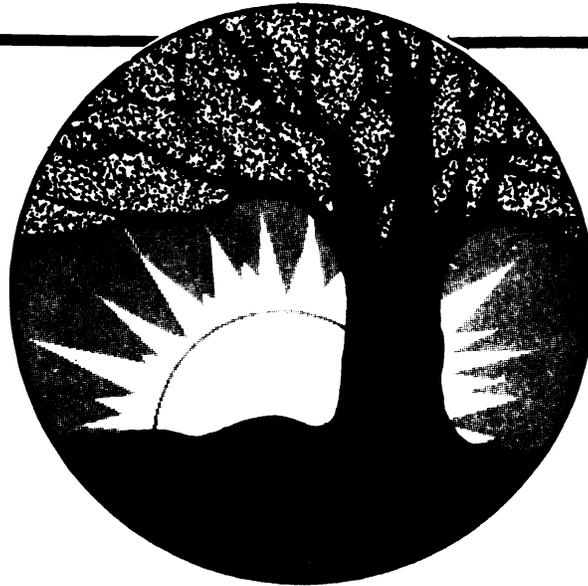


PERFORMANCE AUDIT

**Department of Labor and Workforce Development
and Related Entities
March 2009**



**Justin P. Wilson
Comptroller of the Treasury**



**State of Tennessee
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March 30, 2009

The Honorable Ron Ramsey
Speaker of the Senate
The Honorable Kent Williams
Speaker of the House of Representatives
The Honorable Jack Johnson, Chair
Senate Committee on Government Operations
The Honorable Susan Lynn, 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 of Labor and Workforce Development and the related entities should be continued, restructured, or terminated.

Sincerely,

Arthur A. Hayes, Jr., CPA
Director

AAH/dww
08-050

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 2009

AUDIT OBJECTIVES

The objectives of the audit were to determine the methods of applying for unemployment benefits; what steps the department has taken to resolve a finding from the previous performance audit regarding the use of direct deposit or EBT (Electronic Benefits Transfer) services for its unemployment insurance (UI) benefits checks; the viability of the unemployment insurance trust fund; what steps the department has taken to resolve a finding from the previous performance audit regarding the Labor Standards Division's need to be consistent in assessing penalties as well as needing time guidelines for inspection case closure and violation correction; if the department is conducting inspections of boilers and elevators as required by statute; the number and percentage of Workers' Compensation Benefit Review decisions that were affirmed/reversed through the Administrative Review process and whether there are consistencies in why decisions were reversed; the status of the department's succession plan and what plans are in place to handle the succession of retiring staff; whether boards, councils, and commissions attached to the department comply with statutory requirements and with the department's conflict-of-interest policy; and the department's compliance with Title VI of the Civil Rights Act of 1964.

FINDINGS

The Board of Review May Not Be Necessary for the Unemployment Appeals Process

The Board of Review is the last stage in the department's appeals process for decisions on eligibility for unemployment benefits. The lack of detailed minutes made review of the board's performance difficult. However, based on a review of the board's function and available documentation, it appears that the board's role in the appeals process should be assessed. It may be possible to reduce applicant and staff time to complete the

appeals process, reduce costs to the state, and still meet federal guidelines (page 12).

Expanding Internet Options for Unemployment Benefit Applicants May Reduce Wait Time

Only certain applicants can apply for unemployment benefits over the Internet. Because there can be delays when applying over the telephone, the department should expand the option of applying for unemployment benefits over the Internet to all applicants (page 16).

The Department of Labor and Workforce Development Still Has Not Implemented EBT (Electronic Benefits Transfer) Services for Its Unemployment Insurance (UI) Benefits Checks

The 2004 performance audit addressed the benefits of an EBT system and the department stated that the method of payment would be a secure, convenient, and accurate benefit delivery mechanism. Using an EBT card to deliver unemployment benefits could result in cost savings to the department and applicants and minimize the security risks of lost and fraudulent checks (page 19).

The Labor Standards Division Does Not Have Written Policies and Procedures for Investigation and Closure Time Frames, or Policies Regarding Penalty Assessments for Child Labor and Wage Regulation Investigations

The division still has not adopted written policies specifying time frames for completing inspections and investigating complaints, nor has it adopted policies for the assessment and waiving of penalties for violations of child labor and wage regulation laws. These policies help ensure consistency and fairness in staff actions and decisions and provide a tool for monitoring the efficiency and effectiveness of the processes (page 20).

The Workers' Compensation Administrative Review Process Lacks Policies and Procedures for Waiving the Ten-Day Informal Conference Requirement

State law requires the Workers' Compensation Division to hold conferences appealing its benefits review decisions within ten calendar days of the request for the conference. The division waived the ten-day requirement in many cases, but does not have policies or procedures describing the circumstances for requesting and approving waivers and documenting these actions (page 25).

Member Attendance of the Medical Care and Cost Containment Committee Declined Significantly Between July 2004 and January 2007

The board approves certain regulations prior to submission to the Secretary of State; consults the Commissioner on establishing a comprehensive medical fee schedule and on establishing a schedule for reasonable charges by physicians for preparing and giving depositions on workers' compensation cases; and advises the Commissioner on issues relating to medical care and cost containment in the workers' compensation system. The committee is composed of members representing employers, employees, and hospitals in addition to other members. When meeting attendance is low, the Commissioner may not receive balanced advice based on all perspectives (page 27).

OBSERVATIONS AND COMMENTS

The audit also discusses the following issues: the status of the unemployment compensation trust fund, succession planning, the timeliness of high pressure boiler inspections and elevator inspections, and conflict-of-interest policies for department boards and commissions (page 30).

**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 4-29-230, the following entities are scheduled to terminate June 30, 2009:

- the Department of Labor and Workforce Development;
- the Occupational Safety and Health Administration Labor Advisory Council;
- the Occupational Safety and Health Review Commission;
- the Prevailing Wage Commission;
- the Elevator Safety Board;
- the Board of Boiler Rules;
- the Board of Employee Assistance Professionals;
- the Advisory Council on Workers' Compensation;
- the Medical Care and Cost Containment 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 agency and to report to the Joint Government Operations Committee of the General Assembly. The audit is intended to aid the committee in determining whether the Department of Labor and Workforce Development and the related entities should be continued, restructured, or terminated.

OBJECTIVES OF THE AUDIT

The objectives of the audit were

- to determine the methods of applying for unemployment benefits;
- to determine what steps the department has taken to resolve a finding from the previous performance audit regarding the use of direct deposit or EBT (Electronic Benefits Transfer) services for its unemployment insurance (UI) benefits checks;
- to determine whether the future viability of the unemployment insurance trust fund appears to be in jeopardy based upon a trend analysis of prior-year expenditures and revenues;
- to determine what steps the department has taken to resolve a finding from the previous performance audit regarding the Labor Standards Division's need to be consistent in assessing penalties as well as needing time guidelines for inspection case closure and violation correction;
- to determine if the department is conducting inspections of boilers and elevators as required by statute;
- to determine the number and percentage of Workers' Compensation Benefit Review decisions that were affirmed/reversed through the Administrative Review process and note whether there are consistencies in why decisions were reversed;
- to examine the department's succession plan and determine what plans are in place to handle the succession of retiring staff (i.e., how replacements are being trained to take over the higher-level positions);
- to determine whether boards, councils, and commissions attached to the department comply with statutory requirements and with the department's conflict-of-interest policy; and
- to determine the department's compliance with Title VI of the Civil Rights Act of 1964.

