5%	81.3%	83.0%	82.6%
Earnings Change in Six Months	\$3,075	\$3,306	\$2,943	\$4,992	\$3,000	\$3,375
Employment and Credential Rate	50.0%	42.1%	47.5%	50.5%	48.5%	58.0%
Younger Youth						
Skill Attainment Rate	72.0%	91.9%	73.5%	84.1%	75.0%	81.5%
Diploma or Equivalent Rate	60.0%	52.0%	61.5%	67.9%	63.0%	72.8%
Retention Rate	54.0%	23.0%	55.5%	60.0%	57.0%	64.0%

Data Collection

The Case Management Activity Tracking System (CMATS) is an effort of several major state agencies partnering to provide Tennessee with a comprehensive WIA application. CMATS is a Web-based system developed to manage participants served through the Local Workforce Investment Areas, Adult Education, Vocational Rehabilitation, and Job Services. Currently only WIA and Adult Education are online. Job Services was scheduled to come online in September 2003 but was delayed due to hardware upgrades.

CMATS data are used to fulfill annual and quarterly reporting of Workforce Investment Act Standard Report Data with the U.S. Department of Labor. According to department staff, CMATS was designed around the required components of the report. An essential feature of WIA is the “Customer Choice” orientation of the program. Individuals seeking assistance through WIA funding have the freedom of choice in selecting the training program that best fits their personal and career needs. As such, it is important that customers receive accurate information regarding the performance records of all training providers eligible to participate in the WIA program.

The department uses CMATS data for calculating performance measures; however, at this time the system does not perform the calculations. Currently, the department extracts

CMATS data and forwards the extract to the University of Memphis. The department contracts with the university to provide demographic predictions, statistical analyses, and economic predictions as well as calculating performance measures. According to Division of Employment and Training staff, the department is purchasing statistical software so that the functions and calculations currently provided by the University of Memphis can be performed by department staff. Additionally, the federal government has provided a statistical program, Mathematica, to aid in conducting data validation tests to ensure data accuracy. This software extracts information from CMATS and selects random files and components for the department to perform data validation tests. Division staff believes this system will select between 250 and 350 files for review from the entire database population for validation testing. The department hopes to begin using this system in March 2004.

Based on information reviewed, it appears the department has improved in meeting negotiated performance criteria. The department should continue its efforts to ensure the program meets and exceeds these criteria, as well as focusing efforts in ensuring data integrity.

Department of Labor and Workforce Development's Comment

We appreciate the thorough and detailed performance audit and review of the Division of Employment and Workforce Development, Department of Labor and Workforce Development. In addition, we appreciate the audit's acceptance of suggested areas for improvement, as we too are further committed to the process and procedures of continuous improvement in the areas of performance and data collection.

STATUS OF THE EMPLOYMENT SECURITY TRUST FUND

The Unemployment Compensation Fund receives premiums from employers as deposits and pays benefits to claimants. Interest earned is retained in the fund. According to a calendar year 2002 department report, the trust fund had a balance of \$580.4 million at the end of December 2002 with a forecasted balance of \$507.3 million by the end of December 2003 (see below for discussion of actual balance).

According to an April 2003 U.S. Department of Labor report on trust fund solvency, Tennessee had a high-cost multiple of 0.40 for calendar year 2002 and ranked 39th in the nation. The high-cost multiple, the federal government's measure for evaluating trust fund solvency, represents the percentage of a year for which a state's trust fund could pay benefits, if benefits were the same as the historically highest benefits payout. High-cost multiples nationwide ranged from 2.36 to 0; the U.S. average was 0.44. In comparison, a June 30, 1996, report quoted in the October 1997 performance audit of the Department of Employment Security indicated that Tennessee had a high-cost multiple of 0.78 and ranked 26th in the nation, with high-cost multiples nationwide ranging from 3.02 to .12 and a U.S. average of 0.68. Based on this data, Tennessee's trust fund is currently in a less favorable position (relative to other states) than it was at the time of the last audit.

The department submits (no later than February 1 of each year) an annual report on the trust fund to the General Assembly, as required by statute. The report includes a Statement of Revenues, Expenditures, and Changes in the Fund Balance as well as projections of revenues and benefits for eight quarters. See below for a summary of the annual reports for 2000 through 2003.

**Employment Security Trust Fund
Revenues, Benefits, and Ending Fund Balance
(Expressed in Millions)
As of December 31, 2000-2003**

	2000	2001	2002	2003
Premiums Collected and Interest Earned	\$356.6	\$351.1	\$549.0	\$480.5
Benefits Paid	\$363.8	\$575.7	\$602.8	\$572.4
Ending Balance	\$858.8	\$634.3	\$580.4	\$488.4

On February 3, 2004, the Commissioner of the Department of Labor and Workforce Development made a presentation on the trust fund's status to the Senate Commerce, Labor and Agriculture Committee. The Commissioner raised concerns about the trust fund's ability to withstand another downturn in the economy. The amount employers pay into the fund is determined by the balance in the fund and is set forth in a series of six contribution tables. Table 1 requires the highest contribution rate and is used when the fund is below \$450 million; Table 6 requires the least contribution. Currently, Table 2 (which is used when the fund balance is less than \$525 million but more than \$450 million) is being used. However, the University of Tennessee's projections for the fund balance indicate that the fund balance will begin to increase in 2004 and 2005 because of an upturn in the economy. The Commissioner stated that, if projections are incorrect and the fund balance continues to decrease to below \$450 million (when Table 1 goes into effect), he will notify the General Assembly and the Governor that further action needs to be taken. Possible options identified in information provided by department staff include the following:

- (1) Raise the taxable wage base. Tennessee's taxable wage base for unemployment insurance premium purposes is \$7,000 (the lowest allowable by federal law) and has not been raised since 1983. Currently, an employer pays the same unemployment insurance on an employee making \$7,000 per year as he/she pays on an employee making \$28,600 (the minimum wage needed to qualify for the maximum weekly benefit amount) or more, even though higher paid employees' potential benefit liability for the trust fund is much greater.
- (2) Raise the trust fund trigger levels on the premium rate chart, so that a table requiring increased contribution rates would go into effect when the trust fund balance is at a higher level. For example, instead of Table 2 going into effect when the trust fund balance is between \$450 million and \$525 million, it would go into effect when the balance falls between \$500 million and \$575 million.
- (3) Revise the premium rate tables to generate enough revenue to cover the \$75 million trigger implements between tables on the current chart. On the current premium rate

chart, a new premium rate table is triggered by a \$75 million drop in the trust fund balance. However, the current chart doesn't generate enough revenue from, for example table 3 to table 2, to offset the \$75 million drop in the trust fund balance.

ALTHOUGH WEAKNESSES STILL EXIST, IMPROVEMENTS HAVE BEEN MADE IN TOSHA'S PUBLIC SECTOR ACTIVITIES

Public sector employers are required to establish and maintain effective and comprehensive occupational safety and health programs. These employers include state departments, commissions, boards, or other agencies, as well as county or municipal governments electing public-sector status. County and municipal governments not electing public-sector status are treated like private-sector employers. TOSHA's Public Sector staff enforce the public-sector statutes through inspections, investigations, and consultations. In the January 2000 performance audit, we identified two areas of concern: inspections of state agencies and the need to update public sector employers' occupational safety and health plans. Our review during the current audit indicated that improvements have been made, although weaknesses still exist.

Inspections Performed

TOSHA Rule 0800-1-5-.08(3)(a) requires monitoring inspections to take place at such times and in such places of employment as the commissioner may direct. Monitoring inspections of each public-sector employer are to be conducted at least every two years and cover, at a minimum, inspections of at least one worksite in at least two departments or establishments. The selection of entities to inspect is based on factors such as accident ratios, number of complaints, etc. Agencies where most work is in an office setting are considered low priority for inspections.