SCOPE AND METHODOLOGY OF THE AUDIT

The activities of Department of Labor and Workforce Development were reviewed for the period July 2004 to August 2008. 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 and included

1. review of applicable legislation and policies and procedures;
2. examination of the entity's records, reports, and information summaries;

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 and staff of other state agencies that interact with the agency.

HISTORY AND STATUTORY 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.

ORGANIZATION

The department has six program divisions, each under the direction of an administrator. (See the organization chart on the following page.)

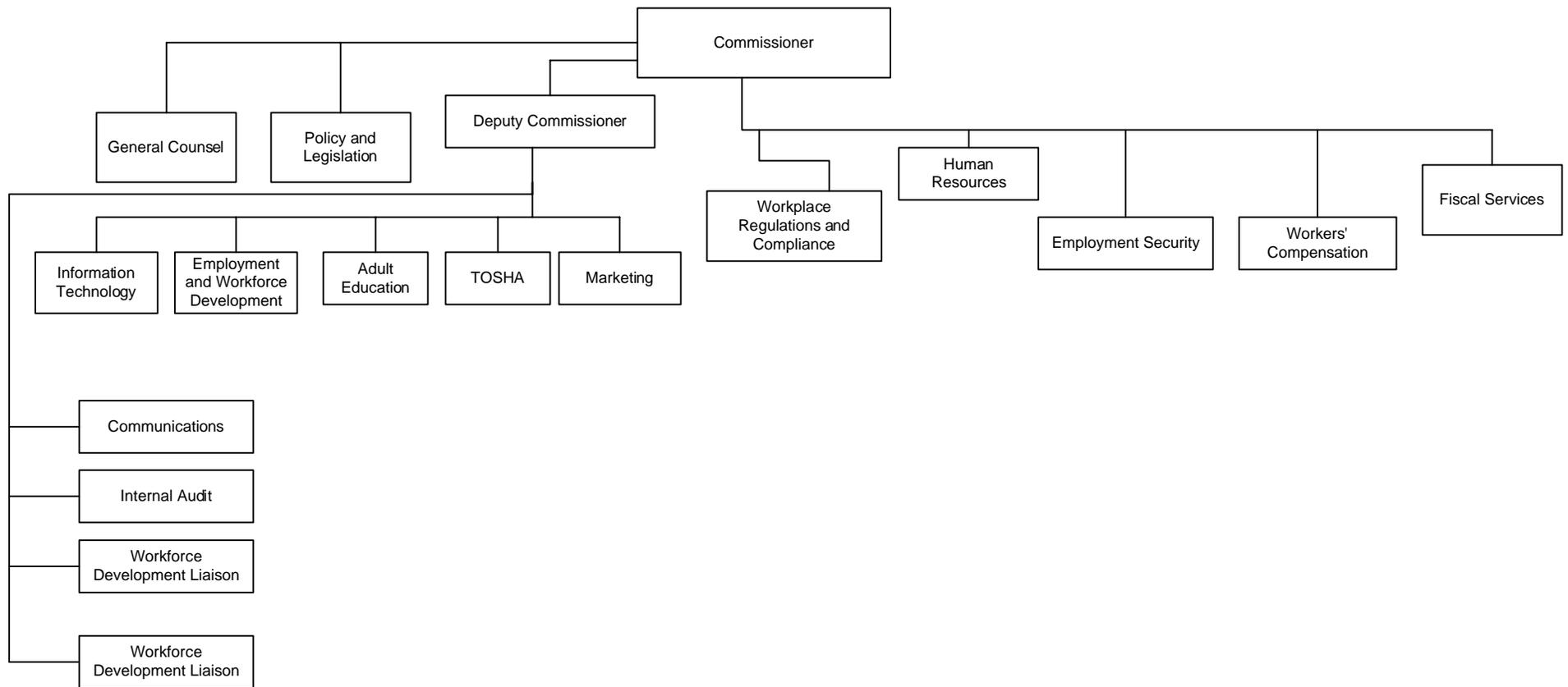
Workers' Compensation

This division is responsible for administering and enforcing Tennessee's Workers' Compensation laws. (Employers purchase workers' compensation insurance from an insurance company.) 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 insurance company forwards the injury report and supplemental forms to the division. The insurance company also provides the division with proof of workers' compensation insurance coverage endorsements and cancellations purchased by the employer. The division monitors and maintains records of claims filed and insurance coverage.

The insurance company works with the injured employee to provide and pay for medical expenses and a percentage of the employee's wages while the employee is unable to work due to the injury. If the employee has permanent impairment as a result of the injury, the insurance company enters into a settlement with the employee.

The division promotes workplace safety through information awareness programs for employees and employers, mediates disputed claims, and assesses and collects penalties for non-compliance with the law.

Department of Labor and Workforce Development Organization Chart September 2008



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 premium credit of 5% on their workers' compensation insurance policy.

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

The Uninsured Employer program, started in 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 Benefit Review resolves workers' compensation disputes. The Benefit Review program issues orders for medical and indemnity benefits in appropriate claims. It holds conferences to mediate settlement disputes and approves final settlements. The Workers' Compensation Fraud unit is responsible for referring potential fraud cases 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.) Case managers develop treatment plans and monitor the employee's progress to ensure the employee follows the plan and receives all necessary medical services.

Tennessee Occupational Safety and Health Administration

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 who are hospitalized or incidents resulting in a death. Random follow-up inspections are performed to ensure violations have been corrected. Abatement letters specifying how violations will be corrected are required for all inspections.

Situations in which TOSHA has been made aware of imminent danger to employees are given first inspection priority; accidents are second priority; complaints or referrals are the third priority; and general inspections are fourth 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*).

The inspector discusses any violations in a closing conference with the business's representatives and a union representative (if applicable) 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.

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, 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.

Workplace Regulations and Compliance Division

The Division of Workplace Regulations and Compliance protects the general public, owners and users, and their employees from the potential hazards inherent to the operation of boilers, pressure vessels, and elevators.

The Division of Mines, Mine Safety Section, provides and administers mine safety and education training to Tennessee miners and works with Tennessee mining operations in developing safe and healthy work environments. Licensing of the underground coal and surface mines and metal mines in Tennessee are also functions of the division.

The Labor Standards Section administers and enforces the Child Labor Act, the Wage Regulations Act, and the Prevailing Wage Act.

The Labor Research and Statistics Section conducts the Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses and the OSHA Log Data Collection Initiative Survey to obtain data on non-fatal workplace incidents.

Adult Education

The Division of Adult Education administers the Adult Education and Family Literacy Act grant funds that provide educational opportunities for those adults seeking basic skills upgrades, General Educational Development (GED) exam preparation, English for Speakers of Other Languages (ESOL), and basic workplace computer skills. These services are offered in every county at Adult Learning Centers and to employers on-site at their request.

Employment and Workforce Development Division

The Workforce Development Division is responsible for building a talent pool for Tennessee in order to sustain and expand business and industry throughout the state. This is accomplished through coordinating the employment and training services to employers and job seekers as specified in the Workforce Investment Act and the Title V Older Americans Act. The division provides for training to employers in order to upgrade the skills of the existing workforce and keep businesses competitive. Employers may also receive training grants to train a new workforce as part of business location or expansion.

Job seekers may obtain training services to include skills upgrades, credentials, career readiness certificates, career counseling, and job placement services. The division provides oversight to the 13 Local Workforce Investment Areas and Title V providers across the state and serves as the staff to the State Workforce Development Board.

REVENUES AND EXPENDITURES

Revenues by Source For the Fiscal Year Ending June 30, 2008

<i>Source</i>	<i>Amount</i>	<i>% of Total</i>
Administration	\$6,587,065	<1%
Safety and Health	5,939,969	<1%
Workers' Compensation	1,559,728	<1%
Mines	231,043	<1%
Boilers and Elevators	3,805,439	<1%
Labor Standards	281,175	<1%
Employment Training	64,600,603	10%
Second Injury Fund	495,324	<1%
Adult Basic Education	12,169,738	2%
Employment Security	88,819,872	13%
Unemployment Insurance Trust Fund	479,351,765	72%
Total Revenue	\$663,841,722	100%

Source: Information was obtained from the State of Tennessee Accounting and Reporting System, Fiscal Year 2008.

**Expenditures by Account
For the Fiscal Year Ending June 30, 2008**

<i>Account</i>	<i>Amount</i>	<i>% of Total</i>
Administration	\$10,518,218	1%
Safety and Health	8,230,633	1%
Workers' Compensation	13,226,719	2
Mines	687,624	<1%
Boilers and Elevators	3,515,186	<1%
Labor Standards	1,337,720	<1%
Employment Training	64,733,031	9%
Second Injury Fund	9,039,171	1%
Adult Basic Education	18,128,044	2%
Employment Security	89,572,989	12%
Unemployment Insurance Trust Fund	537,132,868	71%
Total Expenditures	\$756,122,203	100%

Source: Information was obtained from the State of Tennessee Accounting and Reporting System, Fiscal Year 2008.

OTHER RELATED ENTITIES

Ten additional entities are administratively attached to the Department of Labor and Workforce Development and assist the department's divisions in fulfilling their regulatory responsibilities. Four 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.

Occupational Safety and Health Administration (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. There has been a vacancy since June 30, 2006. The council met twice a fiscal year in 2005, 2006, and 2007 as required by statute. The council did not have any revenues or expenditures during the audit period.

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 has three members appointed by the Governor. Based on our review

of TOSHA Review Commission minutes, the commission met 17 times between August 2004 to August 2007 and had an overall attendance rate of 88%.

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.

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. The board met quarterly from July 1, 2004, to June 30, 2007. (There are no statutory meeting requirements.) The board had no revenues.

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 has six members. The law requires the Governor to strive to ensure that one member is a racial minority. Based on our review of board meeting minutes, a racial minority did not serve on the board from July 1, 2004, to June 30, 2007. Specifically, a racial minority was not appointed to the board until December 2007. Further, the board is required to meet four times per year. Our review of the board's meeting minutes for the past three fiscal years found that it had met as statutorily required.

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, reported revenues from licensing fees of \$14,350 for fiscal year 2004; \$900 for fiscal year 2005; \$6,925 for fiscal year 2006; and \$7200 for fiscal year 2007. The board met 11 times from August 2004 to September 2007. (There are no statutory meeting requirements.)

Advisory Council on Workers' 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. The council is required to meet at least twice a year. It met 22 times between August 2004 and October 2007.

Medical Care and Cost Containment Committee (created by Section 50-6-125, *Tennessee Code Annotated*). The committee is composed of 15 voting members appointed by the Commissioner. It advises the Commissioner on issues related to medical care and cost containment in the workers' compensation system. The Committee met 12 times during the period August 2004 to July 2007. (There are no statutory meeting requirements.)

Board of Review (created by Section 50-7-601, *Tennessee Code Annotated*). The board is composed of three members appointed by the Governor. These members represent East and West Tennessee regions. The members meet once or twice a month to render their approval or disapproval of appeals for unemployment insurance claims. These claims have been through the Appeals Tribunal once and are again being appealed so that the Tribunal's decision may be reconsidered. Each member is paid \$20 per decided case in a calendar month up to \$1,500. In addition, each member is compensated for travel expenses in accordance with Department of Finance and Administration regulations. See finding 1.

State Unemployment Compensation Advisory Council, formerly the Employment Security Advisory Council (created by Section 50-7-606, *Tennessee Code Annotated*). The State Unemployment Compensation Advisory Council aids the Commissioner of the Department of Labor and Workforce Development in formulating policies and discussing problems related to the administration of the employment security program. The Commissioner appoints an equal number of employer representatives and employee representatives to the council, which is required to meet at least twice a year. The statute also allows the Commissioner to appoint public members, at his discretion. The council only met five times during the period of June 2004 to June 2008.

FINDINGS AND RECOMMENDATIONS

1. The Board of Review may not be necessary for the unemployment appeals process

Finding

The Board of Review is the last stage in the department's appeals process for decisions on eligibility for unemployment benefits. The lack of detailed minutes made review of the board's performance difficult. However, based on a review of the board's function and available documentation, it appears that the board's role in the appeals process should be assessed. It may be possible to reduce applicant and staff time to complete the appeals process, reduce costs to the state, and still meet federal guidelines.

Appeals Process

When a claimant files for unemployment benefits, department staff will investigate whether the claimant is entitled to benefits, make a determination, and then issue a written decision. After the decision, if either the claimant or employer disagrees with the decision, that party may file an appeal. There are two levels of appeal within the Department of Labor and Workforce Development. The first appeal must be made to the Appeals Tribunal (AT) within 15 calendar days of the mailing date of the adjudicator's determination. AT hearing officers take testimony and accept evidence from the parties involved and witnesses, and proceedings are recorded and transcribed. After the AT decision, parties involved have the right to further appeal the decision to the Board of Review in writing within 15 calendar days of the mailing date of the AT decision.

Section 50-7-601(b), *Tennessee Code Annotated*, establishes a three-member Unemployment Compensation Board of Review (BOR). Per Section 50-7-304(e)(1), *Tennessee Code Annotated*, the board "may on its own motion affirm, modify or set aside any decision of an unemployment hearing officer [Appeals Tribunal Hearing Officer] on the basis of the evidence previously submitted in the case, or direct the taking of additional evidence, or may permit any of the parties to the decision to initiate further appeals before it." The board permits further appeal by any party to the decision of an Appeals Tribunal Hearing Officer. The board can remove itself or transfer the proceedings of any appeal to another Appeals Tribunal Hearing Officer.

Board of Review Process

When a case is appealed to the Board of Review, a case referee reviews the case first. Case referees are law school graduates employed by the department who are tasked with writing case recommendations based on legal precedent and case fact. Each case referee's recommendation is reviewed by a licensed attorney positioned as the Special Master to the Board of Review. Once a case has a written recommendation and is approved by the Special Master, it is then held with other cases to be voted on by the Board of Review. The board members vote by

either agreeing or disagreeing with the referee recommendation. After the decision, either party can appeal directly to Chancery Court or file a Petition to Rehear to the board. For a Petition to Rehear, a case referee is assigned the case to reexamine and offers a further recommendation based on law and fact. (Based on our review, the Petition to Rehear case referee was always different than the original case referee.) The Special Master then reviews, marks for further revision, or approves the case referee's recommendation, and the board members are then asked to vote once more. These decisions can be further appealed in Chancery Court. (See flowchart of the appeals process on the following page.)

In its current structure, Board of Review members are not full-time and do not write case recommendations; they only vote on whether they agree or disagree with the case referee's assessment. They are neither relied upon for legal expertise nor required to have any specialized knowledge. Meetings are not recorded, and transcripts are not produced documenting their discussions. Also, a department case referee holds hearings rather than the board, typically to decide whether to accept a late appeal, those appeals made more than 15 calendar days after the mailing date of the Appeals Tribunal decision.

Review Results

We reviewed the Board of Review minutes for the last four fiscal years, as well as actual case files having board decisions issued between January 1, 2008, and May 5, 2008. The following information covers all findings related to these reviews.