We obtained and reviewed a listing of all public-sector inspections conducted between January 1, 2000, and June 30, 2003. TOSHA continues to appropriately focus a majority of city and county inspections in high risk areas, such as water treatment facilities, maintenance shops, fire departments, police departments, etc., as is noted in the prior audit. Additionally, we found that the number of state agency inspections conducted has significantly increased since the prior audit, which noted that between 1995 and 1998, only 23 to 28 state agency inspections were conducted each year. During calendar years 2000 through 2002, the average number of state inspections was 51. (See Table 5.)

**Table 5
Number of Inspections Conducted**

	2000	2001	2002	Average 2000-02	2003 (through June 30)
Cities	306	231	259	265	115
Counties	127	138	134	133	59
Utilities	89	67	81	79	38
State Agencies	59	51	43	51	23
Totals	581	487	517	528	235

Despite the improvements, however, we also found that approximately 24% of all public-sector entities were not inspected as required. (See Table 6.) Without periodic inspections, it is difficult for TOSHA to determine the effectiveness of public-sector employers' occupational safety and health programs.

Table 6
Public-Sector Inspections
Were They Conducted as Required?
January 1, 2000, Through June 30, 2003

	Yes		No		Due in 2003*		Total
	Number	Percent	Number	Percent	Number	Percent	
Cities	125	55%	62	27%	42	18%	229
Counties	71	79%	4	4%	15	17%	90
Utilities	40	63%	11	17%	12	19%	63
State Agencies	12	25%	26	54%	10	21%	48
Totals	248	58%	103	24%	79	18%	430

* These inspections were due in 2003 but had not been conducted as of June 30, 2003.

Because inspections may have been conducted during the last half of 2003, we could not draw a conclusion regarding these inspections.

Public-Sector Occupational Safety and Health Plans

Because of possible changes in entities' duties and responsibilities, changes in technology, and increased awareness of safety and health risks, up-to-date plans are needed for the department to assess risks and the entities' response to those risks. The January 2000 performance audit noted that Occupational Safety and Health Plans submitted and on file from state agencies and county/local governments were not current. Sixteen of 19 plans reviewed had been submitted in the 1970s. For the current audit, we also obtained a listing of public-sector entities and dates of their plan submission or update. Based on a review of the current plan submission listing, we determined the average age of plans was 18.6 years. However, when we reviewed 20 public-sector health plans on file with the department, we found that the department began soliciting plan updates during April 2003 and that the letters included language indicating that TOSHA will be requesting updates every five years. Therefore, it appears the department is taking steps to implement the prior audit recommendation to begin updating public-sector plans every five years.

TOSHA should continue its efforts to increase inspections of public-sector entities, while still keeping its appropriate focus on higher-risk entities. TOSHA should also continue the process of obtaining updated Occupational Safety and Health Plans and requiring that plans be updated every five years.

TOSHA INSPECTION DATA ARE NOW COMPUTERIZED

The January 2000 Sunset audit of the Department of Labor found that TOSHA compliance officers did not always use the most current inspection forms and worksheets adopted by the department. Some compliance officers used federal OSHA inspection forms instead of the TOSHA inspection forms. Based on our TOSHA file review and interviews with department management and staff during the current audit, this weakness has been addressed. TOSHA inspectors now enter all inspection information directly into an inspection computer system/database or, for those inspectors without access to this system, a data entry person in Nashville enters those inspections and related information. Therefore, inspections across the state should be uniform and information obtained, consistent.

COMPLETENESS OF INFORMATION IN LABOR STANDARDS INSPECTION REPORTS HAS IMPROVED

The department's Labor Standards Division has improved the completeness of information contained in its inspection reports. In the 2000 audit, we recommended that inspectors completely fill out their inspection reports, noting any citations or penalties assessed, and detailing, if applicable, why no warning, citation, or penalty was issued when violations were noted. We also recommended that inspectors make sure employers with violations sign and date the inspection reports, attesting that identified problems have been corrected.

Prior Audit

The 2000 audit reviewed Labor Standards inspection reports and found that only one of 413 inspectors' reports reviewed recommended a penalty. The reports reviewed did not indicate whether employers had been warned or given formal citations. Also, the majority of child labor inspection reports noting violations did not have the dated signature of the employer attesting that the violations had been fixed, as required. Those reports that were signed had not been signed within the inspector's prescribed time period.

Current Status

To determine if the department implemented our recommendations, we obtained a list of Child Labor, Wage Regulation, and Wage Complaint inspection reports from January 1, 2000, through July 22, 2003—a total of 8,926 reports. We determined that 8,607 of those inspection reports were in closed status, which means all work by the inspectors and division management had been completed for those reports. We reviewed the files of 310 closed inspection reports—150 Child Labor, 150 Wage Regulation, and 10 Prevailing Wage reports.

Based on a review of 310 Labor Standards inspection reports, we determined that 57 (18%) of the inspection reports reviewed found violations (51 Child Labor, 3 Wage Regulation, and 3 Prevailing Wage). Twenty-seven (47%) of the 57 reports with violations assessed penalties (all 27 were for Child Labor violations). (See Finding 4.) In 44 (86%) of the 51 child labor cases in which employer notification was needed, the division had warned or given formal

citations to the employer. In addition, 46 (90%) of 51 child labor inspection reports had the dated signature of the employer as required. Therefore, we concluded that, although some weaknesses still exist, the Labor Standards Division has improved the completeness of information in its inspection reports.

Child Labor Inspection Reports. The division conducts inspections and investigates complaints regarding child labor issues. Of the 150 Child Labor inspection reports reviewed, 51 (34%) cited one or more violations. Table 7 indicates the action taken by the division on the 51 inspection reports with violations cited. Seven of the 51 reports reviewed (14%) did not indicate whether the division took any action.

Table 7
Results of Child Labor File Review
Inspection Reports With Violations – Division Actions

Status	Number
Final Warning	17
Penalty Assessed	27
No Indication*	7
Total	51

* Division staff had no definitive explanation for why no action was identified. According to the staff, if a violation is found, a final warning or penalty must be issued. However, either of these actions can be overruled by the division director. Therefore, it is possible that in these cases further action was not considered appropriate by division management.

Once an inspection report is reviewed by division management, the division can issue a final warning or assess a penalty. A final warning is a letter informing an employer of a violation or violations and is used when the employer has not had previous violations. For all of the 44 inspection reports resulting in final warnings or penalties, employers were formally notified via a letter from the division. Violation of child labor laws is a Class A misdemeanor with a civil penalty imposed, at the commissioner’s discretion, of \$150 to \$1,000 per violation. (Pursuant to Section 50-5-112, *Tennessee Code Annotated*, each day that a violation continues after the employer has been formally notified constitutes a separate violation.) Of the 27 penalties assessed, 25 were for the minimum \$150 penalty.

Of the 51 Child Labor inspection reports reviewed for which the inspector had cited violations, 46 (90%) were signed by the employer attesting to the correction of violations, as required; five (10%) were not signed.

Wage Regulation Inspection Reports. The division investigates complaints that employees have not been paid the wages due to them, have not been paid at least twice a month, etc. We reviewed 150 Wage Regulation inspection reports. In 81 (54%) of 150 reports reviewed, claimants received payment of wages due. We saw evidence of three penalty assessments, which were subsequently waived because employers later paid the wages due. We found six inspection reports with no information on the report or in the files.

Prevailing Wage Inspection Reports. The division conducts inspections and investigates complaints to enforce compliance with the Prevailing Wage Act. (The act requires a certain rate of pay on state-funded projects over \$50,000.) Of the ten Prevailing Wage inspection reports reviewed, three were job-site inspections and seven were pre-construction conferences. One of the three job-site inspection reports found violations of the Prevailing Wage Act, but there was no indication that citations or warnings were issued or that the employer was notified. Violations identified in the other two reports were noted as corrected. According to division management, the normal practice is to inform the prime contractors of any violations and allow them to withhold payment from their subcontractors until corrections are made. By law, failure to pay the set rate may be considered a breach of contract, which could result in termination and re-letting of the contract.