Lack of Detailed Minutes

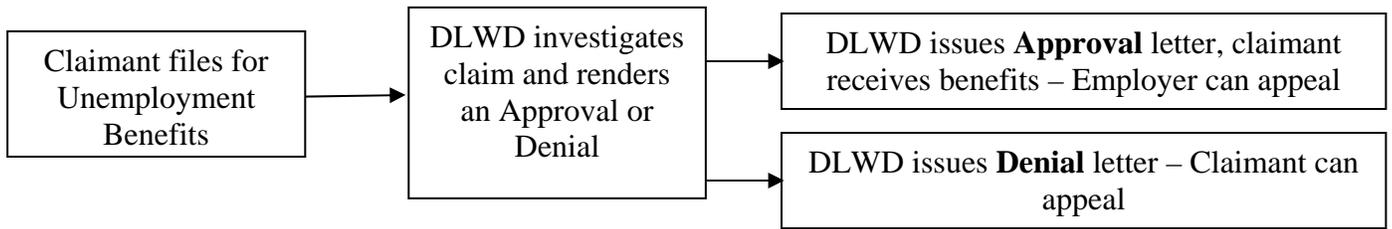
We determined that information in the minutes is severely limited and did not provide enough information for auditors to determine whether the board is operating effectively and practicing due diligence. Board of Review minutes are very sparse and list only the members present, date of the meeting, number of cases reviewed, and start/end times. More specific deliberations are not recorded. Without a record of deliberations, we could not assess the due diligence of the board. Per Section 50-7-304(f), *Tennessee Code Annotated*, “. . . a full and complete record shall be kept of all proceedings in connection with a disputed claim. . . .” Based solely on this documentation for the last four fiscal years, it appears that the BOR spends an average of one minute and 20 seconds for each case reviewed.

Auditors attended the meeting held May 19, 2008, in which the board assessed 49 cases in 2.5 hours. Although that represented an average of three minutes per case, the time spent on cases in meetings preceding and following this meeting was even less. The May 5, 2008, meeting included a review of 150 cases in 30 minutes; and the May 28, 2008, meeting included a review of 122 cases in approximately 2.5 hours. During an interview, the Special Master could not guarantee that the board members were spending an adequate amount of time with each case for proper consideration; however, the Special Master noted that if the claimant disagrees with the decision, he or she can request a petition to rehear or file in Chancery Court.

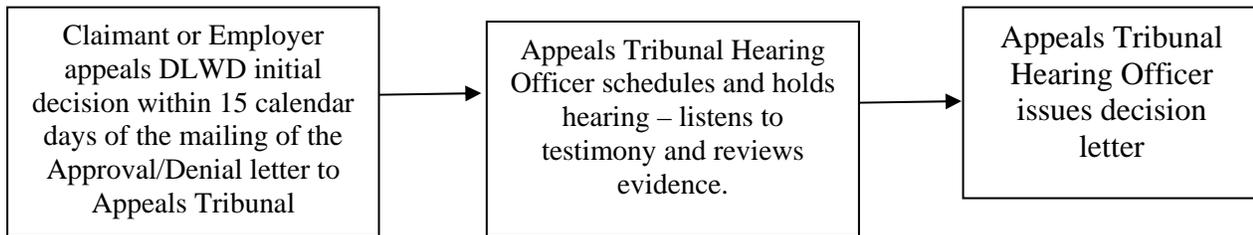
According to staff, board members do receive some information prior to the actual meetings and are well versed in the cases being heard. However, insufficient documentation in

Employment Security Division Appeals Process

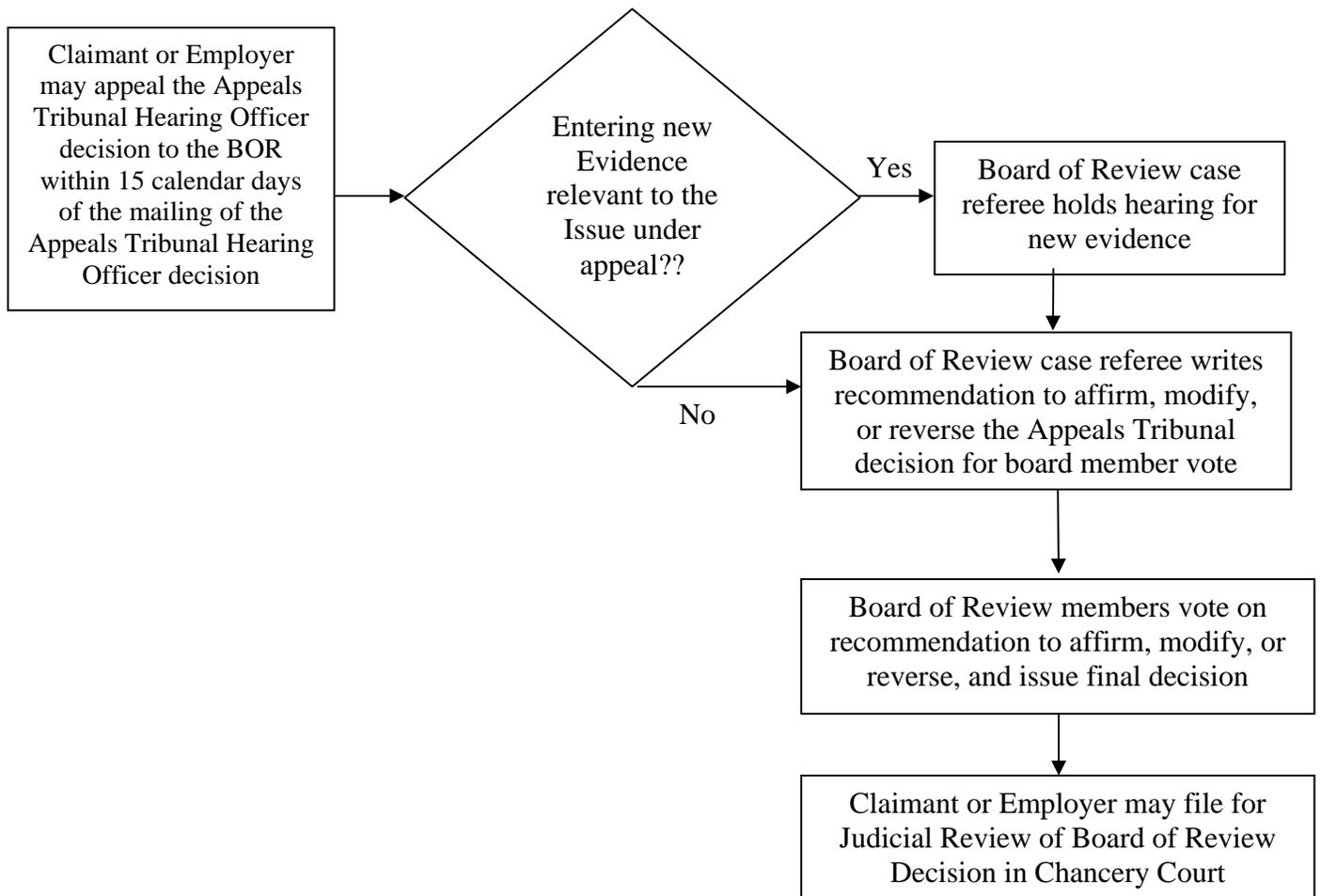
Filing for Unemployment Benefits



Appealing DLWD Unemployment Benefits Decision



Appeal the Appeals Tribunal Hearing Officer Decision to Board of Review



the minutes prevented auditors from determining whether the board is exerting due diligence in its review of appealed cases.

Discarding of File Information

Until July 17, 2008, the BOR staff discarded case referee recommendations which documented the BOR case referee recommendations and precedent used to render each board decision. The recommendations include findings of fact, conclusions of law, and reasons for the ultimate decision which are required by rule 0560-3-3-.04. We attempted to review all physical files available at the time of our review for the 2008 fiscal year. (Files are microfilmed and physical files are discarded.) However, many of the files we attempted to review were being prepared for microfilming. We discovered then that the form that contains the case referee recommendation, which was critical to our review, is discarded from case files as they are processed for microfilming. The reason given for this was that the recommendation was considered internal and protected by attorney-client privilege and, therefore, not required to be made publicly available. The department's legal office recently advised the department that this is incorrect, and the policy was subsequently changed. However, as a result, our file review was restricted to only those physical files containing the case referee recommendation form.

Lacking a Third Member

The Board of Review consists of three members; however, we found that for fiscal year 2004 through 2008, there were only two members present for meetings 60% of the time. One contributor is that during fiscal year 2004 and 2005, there was a vacancy lasting 16 months, equating to 36 consecutive meetings. With only two members serving, board members may feel undue pressure to reach agreement for the sake of moving a case forward. According to the Special Master, if the two members do not agree on a case, it will be delayed until a third BOR member is appointed to offer an additional opinion since the agreement of at least two members is required for approval. During the May 19, 2008, meeting observed by the auditor (for which there was a member vacancy) a situation arose in which one of the members voiced a potential objection. However, once the Special Master made clear to the member that this would delay action on the case until a third member was appointed, the member chose not to object. The Special Master did mention to the members that the board was to act in the best interest of the parties and not be influenced by the possible delay of the case. Nevertheless, in this case, the pressure to reach agreement could have been a factor in not voicing a formal objection.

Conclusion

Because department staff perform the majority of the appeal review functions and because of the limited amount of time the board has to approve or disapprove the decisions, the department should determine whether the Board of Review is necessary to the process. The department could save time and money (at least \$18,000/year per board member compensation) if the board were eliminated. The U.S. Department of Labor *Manual of State Employment Security Legislation*, Section 12, provides three administrative provisions states can follow in handling unemployment benefit appeals claims. The third provision allows second stage appeals

to be heard by the Employment Security Commissioner, Director, or Commission, rather than by an independent Board of Review. It is possible the current case referee/Special Master function could meet this provision, since it already serves as the review and hearing capacity for the BOR, rather than having a separate board.

Recommendation

The Department of Labor and Workforce Development should determine what value the Board of Review provides to appeals process or whether it is necessary to the process. If the department finds the board provides little benefit, it should consult with the General Assembly to amend state law creating the Board of Review.

The Board of Review should adopt written policies and procedures regarding the review process, including a requirement that all deliberations be documented and that all such documentation be retained. The Board of Review should also establish a method to document the time spent reviewing all cases. These measures should be taken with the goal of improving the transparency and effectiveness of the board.

Management's Comment

We concur. The department will determine what value the board provides to the appeals process and whether it is necessary to the process. The department believes, however, that an *independent*, second level appeals review is important, although that review can take a different structure and process than the present board.

Regarding the auditor's comments pertaining to a "Lack of Detailed Minutes" and the "Discarding of File Information," the board will make an audio recording of each board meeting henceforth and it now retains "case referee recommendations." Regarding comments that pertain to "Lacking a Third Member," the Governor appointed a third board member last year.

2. Expanding Internet options for unemployment benefit applicants may reduce wait time

Finding

To help reduce cost and improve efficiency, the Department of Labor and Workforce Development has changed its process for accepting applications for unemployment insurance benefits over a period of seven years. However, the department should take additional steps to ensure that individuals applying for unemployment benefits do not encounter unnecessary obstacles. Specifically, in all but four counties (Fayette, Lauderdale, Shelby, and Tipton), the department's new system has eliminated an applicant's option to meet face-to-face with a department representative and only allows applicants to apply for benefits over the Internet or the

telephone, or to mail in an application. The use of the Internet to apply for unemployment benefits is limited to those individuals who have lost their job as a result of a lack of work. Wait times to apply for unemployment benefits for other applicants may be greater as they are forced to apply using the telephone, which can become overloaded. According to department officials, applicants very rarely mail in their application for unemployment benefits.

In an effort to save money, improve efficiency, and make it easier for applicants to apply for unemployment benefits, the department opened its first call center in 2001. In an effort to maintain a consistent level of customer service, over a period of seven years the department gradually opened four other call centers across the state, resulting in 91 of the state’s 95 counties being covered by call centers. Shelby County as well as the three counties surrounding the Memphis area are the last areas of the state currently not covered by a call center. Applicants must either apply over the Internet or physically go to a career center to apply for unemployment benefits. Career centers are locations where employers can go to find workers and job seekers can get assistance and career information. Department officials report that contingent upon budgetary constraints, Shelby County as well as the three counties surrounding Memphis will be covered by a call center at some time in the future. Call center locations and their dates of establishment are located in Table 1.

Table 1
Department of Labor and Workforce Development Call Centers

Call Center Location	Date Call Center Established
Nashville	September 2001
Chattanooga	May 2005
Johnson City	August 2005
Crossville	September 2005
Knoxville	April 2008

Applicant Complaints Reported by Department Officials

Applicants who use the telephone to apply for unemployment benefits first enter information over the telephone using their key pad as prompted by a recording. Once this process is completed, the applicant is connected with a staff representative who asks for additional information. Wait times are calculated from the time the applicant completes entering information over the telephone until the applicant is connected with a representative. (While the department can determine what percentage of time telephone lines are busy in any given day, it does not know how long telephone lines are busy for each individual customer.)

Despite department efforts to be more efficient by establishing call centers, the majority of 21 call center staff that we interviewed reported that individuals applying for unemployment benefits complain that there are problems with the process. Namely, staff report that applicants often complain that after they have electronically entered requested information over the telephone, they have to wait a significant length of time on the telephone to speak with a

department staff representative. According to a department report, the average time to speak to a call center staff for FY 2008, once information is electronically entered over the telephone, was approximately 15 minutes. Department officials report that there are periods when the system can get overwhelmed, resulting in longer wait times.

According to department officials, the department goal of answering applicant calls changes with the volume of applicants applying for benefits. In April 2008, when the state's unemployment rate was 4.3% or less, the department had an internal goal of answering applicant calls within eight minutes. However, as of October 2008, the department did not have a goal for an appropriate wait time due to the overwhelming volume of calls it was receiving. A department official reported that the department is merely trying to keep up with the large volume of applications. Department officials report that the goal has been temporarily suspended until the level of applications becomes more manageable.

It appears that the department can take steps to help improve application intake efficiency and effectiveness. Currently individuals may only use the Internet to apply for unemployment benefits for jobs that were lost as a result of a lack of work. Applicants who lost their job as a result of other reasons must apply for unemployment benefits over the telephone or mail in an application. For example, individuals may qualify for unemployment benefits but not be able to apply for benefits over the Internet if they are forced to leave work due to illness and/or injury. Expanding applicant Internet options beyond simply a lack of work may reduce wait time as a greater number of individuals would be permitted to use the Internet to apply for unemployment benefits. Department officials acknowledge that although the system is limited to only accepting applications resulting from a lack of work, the use of the Internet has had a positive effect on the number of calls department staff receive by reducing wait time. For example, the state of Alabama allows individuals to apply for unemployment benefits through the Internet regardless of the reason for their unemployment.

Recommendation

Department officials should expand the categories of authorized reasons for separation from employment for individuals to apply for unemployment benefits over the Internet. Management should change its processes to allow a greater number of applicants to apply via the Internet and should monitor wait times after this change to see if wait times decrease.