Division of Labor Standards management should monitor inspection reports to ensure all reports contain all pertinent information regarding violations, corrections of violations, etc., and that decisions about penalties (e.g., if penalties were waived and why) are adequately documented.

STATUTE REQUIRING SUBMISSION OF MINE MAPS HAS NOT BEEN CHANGED

The Mine Safety Section is not requiring mine owners and operators to submit maps as required by Section 59-1-116, *Tennessee Code Annotated*. The law states that the department should not issue a mine license until a map of the mine is submitted to the department. In addition, Section 59-2-106 states that Mine Safety may (at the end of each year) require mine maps to be updated.

The January 2000 Sunset audit of the Department of Labor and Related Entities found that the Mine Safety Section was not requiring mine owners, operators, or superintendents to submit mine maps prior to licensing or to submit updates. According to the director of Mine Safety, the federal Mine Safety and Health Administration (MSHA) requires an updated map of each mine be submitted to MSHA every six months. Because MSHA's maps are more current than the state's and would be available to a mine rescue team if an accident occurred, Mine Safety considered it an unnecessary expense to the mine companies to require that they submit updated maps to the state. According to the director, this statutory requirement could be deleted and have no serious effect on the mining industry.

During the current audit, Mine Safety staff stated that the mine maps and updates were still not being required and that either the map the operator keeps on site or the federal MSHA's map would be more accurate than any map the section would have. The General Assembly may wish to consider deleting from statute the requirement that mine operators submit a mine map to the Tennessee Department of Labor and Workforce Development.

MINE FOREMAN CERTIFICATE HAS BEEN REVISED

The January 2000 Sunset audit of the Department of Labor found that the mine foreman certificate (issued once the applicant has met all requirements) stated that the individual has appeared before, and been examined by, the Board of Mine Foreman Examiners. However, this board was terminated by the Department of Labor in the fall of 1994, in an effort to cut costs. The audit recommended that the department revise the mine foreman certificate to delete the reference to the Board of Mine Foreman Examiners. Based on our review during the current audit, the department has implemented this recommendation. The mine foreman certificate was revised in June 2000 and now refers to the Division of Mines instead of the Board of Mine Foreman Examiners.

FINDINGS AND RECOMMENDATIONS

1. The department should further explore the use of direct deposit or EBT (Electronic Benefits Transfer) services for its unemployment insurance (UI) benefits checks

Finding

The department's Employment Security Division is responsible for administering the Unemployment Insurance program that provides weekly benefits to unemployed individuals who have lost their job through no fault of their own and have qualifying wages in the base period. Between September 1, 2002, and August 31, 2003, the department issued over 3.5 million checks amounting to over \$731 million. Several other states' Unemployment Insurance programs already use direct deposit for their UI benefits checks, and some other Tennessee state agencies (e.g., the Departments of Human Services and Treasury) use direct deposit or EBT services for their clients. When asked about the possibility of using direct deposit for unemployment compensation benefits checks, Department of Labor and Workforce Development management expressed concerns about the cost and feasibility of the process. However, the department was unable to provide documentation supporting its concerns. In addition, the department had not formally evaluated the costs and advantages of using direct deposit or Electronic Benefits Transfer for unemployment insurance benefits.

According to Employment Security Division management, using direct deposit for unemployment compensation benefits checks that are issued on a weekly basis would be very expensive. However, the department has not estimated such costs; it does not consider direct deposit a high percentage option for most claimants since many do not have checking accounts. Management contended that most states that have implemented direct deposit for UI benefits checks have a low percentage of usage and must maintain a dual system (i.e., direct deposit plus regular check issuance by mail).

According to management, some states that have tried using direct deposit for UI benefits have had difficulty getting at least 10% of claimants to participate. Management could not provide any documentation regarding other states' difficulties but indicated that they got most of their information about other states' problems with direct deposit during conversations at multi-state meetings. Some of the states that use direct deposit for UI benefits apparently have mandates in place which require claimants to have bank accounts so that they can receive UI benefits checks via direct deposit. Division management did provide the address to the UI Information Technology Support Center's Web site, which included "best practices" information from Alaska, Minnesota, and Wisconsin, as well as a "lessons learned" section. None of this information indicated problems getting claimants to use the direct deposit method. The Web site also detailed which states use or plan to use direct deposit of UI benefits checks (see Table 8). According to that information, 18 states directly deposit UI benefits checks, and 3 additional states (plus the District of Columbia) have plans to directly deposit UI benefits checks.

Table 8
Direct Deposit of Unemployment Insurance Benefits Checks by States
As of August 12, 2003

Direct Deposit Implemented	Planning Direct Deposit
Alabama	California
Alaska	District of Columbia
Arizona	Idaho
Florida	Nebraska
Georgia	
Iowa	
Kansas	
Louisiana	
Minnesota	
Missouri	
North Carolina	
Oklahoma	
Oregon	
Pennsylvania	
Rhode Island	
Utah	
Vermont	
Wisconsin	

Source: http://www.itsc.state.md.us/maps_charts/directdep.asp, UI Information Technology Support Center, sponsored by the U.S. Department of Labor.

In order to obtain additional information about other states' use of direct deposit for unemployment insurance benefits, we contacted officials in four other southeastern states: Alabama, Florida, Georgia, and North Carolina. Georgia has the most experience with direct deposit (over 3 years) and Florida has the least experience (1.5 years). Officials in these states mentioned only minor problems with direct deposit (e.g., claimants who have no bank account or who do not trust the concept of direct deposit) but noted several benefits, including

- elimination of printing checks as well as the paperwork associated with mailing the checks;
- the savings resulting from electronically transferring funds to a claimant's bank account (which takes 2 to 3 days versus the cost (i.e., stock paper for checks, machinery to print checks, envelopes, check stop payments, storage) associated with printing and mailing out checks (which takes 7 to 10 days);
- claimants' receiving benefits more quickly, improving customer service;
- improved security and accuracy; and
- no lost or stolen checks.

Officials from the four states estimated a cost of between \$.60 and \$1.64 for printing and mailing each unemployment insurance benefits check and a cost of \$.10 to \$.24 to directly deposit the UI benefits into a claimant's bank account. Three of the states developed and implemented the direct deposit system in-house in order to keep start-up costs as low as possible. (Florida contracted for the development and implementation because of insufficient internal resources.) The states marketed the direct deposit concept to claimants using UI interviewers who process claims in person or over the phone, and also used the agency's Web site, the benefits booklet, flyers mailed out with benefits checks, and posters in local offices. None of the four states mandated the use of direct deposit, and participation rates ranged from an estimated 43% in Georgia to 19% in Alabama.

Another possibility is the use of EBT (Electronic Benefits Transfer) services to provide UI compensation benefits. According to information provided by Department of Finance and Administration staff, the Tennessee Department of Human Services has initiated a request for proposal (RFP) for the renewal of its EBT (Electronic Benefits Transfer) services contract. (Human Services began using EBT in 1999 for the delivery of benefits for the Food Stamp and Families First programs.) This RFP, which is currently being reviewed by Finance and Administration, includes a component that would allow UI compensation benefits to be distributed through electronic funds transfer via a bank debit card (Visa or Mastercard) and/or with a direct deposit payment option to bank account holders. Finance and Administration staff anticipated that all components of the RFP would be approved and in place by January 2005. Employment Security Division management commented that the use of EBT services would be more desirable than direct deposit because it would not require the claimant to have a bank account.