Management's Comment

We concur. Internet claims expansion was implemented on December 10, 2008. In addition to lack of work claims, individuals now may file "separation" issue claims (i.e., quits and discharges) over the Internet, which constitute a large majority of all claims filed.

3. The Department of Labor and Workforce Development still has not implemented EBT (Electronic Benefits Transfer) services for its unemployment insurance (UI) benefits checks

Finding

The Department of Labor and Workforce Development still has not implemented the use of Electronic Benefits Transfer (EBT) services despite concurring with the benefits of using these services for unemployment insurance (UI) checks in the March 2004 performance audit. Similar to their assertion in the previous performance audit, during the course of this audit, department officials stated that they are considering implementing an EBT system sometime in the future. However, as of the conclusion of this audit, the department has not yet implemented such a system, nor has it established a date when such a system would be implemented.

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. During fiscal year 2007, the department issued 2,126,242 unemployment insurance checks amounting to \$463,150,606. 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 stated that although no date had yet been established, they hoped to do so in the near future.

Department officials acknowledge the economic and security benefits of using such a system to deliver unemployment benefits. Specifically, department management state that since the department currently sends an average of 30,000 to 40,000 checks an week, the use of an EBT system would result in savings in postage, the cost of acquiring and maintaining check stock, and the time spent by department staff addressing lost and fraudulent checks.

Department officials state that many individuals who receive unemployment benefits do not have a checking account with a bank. Subsequently, the recipient often has to use check cashing services that charge a fee, thereby reducing the limited amount of funding that the recipient has to live on.

Recommendation

The Department of Labor and Workforce Development should strive to implement an electronic method of delivering unemployment benefits as soon as possible in order to maximize economic savings as well as to minimize the security risks of lost or fraudulent checks and unnecessary check cashing costs to the recipient. Since department officials state that many recipients do not have bank accounts, the method established by the department should not require recipients to have a bank account in order to access benefits, for example, using an EBT card that can electronically have funds transferred to it.

Management's Comment

We concur. The department's use of "debit cards" to pay unemployment benefits is in process, and implementation is scheduled to begin June 2009 with completion in September 2009. Please note that the department already would have begun implementation in January 2009 except that the federal government mandated two rounds of Emergency Unemployment Claim (EUC) benefits. The department's limited resources had to be diverted to EUC and as a consequence, debit card implementation had to be pushed back.

4. The Labor Standards Division does not have written policies and procedures for investigation and closure time frames, or policies regarding penalty assessments for Child Labor and Wage Regulation investigations

Finding

The Labor Standards Division still has not adopted written policies and procedures specifying time frames for completion of inspections, investigation of complaints, and assessment of penalties for violations of the Child Labor or Wage Regulation laws. This is a repeat finding from the 2000 and 2004 performance audits of the Department of Labor and Workforce Development.

Based on interviews with and documentation obtained from the Labor Standards Director, we determined the division still lacks written guidelines for case investigation inspection and closure time frames as well as formalized penalty assessment guidelines. The Labor Standards Director verbally directed inspectors to close a case if they have not made headway on the case within 30 to 60 days. We conducted file reviews of Child Labor and Wage Regulation inspection files to determine case closure times and consistency of penalty assessments.

Child Labor

We randomly selected 150 closed files from a list of 3,972 Child Labor investigations inspections conducted between January 1, 2005, and May 31, 2008. We calculated case closure times, although in some instances, it was difficult to determine actual case closure dates. There was no field on the forms for inspectors to record the close date, but dates were noted in the inspector comments and comments related to penalties. However, if a date was not specifically noted in the file as being the close date, we used the date of the last correspondence on the case, such as payment of penalty or final warning letter date, for our calculation.

We found that 67% (101 of 150) of the cases were closed on the same day of the investigation/inspection due to no violations being noted. The average time between open and close dates was 35 days for all of the cases reviewed. However, for cases involving violations, the average was 108 days. (There were 48 of 150 cases with violations.)

Table 2
Child Labor Inspection Closure Time Frames
Randomly Selected Closed Cases January 1, 2005, Through May 31, 2008

Number of Days to Close	All Cases Reviewed	Cases with Violations
Average	35	108
Highest	409	409
Lowest	0	16

In our sample, there were 48 Child Labor cases in which inspectors recommended penalties. However, we found the Labor Standards Director only assessed penalties for 12 of 48 (25%) cases. Of these 12 cases, 7 had previous violations, but for 3 of these cases, it appears that prior violations were not taken into consideration as the penalty assessment was at the lowest amount, \$150 per violation. The remaining 36 cases involving violations received Final Warnings. Overall, it does appear that consistency has improved significantly since the prior audit as we did not observe the large penalty discrepancies noted in the prior audit. However, formal written penalty assessment procedures are needed.

Wage Regulation

Wage Regulation cases are strictly complaint based, meaning that an individual must file a complaint for an investigation to commence. These are typically conducted via telephone, with the submission of information via mail or fax. Investigators attempt to determine whether wages are due to the complainant, and how much, from information submitted by both the complainant and the employer.

An example of a wage regulation case is an employee who left or was discharged from employment and did not receive payment of all wages earned. According to Section 50-2-103(g), *Tennessee Code Annotated*, an employee “shall be paid in full all wages or salary earned by the employee no later than the next regular pay day following the date of dismissal or voluntary leaving or 21 days following the date of dismissal or voluntary leaving, whichever occurs last.” Section 50-2-103(i) stipulates that a violation of the section is a Class B misdemeanor, punishable by a fine of not less than \$100 or more than \$500. Also, every employer, partnership, or corporation willfully violating any provision in this section is subject to a civil penalty of not less than \$500 or more than \$1,000, and each infraction constitutes a separate and distinct offense.

We randomly selected 150 closed files from a list of 3,656 Wage Regulation investigations inspections conducted between January 1, 2005, and May 31, 2008. We calculated case closure times, although in some instances, it was difficult to determine the actual case closure date for the same reason as Child Labor cases. If a closure date was not specifically noted in the file as the close date, we calculated case closure based on the date of the last correspondence on the case. We were unable to review five cases as they were still being reviewed by the Labor Standards Director. Of the remaining 145 cases, the average number of

days between open and close was 51 days. However, depending on the case outcome, this varied significantly. We found

- 88 cases where wages were owed and no penalty was assessed, which averaged 35 days;
- 51 cases where inspectors determined no wages were due, which averaged 565.9 days; and
- 6 cases where penalties were assessed, which averaged 252 days;

The Division Director waived penalties for all six of the penalty cases (totaling \$17,000). Three penalties were waived because the inspector could not determine whether wages were owed based on information submitted by the employer after the penalty was assessed (\$8,500). One was waived after the employer paid the claimant (\$6,000), and one was waived because ownership of the business had changed (\$1,500). The final penalty was waived due to an Attorney General Opinion (06-169) related to vacation pay which nullified the department's original decision on wages being owed to the claimant (\$1,000).

While all of the penalties in our sample were waived, we did find that for at least five of the cases, the Notification of Violation and Penalty appeared to prompt businesses to contact the department with information, thereby allowing the department to issue a decision and subsequently close the case. Due to the approximate eight-month average to close these cases, the department may want to consider upholding and collecting penalties, especially for repeat violators, to ensure prompt response from that employer in future cases.

Penalty Guidelines

Based on interviews with and documentation obtained from the Labor Standards Director, we determined the division still lacks formalized penalty assessment policies and procedures. The Director does maintain a document for personal use in assessing penalties, but nothing has been formalized by the department to aid in ensuring consistency. Consistency in the application of penalties is important in treating employers fairly while still impressing upon them the importance of compliance with Child Labor and Wage Regulation laws. The documentation of penalty policies and procedures is integral to ensuring consistency and continuity, most especially when personnel and leadership changes arise.

While verbal guidelines from management are helpful, they in no way formally document management's intent as it relates to achieving efficient and effective case investigation and closure. Written guidelines also provide a record of any changes in management's intent. Additionally, written procedures provide guidance for new staff as well as a formalized monitoring tool for management.

Identify Repeat Violators

Per discussions with the Labor Standards Director, staff are now required by the inspection form software to enter the employer's Federal Employer Identification Number (FEIN) before any information may be input into the system in an effort to easily identify repeat offenders. However, there was no evidence of a written policy to this effect based on our review of the *Labor Standards Operational Policy and Training Manual*. Furthermore, during our interview, it was determined that an inspector can enter a "0" in this field if the FEIN is not available at the time of inspection, with the intent of entering that information when it is obtained. Documenting the FEIN in the system is something new for the division, and auditors did find instances in the file review where the FEIN was not entered into the form but was handwritten on the form. While the department is implementing the required collection of the FEIN to uniquely identify employers, it does not appear the department is ensuring this is entered later when the FEIN was not readily available at the time of inspection. This certainly hinders the department's efforts to identify and sanction repeat violators and circumvents what would otherwise be an effective control for identifying repeat employer offenders.

Recommendation

The department should develop and implement formalized, written policies and procedures for case investigation and closure to document management's intent, direct new staff, and to provide a possible management monitoring tool for efficiency and effectiveness of the process. The penalty assessment process should also be documented in written policies and procedures to improve efforts for consistency as well as for continuity when staff and leadership changes arise. The department should also consider enforcing collection of penalties for Wage Regulation violations, especially in instances where an employer does not cooperate or for repeat offenders.

The department should also develop and implement written policies and procedures requiring inspectors to not only obtain the FEIN for employers, but also to enter that information into the database as soon as it is available to aid in the future identifying of repeat violators. Additionally, the division should specifically note the case closure date in files for use in monitoring timeliness and work towards establishing time goals.

Management's Comment

We concur. The Division of Labor Standards has rewritten its policy and procedure manual. This manual addresses updated policies and procedures as well as the specifics of the finding set out by the performance audit. This updated manual was revised and implemented on May 15, 2008.

The auditors randomly selected their cases for investigation from January 1, 2005, through May 31, 2008. The result of the updated manual was in part due to the communication

the performance auditors had with Labor Standards while initially reviewing such files and partly because it was time to take a look at the manual for updates due to recent legislation that gave the division the enforcement authority to oversee the Employment of Illegal Alien Act.

In terms of assessing penalties for Child Labor and Wage Regulation, the Director of Labor Standards shall use discretion in assessing penalties based upon the totality of the facts, the circumstances, and the investigation. The statute(s) TCA 50-5-101 et seq. and 50-2-101 et seq. does not give us regulatory authority to enforce such penalties.

In Child Labor, the assessed penalties may be reduced because the employer has taken additional and remedial measures to comply with these statutes. Such remedial measures may include but are not limited to: the business owner taking the division's training classes, sending managers and other personnel to class, and/or changing their procedures on how personnel records are kept when hiring minors, etc.

In assessing penalties under the Wage Regulation Act, the penalties may also be used as a management tool to collect wages that were deemed owed to the complainant by the inspector and the Director of Labor Standards.

In assessing penalties under both Child Labor and the Wage Regulation Act, several factors shall be taken into consideration: specifically, the business size and revenue of the owner who is charged, the gravity of the violation, past violations, whether the business has taken necessary steps in correcting the violations, and the intent the business has in following the law.

When penalties are not collected by the Division of Labor Standards, the division sends those cases to the Office of the Attorney General. They handle the collection of penalties through the legal process; however, they balance their case loads with the amount in question for the assessed penalties. While they have collected some of the assessed penalties, the overall percentage of the collected penalties is small.

After the Director deems it necessary to assess a penalty to the business, employer, etc., they are afforded their appeal rights or their due process guarantee. They have 30 days to notify the division of their appeal. The Commissioner of Labor and Workforce Development's designee shall listen to their appeal at an informal conference. The designee has discretion to address the issue of the assessed penalty.

A new time frame has been established for both Child Labor and Wage Regulation. Cases shall be processed and investigated and/or resolved within 60 days of the inspection date or of the original receipt date.

We have made numerous attempts to get the legislature to assist the division with some regulatory authority as it relates to the assessing and enforcement of penalties. Our efforts have been unsuccessful.

Our overall objective is to get the employers to follow the Child Labor and Wage Regulation Act pursuant to state law. Furthermore, it is our intent that the adoption of the newly written policy and procedures manual will be more closely adhered to.

5. The Workers' Compensation Administrative Review process lacks policies and procedures for waiving the ten-day informal conference requirement

Finding

State law requires the Workers' Compensation Division to hold conferences appealing its benefit review decisions within ten calendar days of the request for the conference. We found the division waived the ten-day requirement in many cases, but does not have policies or procedures describing the circumstances for requesting and approving waivers and documenting these actions.

The Workers' Compensation Benefit Review resolves workers' compensation disputes between injured workers and employers. When the injured employee and employer fail to reach a consensus on workers' compensation issues, rather than filing suit in court, the parties must first exhaust the Benefit Review process. This process begins with a Benefit Review Specialist accepting evidence from both parties, and issuing an order outlining the determination. If either party disagrees with the determination at this level, it has seven calendar days to ask for an Administrative Review, which is the last level at which parties are not required to have legal representation. The process is deemed exhausted upon one of the following:

- reaching a mediated settlement;
- issuing an impasse report;
- conducting and completing mediation by private Rule 31 mediator;
- issuing a waiver signed by the Benefit Review Program Director; or
- issuing a Benefit Review Report stating whether the process has been exhausted (Rule 0800-2-5-.09).

State law requires that the Administrator of the Workers' Compensation Division (or designee) conduct an informal conference [the administrative review] within ten days of the request (Section 50-6-238[d][2][A], *Tennessee Code Annotated*).

We conducted a file review of all cases requesting Administrative Review that resulted in a decision that was reversed or reversed in part for fiscal years 2007 and 2008. Of the 80 cases reviewed, we found 29 instances where the informal conference occurred beyond the ten-calendar-day requirement. There was no documentation in the files of any waivers of the ten-calendar-day requirement; waivers were mentioned only in administrative notes. Of the 29 files, for 28% (8 of 29) of the cases, the tenth day fell on a weekend, holiday, or a combination of both,

but the conference was scheduled for the next available business day. There were 31% (9 of 29) listed in administrative notes as having a verbal or written waiver, either by e-mail, letter, or fax, to waive the requirement. In 28% of the cases (8 of 29), it appears waivers were considered implied when parties to the case were not available within the required time. The remaining 14% of the cases (4 of 29) had no waiver.

While it is reasonable to expect obstacles to scheduling reviews within ten calendar days, it is necessary to formally document these obstacles and obtain agreement from the filing party to ensure a fair process and compliance with the law.

Recommendation

The department should adopt a policy regarding the waiving of the statutory requirement to hold an informal conference within ten calendar days of the request for the review. This should include requiring a formal document waiving the requirement as well as the filing of that waiver in the review file to help ensure that both the law and due process are followed.

Management's Comment

We concur. The Administrative Review Program is meeting the statutory ten-calendar-day requirement in the majority of the cases it reviews. In the other cases, there are valid reasons for an extension of time. These reasons include: the request of and by agreement of both parties; a party, such as an unrepresented employee, or both parties, have asked for additional time to obtain legal representation, obtain additional medical records, obtain a copy of the Benefit Review file, or to make or comply with a discovery request; and allowing time for the Parties to try to resolve or settle the issues in dispute by themselves.