Recommendation

The Department of Labor and Workforce Development should analyze the costs and benefits of using direct deposit or EBT (Electronic Benefits Transfer) services to distribute benefits to claimants in the unemployment insurance (UI) compensation system. As part of the analysis of costs and benefits, department staff should consult with the Department of Finance

and Administration, other Tennessee state agencies, and other states currently using such services.

Management's Comment

We concur. An alternative for payment of benefits by check has been under consideration for some time. The Employment Security Division of the Department of Labor and Workforce Development is presently in partnership with the Department of Finance and Administration in development of an RFP to solicit proposals for the purpose of delivering weekly benefit payments through debit card transactions and/or direct deposit.

The Department of Finance and Administration intends to secure a contract for a bank debit card to deliver (i) child support payments, (ii) unemployment insurance payments, and (iii) foster care and adoption payments. The proposal will call for payment delivery to be without charge via debit card and will also require a means of establishing direct deposit into an individual bank account for those wishing such service.

The proposal is presently in draft form and plans are to release it on or before April 1, 2004.

We agree with the audit findings that this method of payment will provide a secure, convenient and accurate benefit delivery mechanism for state payments to recipients.

2. The department does not have a formal, written conflict-of-interest policy for its board, committee, commission, and council members

Finding

This is a repeat finding from the January 2000 audit of the Department of Labor. At that time, we recommended that the department develop a formal, written policy regarding potential conflicts of interest by its board members. No statute requires written disclosure; however, without a means of identifying potential conflicts of interest and discussing and resolving them before they have an impact on decisions, members could be subject to questions concerning impartiality and independence. The department concurred and indicated in its response to the audit that it would develop a written policy and disclosure statement.

Employee Conflict-of-Interest Policy and Disclosure

Currently, the department has in place a conflict-of-interest policy for employees, which incorporates the provisions of Section 8-50-506, *Tennessee Code Annotated*. This policy requires employees "whose duties are to regulate, inspect, audit or procure goods or services or to administer tax laws to disclose to their immediate supervisor any conflict or potential conflict

of interest by the employee (or their immediate family) involving more than a \$5,000 interest in any private entity.” Department staff have used this same employee policy for some boards and their members, for example, the Employee Assistance Professionals Board, the Board of Review, and the TOSHA Advisory Council. However, this policy (and the statute on which it is based) was intended for department employees, not board members.

Draft Policy

The General Counsel for the Department of Labor and Workforce Development has drafted a conflict-of-interest policy and has submitted that draft to the Governor’s office for approval. The draft policy defines what constitutes a conflict of interest and the conduct expected of board members. Under that policy, a conflict of interest would include any circumstance in which a member’s individual interest impairs, or gives the appearance of impairing, his or her ability to make unbiased decisions or provide unbiased public services. The policy also defines a financial interest as having an ownership of 5 percent or more of the stock of a corporation or other business entity, or being a director, advisor, or other active participant in the affairs of a party. Any member determined to have a conflict with a matter up for consideration is required to publicly acknowledge the conflict and refrain from participating in discussions and voting on the matter.

Recommendation

As soon as the Governor’s office review is completed, the Department of Labor and Workforce Development should adopt and implement a written conflict-of-interest policy for its board, committee, commission, and council members. The department should require board members to update disclosures periodically and whenever their circumstances change.

Management’s Comment

We concur. The members of the boards, committees, commissions, and councils attached to the Tennessee Department of Labor and Workforce Development are appointed by and serve at the will of the Governor. The Department is responsible for providing administrative and staff assistance for these bodies to carry out their duties.

In response to the need for a conflict-of-interest policy for members of these bodies, the Department’s General Counsel’s office has drafted a policy, departmental procedures, disclosure forms, and acknowledgement forms. The latest drafts were sent to the Governor’s legal counsel for review on January 14, 2004. Once the drafts are finally approved, the policy and procedure will be implemented for each board, committee, commission, and council. We have already alerted the members of all of the affected bodies of the pending policy and procedures. Based on conversation with the Governor’s legal office, we believe the policy will be finally approved within a reasonable time.

The pending conflict of interest policy will require the members to annually review the conflict policy, submit acknowledgement of doing so, and to disclose any conflict covered under the policy.

The policy and procedures will also require that the members of the bodies be reminded of their duty to disclose any financial or personal conflicts prior to the transaction of business by the body.

3. The Labor Standards Division needs to be consistent in assessing penalties and needs time guidelines for inspection case closure and violation correction

Finding

The Labor Standards Division needs to be consistent when determining the amount of penalties to assess for violations of the child labor and wage regulation laws. In addition, the division needs written policies detailing time frames for investigation closure and correction of violations. Written guidelines could help ensure that penalties are assessed consistently and that violation correction time frames are applied consistently for similar violations. Guidelines regarding investigation time frames would help ensure that staff understand management's expectations and provide criteria for management in assessing program and employee performance.

Prior Audit

The January 2000 audit found that the Labor Standards Division lacked guidelines concerning penalty assessments and time frames for investigations and correction of violations. We recommended that the division establish specific guidelines for assessing penalties for violations of the child labor and wage regulation laws and specific time guidelines for the handling and closure of investigations and for the correction of violations, depending on their severity.

Penalty Assessment

State statute provides for a range of penalty amounts that may be assessed. Violations of child labor laws are a Class A misdemeanor with a civil penalty imposed, at the commissioner's discretion, of \$150 to \$1,000 per violation. (Pursuant to Section 50-5-112, *Tennessee Code Annotated*, each day that a violation continues after the employer has been formally notified constitutes a separate violation.) Wage regulation violations are a Class B misdemeanor, punishable by a fine not less than \$100, nor more than \$500. Additionally, civil penalties of not less than \$500, or more than \$1,000, may be assessed at the discretion of the commissioner.

As the commissioner's designee, the amount of penalty assessed is at the discretion of the director of the Labor Standards Division. According to division staff and the division director,

the general practice for Child Labor violations is to assess \$150 per violation for a first offense and increase that amount for violations in subsequent inspections. Violations of the Hazardous Occupation for Minors statute usually begin with a penalty of \$1,000 per violation. The employer may request an informal conference with the division director or may file a formal appeal. The director may set aside or adjust penalties at any time throughout the process.

Our file review of Child Labor inspection reports found that the division assessed penalties for 27 of 51 inspection reports where the inspector cited violations (see page 28). The division director assessed \$150 for each violation in 25 (93%) of these 27 inspection reports, the lowest penalty statutorily allowed. The number of violations per report ranged from one for a total penalty of \$150 to 58 for a total penalty of \$8,700. Based on documentation in the report files, we could not determine whether prior violations were taken into consideration. The other two files were assessed penalties of \$1,000 (one violation) and \$150. (This \$150 penalty assessment was for two violations at \$75 per violation, even though state law provides that \$150 per violation is the lowest allowed for each violation. According to staff, there was a typographical error in the citation notification equating to \$75 per penalty rather than \$150. Since the employer paid this amount before staff discovered the error, the division considered the penalty paid and made no corrections.)

During our review, we also found that the director penalized an employer \$1,000 for only one violation. The director noted the employer owned several establishments of a well-known chain and therefore should have known the regulations. However, we found that the employer had 19 minors working at the inspected establishment and had only one violation, making this penalty appear excessive. Furthermore, this penalty appears excessive based on our file review, which contained three other employers cited for the same violation. The first employer was cited for 28 violations and only received a final warning. The second employer was cited for 40 violations and was assessed \$150 for each violation. The third employer was cited for only one violation and was assessed \$150. Additionally, the third employer was located in the same county and was associated with the same well-known chain as the employer penalized \$1,000. Based on our observations, the application of penalties lacks consistency, especially in this instance.

For Wage Regulation violations, penalties are typically not assessed if the claim (complaint) has been resolved to the inspector's satisfaction (e.g., if the employer is willing to pay the wages due or to show cause as to why the wages are not owed). If the claim has still not been resolved even after the division has sent the employer a certified letter demanding payment, the inspector submits all relevant information to the central office for penalty consideration. After notification of any proposed penalties assessed by the division director, the employer may request an informal conference or may appeal in writing. According to staff, at any time during this process a penalty may be waived if the employer agrees to pay or shows why wages are not owed. Our file review of Wage Regulation inspection reports found that the department waived penalties for one of three cases sent for penalty consideration because the employer agreed to pay wages owed to the complainant.

Lack of Information Regarding Prior Inspection Violations

Based on our review and discussions with staff, we found that the division maintains only the three most recent years of inspection reports. Therefore, division staff do not have access to information regarding employer violations that occurred more than three years ago. This may allow employers with prior violations to be assessed only \$150 or receive a final warning rather than a penalty assessment of a higher dollar amount.

Inspection and Violation Correction Time Frames

We reviewed the Labor Standards Policy and Training Manual and interviewed division staff to determine whether guidelines for time frames for inspections and violation correction were implemented as recommended in the prior performance audit. We determined that there are some written guidelines but none that encompass the entire inspection process.

For example, division staff stated that they try to close Child Labor investigations within two weeks after initial contact with the employer. However, this guideline is not written. Our file review of Child Labor inspection reports found that the files do not have a date for case closure, only a notation that the case is closed. Therefore, we could not determine whether investigations were closed in the two weeks.

The prior audit also noted that inspectors lack guidelines to help them set time frames for employers to correct violations of child labor laws. According to staff, policy does not state, but implies, that employers are required to correct violations immediately either by removing the minor from the schedule until they are in compliance or by changing practices. We reviewed the policy and training manual and determined there is a policy requiring that a minor be immediately removed from the schedule for working without proof of age. However, other violations in the manual do not use the language immediately.

Further review found that the manual does not provide specific guidelines for inspection and correction of violations for Wage Regulation inspections.

Recommendation

The Labor Standards Division should adopt written guidelines governing penalty assessments for Child Labor and Wage Regulation violations; guidelines for inspection and investigation time frames; and time frames for correction of violations. Investigation reports should document case closure dates so that division management can monitor the timeliness of investigations. The division should implement a system to track prior employer violations of Child Labor laws and use that information when penalties are assessed. In addition, the division should modify existing guidelines to eliminate implied time frames. Even though “immediate” correction is implied in regard to the correction of child labor violations, the policy should specifically state that violations require immediate correction.

Management's Comment

We concur in part. We are in the initial stages in preparing a policy and procedures manual. Case guidelines will be included to ensure consistency and create time lines for child and wage penalties. Our statute *T.C.A. 50-5-112* does not give the power to enforce and collect civil penalties for both child labor and wage regulation laws. Also with child labor cases the statute provides that the Division must satisfy a criminal standard of proof to assess a civil penalty. We have been trying to work with the legislature to rectify this situation because it is extremely difficult to show criminal standard of intent for a civil matter. Therefore it is difficult to collect and close cases in a timely manner; however the policies and procedures manual will help with these issues.

We are training more employers by way of child labor classes as well as keeping records of those that attended. After attending this training, employers should better understand the child labor laws. This free training is offered once a month and upon demand. By offering this training, we are attempting to create the required proof of intent which is required by the law to assess a penalty. Therefore, we are attempting to reach as many employers as we can.

4. As previously noted in our 2000 audit, the Labor Standards Division is still not assessing penalties (which were authorized in 1996) for wage regulation violations

Finding

Based on our review of a sample of wage regulation reports, the division is still not assessing penalties for violations, even when the offenders are repeat violators.

Prior Audit

The January 2000 audit found that the Labor Standards Division had not assessed penalties for wage regulation violations since rules authorizing penalty assessments were approved in 1996. At that time, the division director stated that penalties had not been assessed because in most cases the employer immediately corrected the problem. Additionally, managers stated that the department's philosophy is to focus on achieving compliance with laws rather than punishing employers who do not comply. Auditors noted that this seemed to be a reasonable focus and that assessing penalties against unintentional, or even first-time, violators may be counterproductive. However, auditors recommended the department use its statutory authority to assess penalties in cases of repeat violators or employers who clearly understood the requirements and chose to ignore them. Management concurred in part with the finding and stated that the Division of Labor Standards would make a concerted effort to more effectively utilize the penalty assessment authority granted by statute.

Penalties Allowed Per Statute

Section 50-2-103(h), *Tennessee Code Annotated*, states that a violation of this section is a Class B misdemeanor punishable by a fine of \$100 to \$500. Additionally, any employer, partnership, or corporation that willfully violates any provision of Section 50-2-103(a)-(g) is subject to a civil penalty of \$500 to \$1,000 at the discretion of the commissioner or the commissioner's designated representative. Each and every infraction constitutes a separate and distinct offense. If the commissioner or the commissioner's designated representative determine the violation was unintentional, there shall be a warning, in lieu of a penalty, on the first offense. On second or subsequent violations, the civil penalty is applicable. It shall be at the sole discretion of the commissioner to elect to proceed either civilly or criminally upon any violation of this part; however, the employer shall not be charged both civilly and criminally for the same violation.

File Review

We obtained a listing of all Wage Regulation Reports dated between July 1, 2000, and July 22, 2003, and randomly selected and reviewed 150 reports. During our review, we noted the division assessed a penalty for only one of the reports. The division assessed a penalty of \$2,000 but subsequently waived the penalty because the employer paid the wages due. Additionally, we identified three employers as repeat offenders: one employer with four reports and two employers with two reports each. We determined that in these cases wages due were also paid and no penalties were assessed. We spoke with division staff who stated that the division generally waives a penalty if the employer is willing to pay the monies due or to show cause as to why the wages are not owed. Furthermore, the division will generally follow this practice even after a penalty assessment.

As we stated in the 2000 audit, we believe that, even though employers pay the wages owed, there is little incentive for employers to comply with laws until they are caught or to maintain compliance after the department's investigation is complete, unless the division assesses and enforces penalties. The identification of repeat offenders is especially important in ensuring adequate enforcement of compliance with wage regulation laws.

Recommendation

Labor Standards Division management should use its statutory authority to assess penalties, particularly in cases of repeat or willful violators. Furthermore, the division should implement a system to identify employers who repeatedly violate wage regulation laws to reinforce the importance of compliance with these laws.

Management's Comment

We do not fully concur. Although the department is legally able to assess civil penalties for unpaid wages, the law currently does not give us enforcement powers to collect these

penalties. As the law is currently, when an employer refuses to pay we then forward the case to the Attorney General's office for collection. The Attorney General's office then has the discretion of whether to proceed after the employer. In some past cases the Attorney General's office has sent a notice to the employer informing them that they have the authority to assess a lien against them. We will have the department's legal office send a letter of demand prior to sending it over to the Attorney General's office, this is to expedite the process. Generally the Attorney General's office decides what cases to proceed with because of staffing or a lack thereof. These are just some of the problems that we face. We have tried to create stronger legislation to allow the division more authority to collect penalties.

The labor standards division has the discretion to waive the penalty in most cases because of the lack of enforcement power if the employer pays within a reasonable time after notification of the amount being owed. In doing so, the department will negotiate with the employer to pay the employee the unpaid wages owed thus keeping the employee from having to hire a lawyer and file a personal complaint. When assessing penalties, staff considers such factors as the severity of the offense and the size of the business (including annual payroll and gross annual sales). It is not the intent of the division to bankrupt employers, only to get employers to follow the law. Our major concern is to ensure that employees are paid the wages that are owed.

The policies and procedures manual will address these issues to allow uniformity when assessing penalties, time guidelines and overall collections, etc.

5. The Safe Employment Education and Training Advisory Committee has not met in five years and apparently is no longer needed because the grant funds involved are no longer available

Finding

The Safe Employment Education and Training Advisory Committee was created by Section 50-6-503, *Tennessee Code Annotated*, and is to consist of seven members (three representing employees, three representing employers, and one representing the insurance industry) appointed by the Commissioner of the Department of Labor and Workforce Development. The committee's duties include making recommendations concerning occupational safety and health grant application procedures and criteria for grant approval; occupational safety and health grant recipients; and revocation of grants to recipients failing to comply with grant criteria. The committee is also responsible for receiving and processing occupational safety and health grant applications. Although the committee is mandated to meet at least annually, the last committee meeting was in October 1998. According to the administrator of the Workers' Compensation Division, the committee is not meeting (and is no longer needed) because occupational safety and health grant funds are not available and have not been available for several years.

Recommendation

The General Assembly may wish to consider terminating the Safe Employment Education and Training Advisory Committee because of its inactivity and the absence of a current need for that committee.

Management's Comment

We concur. We agree with the termination of the Safe Employment Education and Training Advisory Committee.

RECOMMENDATIONS

LEGISLATIVE

This performance audit identified the following areas in which the General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of the Department of Labor and Workforce Development's operations.

1. The General Assembly may wish to consider terminating the Safe Employment Education and Training Advisory Committee because of its inactivity and the absence of a current need for that committee.
2. The General Assembly may wish to review Section 4-3-1416, *Tennessee Code Annotated*, and clarify the desired frequency for distribution of the sexual harassment rules/guidelines to the state's employers.
3. The General Assembly may wish to consider deleting from statute the requirement that mine operators submit a mine map to the department.

ADMINISTRATIVE

The Department of Labor and Workforce Development should address the following areas to improve the efficiency and effectiveness of its operations.

1. The Department of Labor and Workforce Development should analyze the costs and benefits of using direct deposit or EBT (Electronic Benefits Transfer) services to distribute benefits to claimants in the unemployment insurance (UI) compensation system. As part of the analysis of costs and benefits, department staff should consult the Department of Finance and Administration, other Tennessee state agencies, and other states currently using such services.

2. As soon as the Governor's office review is completed, the Department of Labor and Workforce Development should adopt and implement a written conflict-of-interest policy for its board, committee, commission, and council members. The department should require board members to update disclosures periodically and whenever their circumstances change.
3. The Labor Standards Division should adopt written guidelines governing penalty assessments for Child Labor and Wage Regulation violations; guidelines for inspection and investigation time frames; and time frames for correction of violations. Investigation reports should document case closure dates so that division management can monitor the timeliness of investigations. The division should implement a system to track prior employer violations of Child Labor laws and use that information when penalties are assessed. In addition, the division should modify existing guidelines to eliminate implied time frames. Even though "immediate" correction is implied in regard to the correction of child labor violations, the policy should specifically state that violations require immediate correction.
4. Labor Standards Division management should use its statutory authority to assess penalties, particularly in cases of repeat or willful violators. Furthermore, the division should implement a system to identify employers who repeatedly violate wage regulation laws to reinforce the importance of compliance with these laws.

**APPENDIX
TITLE VI INFORMATION**

All programs or activities receiving federal financial assistance are prohibited by Title VI of the Civil Rights Act of 1964 from discriminating against participants or clients on the basis of race, color, or national origin. In response to a request from members of the Government Operations Committee, we compiled information concerning federal financial assistance received by the Department of Labor and Workforce Development, and the department's efforts to comply with Title VI requirements. The results of the information gathered are summarized below.

According to Tennessee Department of Labor and Workforce Development's Budget by Program for fiscal year 2004, the department is to receive \$147,542,400 in federal assistance, broken down as follows:

Program	Amount
Administration	\$5,486,700
TOSHA	\$3,605,700
Mines	\$108,500
Labor Standards	\$166,500
Employment and Training	\$62,373,500
Adult Basic Education	\$12,070,600
Employment Security	\$63,730,900
Total	\$147,542,400

The department submits reports to the U.S. Department of Labor's Civil Rights Center, the Tennessee Department of Personnel's Civil Rights Division, and the Tennessee Office of the Comptroller of the Treasury with respect to Title VI compliance. Ms. Evelyn Gaines is the Title VI Coordinator for the department. Her Title VI responsibilities include handling complaints alleging violations of the Civil Rights Act of 1964 and preparing Title VI Implementation Plans. Ms. Gaines and her four staff members are responsible for ensuring the department's Civil Rights compliance statewide.

The department submitted a Title VI Implementation Plan Update to the Comptroller of the Treasury on June 24, 2003. The original plan was submitted on June 27, 2002. To ensure that department staff and clients/program participants understand the requirements of Title VI, the department makes marketing information, posters, and other publications available to the public in both English and Spanish. In addition, public service announcements air frequently on local television and radio stations across the state. There are also plans to include public service announcements on local Hispanic Radio Stations and in Hispanic newspapers. Each division and local office within the department has a copy of the department's complaint procedures, and during new employee orientation/training courses, employees are provided with the names and locations of Title VI staff. The department informs contractors of Title VI responsibilities by including a non-discrimination statement in all contracts.

Title VI compliance is monitored by both the state and federal government. The department's federal and state monitors conduct desk and on-site audits on a regular basis in an effort to detect any patterns or indications of discrimination. The U.S. Department of Labor's (DOL) Civil Rights Center requires the department to develop and file a Method of Administration (MOA). The MOA is documentation of the Local Workforce Investment Areas' (LWIAs') and the department's inclusion of all ethnicities, more specifically how the department and LWIAs are ensuring involvement or participation in programs offered by the department or the LWIAs. The department monitors participant activity by collecting information through the CMATS database. This information includes general recipient information such as name, age, address, ethnicity, education, as well as employment details such as whether the participant is employed or dislocated, rate of pay, and annual family income. The following table shows Workforce Investment Act enrollment data.

**Department of Labor and Workforce Development
Workforce Investment Act Enrollment Data
Fiscal Year 2003**

Program Group	Total Participants	Black	White	Hispanic	Asian	American Indian	Hawaiian/ Pacific Islander	Multi-Racial
Adults	12,591	4,459	7,752	166	83	30	32	69
Dislocated Workers	9,517	1,800	7,484	57	86	26	19	45
Younger Youth 14-18	8,082	3,491	4,403	91	29	28	14	26
Older Youth 19-21	2,043	901	1,103	20	4	7	2	6

When the department receives a Title VI complaint or referral form, staff log the complaint and offer the complainant appropriate department services, based on the type of complaint, and a copy of the review. Complaints may be accepted in both local areas and department offices. Complaints under the department's purview are investigated and all others are sent to the DOL Civil Rights Center for processing. The department received four complaints during fiscal years 2002 and 2003. As of June 2003, one complaint was mediated/unresolved, one had been withdrawn, one was determined not to be within the department's jurisdiction, and one was pending.

As stated earlier, the department includes non-discrimination language in all contracts. See page 45 for a list of vendor contracts for FY 2003-2004, of which two are with minority vendors.

**Department of Labor and Workforce Development Contracts
As of October 2003**

Vendor	Contract Amount	Service Provided	Ownership	Funding
Tennessee Radio Network	\$34,060	Broadcasting state-wide spots on Workforce Development awareness of Career Centers across Tennessee.	Corporation	Federal
University of Tennessee	\$15,000	Production of videos in compliance with TOSHA regulations to distribute hazard communication standards to industries throughout Tennessee.		State and Federal
Hazards Research Corporation	\$31,000	Consultant who can serve as an expert witness in the event of a hearing before the TOSHA Review Commission or if a case goes to court.	Small Business	State and Federal
Gulf Computers, Inc.	\$606,160	Provide Oracle DBA and PowerBuilder Programmers	Minority/ Disadvantaged – Asian American	State
Focus Computer Management Consulting, Inc.	\$38,000	Continuing modification and refinements of the current software.	Minority/ Disadvantaged – Hispanic American	State
Willis of Tennessee, Inc.	\$75,000	To provide consulting actuarial services for the Advisory Council on Workers' Compensation. The Advisory Council is to review the Advisory Prospective Loss Costs Filing made by the designated rate service organization and to provide written comment on the filing to the Commissioner of Commerce and Insurance.	Corporation	State
University of Tennessee	\$1,345,732	Federal Adult Education funds to provide staff development to Adult Education grantees and ESOL and civics education to limited English proficient populations.		Federal
University of Memphis	\$146,136	Federal guidelines require the department to survey its Workforce Development customers and report the results of the survey to the federal government.		Federal
University of Tennessee	\$80,406	Actuary for the Tennessee Employment Security Insurance Model		Federal
Tennessee State University	\$25,000	Student interns work part-time gathering labor market information required by the federal government.		Federal
Geographic Solutions, Inc.	\$96,000	Maintenance for software used for reporting labor information to the federal government.	Small Business	Federal
Integris, Inc.	\$206,339	Offsite storage of files and computer system to process transactions (i.e., the state's Unemployment Claim checks) in case a disaster occurs and the state data center is not able to operate.	Corporation	Federal
Bank of America	\$130,000	Provide banking services for the Unemployment Insurance collection of fees.	Corporation	Federal
Hand Sten-Tel, LLC	\$360,000	Provide transcription services for appeals hearing officers.	Small Business	Federal
Comcast Cable Communications	\$8,036	Broadcast public service announcement spots on ESPN during each NFL game.	Corporation	Federal

See below for a summary of the department's employees, broken down by gender and ethnicity. As of October 2003, the department had 1,564 staff of whom 63% were female and 37% were male. Minorities comprised 19.5% of the department's staff—17.9% were Black and the remaining 1.6% were Asian, Hispanic, Indian, and Other.

**Department of Labor and Workforce Development
Staff by Title, Gender, and Ethnicity
As of October 2003**

Title	Gender		Ethnicity					
	Male	Female	Asian	Black	Hispanic	Indian	White	Other
Account Clerk	5	23	0	5	0	0	23	0
Accounting Manager	6	0	0	1	0	0	5	0
Accounting Technician 1	2	9	0	2	0	0	9	0
Accounting Technician 2	2	4	0	1	0	0	5	0
Accountant 2	5	4	0	2	0	0	7	0
Accountant 3	3	2	2	0	0	0	3	0
Assistant Commissioner 1	3	1	0	1	0	0	3	0
Assistant Commissioner 2	1	2	0	0	0	0	3	0
Administrative Assistant 1	1	4	0	1	0	0	4	0
Administrative Assistant 2	1	4	0	0	0	0	5	0
Administrative Assistant 3	0	4	0	1	0	0	3	0
Administrative Services Assistant 2	4	23	0	4	0	0	23	0
Administrative Services Assistant 3	3	2	0	0	0	0	5	0
Administrative Services Assistant 4	2	3	0	1	0	0	4	0
Administrative Services Assistant 5	5	5	0	4	0	0	6	0
Administrative Secretary	0	38	0	6	0	0	32	0
Affirmative Action Officer 2	0	1	0	1	0	0	0	0
Aging Program Coordinator	0	1	0	0	0	0	1	0
Attorney 3	7	5	0	2	0	0	10	0
Audit Director 1	0	1	0	0	0	0	1	0
Auditor 3	1	1	0	2	0	0	0	0
Boiler and Elevator Inspection Director	1	0	0	0	0	0	1	0
Boiler Inspector 2	14	0	0	1	0	0	13	0
Boiler Inspector 3	1	0	0	0	0	0	1	0
Boiler Inspector 4	1	0	0	0	0	0	1	0
Board Member	4	7	0	1	0	0	10	0
Chemist 3	1	1	0	0	0	0	2	0
Clerk 1	2	6	0	4	0	0	4	0
Clerk 2	4	18	0	2	0	0	20	0
Clerk 3	1	15	0	4	0	0	12	0
Computer Operations Supervisor	0	1	0	0	0	0	1	0

Title	Gender		Ethnicity					
	Male	Female	Asian	Black	Hispanic	Indian	White	Other
Commissioner 2	1	0	0	0	0	0	1	0
Data Entry Operator	4	14	0	6	0	0	11	1
Data Entry Operations Supervisor 1	0	1	0	1	0	0	0	0
Data Entry Operations Supervisor 2	0	1	0	1	0	0	0	0
Deputy Commissioner 1	1	0	0	0	0	0	1	0
Distributed Programmer/ Analyst 2	1	0	0	0	0	0	1	0
Distributed Programmer/ Analyst 3	1	0	0	0	0	0	1	0
Education Consultant 1	2	0	0	0	0	0	2	0
Education Consultant 2	1	3	0	0	0	0	4	0
Education Consultant 4	1	0	0	0	0	0	1	0
EDP Auditor	1	0	0	0	0	0	1	0
Elevator Inspector 2	19	0	0	0	0	0	19	0
Elevator Inspector 3	2	0	0	0	0	0	2	0
Elevator Inspector 4	1	0	0	0	0	0	1	0
Employment Counselor 2	11	24	0	9	0	0	26	0
Employment Program Specialist 1	5	6	0	5	0	0	6	0
Employment Program Specialist 2	5	4	0	0	0	0	9	0
Employment Program Specialist 3	4	1	0	2	0	0	3	0
Employment Program Specialist 4	1	1	0	0	0	0	2	0
Employment Security District Manager	1	6	0	1	0	0	6	0
Employment Security Interviewer 2	88	355	1	96	6	1	339	0
Employment Security Interviewer Supervisor	8	19	0	0	0	0	17	0
Employment Security Manager 1	11	15	2	2	0	1	21	0
Employment Security Manager 2	13	16	0	6	0	0	23	0
Employment Security Manager 3	7	1	0	2	0	0	6	0
Employment Security Division Assistant Director 1	2	2	0	2	0	0	2	0
Employment Security Division Assistant Director 2	2	2	0	0	0	0	4	0
Employment Security Division Director 1	3	1	0	0	0	0	4	0
Employment Security Division Director 2	3	1	0	1	0	0	3	0
Executive Administrative Assistant 1	0	1	0	0	0	0	1	0
Executive Administrative Assistant 2	0	2	0	0	0	0	2	0
Executive Administrative Assistant 3	3	3	0	2	0	0	4	0

Title	Gender		Ethnicity					
	Male	Female	Asian	Black	Hispanic	Indian	White	Other
Executive Secretary 1	0	7	0	0	0	0	7	0
Executive Secretary 2	0	1	0	0	0	0	1	0
Fiscal Director 2	0	1	0	0	0	0	1	0
General Counsel 3	1	0	0	0	0	0	1	0
Grants Analyst 2	0	1	0	0	0	0	1	0
Grants Analyst 3	4	3	0	2	1	0	4	0
Grants Program Manager	0	4	0	2	0	0	2	0
Graphics Designer 1	0	1	0	0	0	0	1	0
Industrial Hygienist 3	13	5	0	2	0	0	16	0
Industrial Hygienist Manager	1	2	0	0	0	0	3	0
Industrial Hygienist Supervisor	9	1	0	0	1	0	9	0
Information Resource Support Specialist 2	4	2	0	1	0	0	5	0
Information Resource Support Specialist 3	5	1	0	0	0	0	6	0
Information Resource Support Specialist 4	1	2	0	0	0	0	3	0
Information Resource Support Specialist 5	2	0	0	0	0	0	2	0
Information Officer	0	1	0	0	0	0	1	0
Information Systems Analyst 3	0	1	0	0	0	0	1	0
Information Systems Analyst 4	2	0	0	0	0	0	2	0
Information Systems Consultant	1	0	0	0	0	0	1	0
Information Systems Director Employment Security	1	0	0	0	0	0	1	0
Information Systems Director 2	2	0	0	0	0	0	2	0
Information Systems Manager 2	3	0	0	1	0	0	2	0
Information Systems Manager 3	1	0	0	0	0	0	1	0
Lead Data Entry Operator	0	1	0	1	0	0	0	0
Labor Standards Inspection Director	0	1	0	0	0	0	1	0
Labor Standards Inspector	9	3	0	1	1	0	10	0
Legal Assistant	0	5	0	0	0	0	5	0
Legal Services Director	1	0	0	0	0	0	1	0
Medical Consultant	1	0	0	0	0	0	1	0
Mine Rescue Worker	18	0	0	0	0	0	18	0
Mine Safety Assistant Director	1	0	0	0	0	0	1	0
Mine Safety Director	1	0	0	0	0	0	1	0
Mine Safety Inspector	2	0	0	0	0	0	2	0
Mainframe Computer Operator	0	3	0	1	0	1	1	0
Network Technical Specialist 3	1	0	0	0	0	0	1	0
Occupational Safety and Health Director	1	0	0	0	0	0	1	0
Occupational Safety Specialist 3	15	8	1	3	0	0	19	0
Occupational Safety Specialist Manager	4	1	0	0	0	0	5	0

Title	Gender		Ethnicity					
	Male	Female	Asian	Black	Hispanic	Indian	White	Other
Occupational Safety Specialist Supervisor	9	1	0	0	0	0	10	0
Office Supervisor 1	0	3	0	0	0	0	3	0
Office Supervisor 2	2	0	0	0	0	0	2	0
Office Supervisor 3	0	1	0	0	0	0	1	0
Personnel Analyst 2	0	2	0	0	0	0	2	0
Personnel Analyst 3	1	3	0	0	0	0	4	0
Personnel Director	0	1	0	0	0	0	1	0
Personnel Technician 3	0	2	0	0	0	0	2	0
Personnel Transactions Supervisor	1	0	0	0	0	0	1	0
Public Health Nursing Consultant 1	0	1	0	0	0	0	1	0
Programmer/Analyst 3	0	3	0	0	0	0	3	0
Programmer/Analyst 4	2	1	0	0	0	0	3	0
Programmer/Analyst Supervisor	0	2	0	0	0	0	2	0
Procurement Officer	1	0	0	0	0	0	1	0
Publications Editor 1	0	1	0	0	0	0	1	0
Secretary	3	30	0	6	0	0	27	0
Statistical Analyst 2	5	9	0	1	0	0	13	0
Statistical Analyst 3	4	2	0	0	0	0	6	0
Statistical Analyst 4	2	4	0	1	0	0	5	0
Statistical Analyst Supervisor	1	3	0	0	0	0	4	0
Statistician 2	1	4	0	1	0	0	4	0
Statistician 3	0	1	0	0	0	0	1	0
Statistics Assistant Director	1	0	0	0	0	0	1	0
Statistics Director	1	0	0	0	0	0	1	0
Stores Clerk	0	1	0	1	0	0	0	0
Training Specialist 2	0	1	0	0	0	0	1	0
Unemployment Accounts Auditor Supervisor 1	5	0	0	0	0	0	5	0
Unemployment Accounts Auditor Supervisor 2	3	0	0	1	0	0	2	0
Unemployment Accounts Aide 1	0	10	0	3	0	0	7	0
Unemployment Accounts Aide 2	1	10	0	1	0	0	10	0
Unemployment Accounts Auditor 2	27	20	2	9	0	0	36	0
Unemployment Accounts Auditor 3	9	4	0	1	0	0	12	0
Unemployment Accounts Supervisor	2	5	0	0	0	0	7	0
Unemployment Benefits Aide 1	0	7	0	4	0	0	3	0
Unemployment Benefits Aide 2	3	10	0	4	0	0	9	0
Unemployment Benefits Auditor	1	12	0	2	0	0	11	0
Unemployment Benefits Supervisor	1	0	0	0	0	0	1	0

Title	Gender		Ethnicity					
	Male	Female	Asian	Black	Hispanic	Indian	White	Other
Unemployment Claims Adjudicator	4	33	0	7	0	0	30	0
Unemployment Claims Investigator	1	8	0	2	0	0	7	0
Unemployment Hearing Officer 2	16	7	0	8	1	0	14	0
Unemployment Hearing Officer 3	0	1	0	0	0	0	1	0
Unemployment Program Specialist 1	1	1	0	0	0	0	2	0
Unemployment Program Specialist 2	2	5	0	0	0	0	7	0
Unemployment Program Specialist 3	4	15	0	2	0	0	17	0
Unemployment Program Specialist 4	5	1	0	1	0	0	5	0
Veterans' Employment Representative 2	24	6	0	3	2	0	25	0
Veterans' Outreach Specialist 2	22	5	1	7	0	0	19	0
Website Developer 1	0	1	0	0	0	0	1	0
Workforce Development Chief Operating Officer	1	0	0	0	0	0	1	0
Workforce Development Program Director	1	0	0	0	0	0	1	0
Workers' Compensation Director	0	1	0	0	0	0	1	0
Workers' Compensation Program Coordinator	3	1	0	0	0	0	4	0
Workers' Compensation Program Manager	0	1	0	0	0	0	1	0
Workers' Compensation Representative	3	6	0	2	0	0	7	0
Workers' Compensation Representative Supervisor	1	1	0	1	0	0	1	0
Workers' Compensation Specialist 2	13	8	0	2	0	0	19	0
Workers' Compensation Specialist 3	6	4	0	1	0	0	9	0
Workforce Development Program Coordinator	1	0	0	0	0	0	1	0
Word Processor Operator 1	1	5	0	3	0	0	3	0
Totals	581	983	9	280	12	3	1259	1

This audit includes 11 boards administratively attached to the department. We obtained and analyzed information associated with the gender and ethnicity of 61 board members. We determined that, as of October 2003, 79% of all board members were male and 97% of all members were white. Only two of the boards reviewed had a minority member.

**Gender and Ethnicity Distribution for Department Boards
As of October 2003**

Board	Female	Male	Black	White	Grand Total
Board of Boiler Rules	0	6	0	6	6
Board of Employee Assistance Professionals	3	2	0	5	5
Elevator Safety Board	1	3	0	4	4
Board of Review	2	0	1	1	2
Medical Care and Cost Containment Committee	1	8	0	9	9
OSHA Labor Advisory Council	1	5	1	5	6
OSHA Review Commission	1	2	0	3	3
Prevailing Wage Commission	0	5	0	5	5
State Unemployment Compensation Advisory Council	1	3	0	4	4
Advisory Council on Workers' Compensation	3	14	0	17	17
Grand Total	13	48	2	59	61
Percentages	21%	79%	3%	97%	

The Safe Employment Education and Training Advisory Committee does not have members appointed and has not met since 1998. (See Finding 5.) The Elevator Safety Board, the Board of Review, the State Unemployment Compensation Advisory Council, and the Advisory Council on Workers' Compensation each had one vacancy.

The Workforce Development board is federally mandated and, unlike the other boards, is not included in the Governmental Entity Review Law. Therefore, we listed this board separately and did not include it in overall department totals. As of October 2003, the Workforce Development Board's membership was 72% male and 84% white.

**Workforce Development Board Membership
As of October 2003**

	Female	Male	Black	White	Asian	Grand Total
Number	9	23	4	27	1	32
Percent	28%	72%	12.5%	84.4%	3.1%	