As a result of this finding, the Administrative Review Program has begun formally documenting within the written Order deciding the case the reasons for any delay that extended the conference beyond ten days. Administrative staff have also been asked to be sure to continue to specifically document in the administrative notes any reasons for delay. Additionally, the program is considering other steps to ensure that both the law and due process are followed.

As always, we welcome any suggestion(s) of ways for improvement which anyone may have.

6. Member attendance of the Medical Care and Cost Containment Committee declined significantly between July 2004 and January 2007

Finding

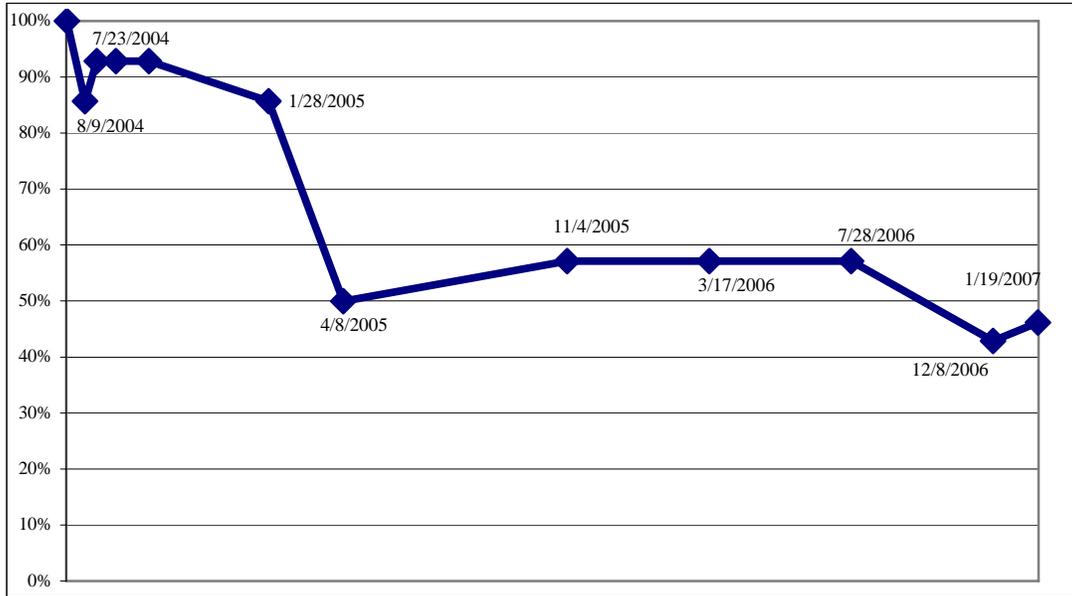
Based on a review of meeting minutes, we found that the Medical Care and Cost Containment Committee meeting attendance declined significantly between July 2004 and January 2007.

Per Section 50-6-125(a), *Tennessee Code Annotated*, the committee must approve regulations pursuant to Section 50-6-233(c)(7), *Tennessee Code Annotated*, before they become effective and assist the Commissioner in their implementation. The committee also advises the Commissioner, at the Commissioner's request, on issues relating to medical care and cost containment in the workers' compensation system. Per Section 50-6-125(b), *Tennessee Code Annotated*, the committee is composed of 15 voting members appointed by the Commissioner and one ex-officio member as follows:

- 3 physicians licensed to practice medicine and surgery per Title 63,
- 3 representing employers,
- 3 representing employees,
- 3 representing hospitals,
- one pharmacist,
- one representing the health insurance industry,
- one chiropractor, and
- one ex-officio (the department's Medical Director).

We reviewed minutes for 12 meetings, held between July 2004 and January 2007. Based on this review of voting members, attendance declined significantly between July 2004 through January 2007, dropping from 100% to 46%.

Chart 1
Medical Care and Cost Containment Committee
Voting Member Meeting Attendance
July 23, 2004, Through January 19, 2007



We further analyzed those meetings with less than 60% attendance to determine the overall percentage each member group (as mentioned in statute) was represented. We found that attendance for all groups during the period April 2005 though January 2007 was 67% and below, the lowest being 17%. (See Table 3.)

Table 3
Analysis of Low Attendance Meetings
April 2005 through January 2007

Representing Group	Attendance %
Chiropractor	20%
Employee	61%
Employer	28%
Insurance	17%
Hospital	50%*
Pharmacist	67%
Physician	67%

*Averaged one vacancy per meeting.

In some meetings there were no representatives of some groups. For example, of six meetings, there were three where employers had no representation. Furthermore, one of these meetings also lacked employee representation. This committee is composed of several groups

for the purpose of providing the Commissioner with a comprehensive view of issues related to workers' compensation medical care and cost containment. When attendance is low, or non-existent, and groups lack adequate representation, the Commissioner could be receiving insufficient information to achieve a balanced perspective, which could adversely affect decision-making.

Recommendation

The department should monitor the attendance of committee members to ensure all groups are represented when soliciting advice. When members consistently fail to attend meetings, the Commissioner should consider replacing these members to ensure that all groups are represented to aid in achieving a balanced perspective on regulations and other medical care and cost containment issues in the workers' compensation system.

Management's Comment

We concur that member attendance of the Medical Care and Cost Containment Committee (MCCCC) has declined. There are several reasons for the decline.

1. As actively employed professionals, members of the MCCCC occasionally have unforeseen conflicts which arise and prevent their attending a meeting even after they have committed to attend. To address this concern, the committee adopted new bylaws this past summer, which allow a member to participate in person or by phone. Additionally, the bylaws allow a member to designate another person to act as a proxy by sending notice in writing to the medical director prior to a meeting.
2. There are several vacancies on the current committee. We have contacted all relevant organizations and requested nominees for the committee. In one case, we have had names submitted and are awaiting the Commissioner's/Governor's selection. The other organizations have not made nominations to the committee.
3. Additionally, in the meetings prior to 2005 there was great interest in the pending medical fee schedule. Committee members attended to ensure that their voices were heard as the meetings dealt with payments from and reimbursements to the member's constituency. Now that the schedule is in place, many members do not have the same desire to participate.

In an effort to improve attendance at the meetings, the department contacts all committee members prior to a scheduled meeting to check their availability. The committee does not schedule a meeting for a date unless a quorum is confirmed. The committee usually schedules its next meeting before concluding its current meeting.

Whenever enough notice is given, a meeting may be postponed if a quorum is unlikely. Also, a meeting can be delayed if there is no adequate agenda, in the event there are too few cases to review, or if there is too little business to conduct.

OBSERVATIONS AND COMMENTS

The topics discussed below did not warrant a finding but are included in this report because of their effect on the operations of Department of Labor and Workforce Development and on the citizens of Tennessee.

UNEMPLOYMENT COMPENSATION TRUST FUND UPDATE

The Unemployment Compensation Fund receives premiums from employers as deposits and pays benefits to claimants. Interest earned is retained in the fund. According to the January 2008 Tennessee Employment Security Insurance Model (TESIM), the trust fund had a balance of \$558.1 million at the end of December 2007 with a forecasted balance of \$514 million by the end of December 2009 (see below for discussion of actual balance). However, trust fund projections were based on unemployment statistics that were approximately 1% point lower than current levels. As such, assumptions about trust fund activity, including the amount of benefits distributed to applicants versus the level of premiums collected from employers, could be substantially different than what actually exists, resulting in a balance projection that is higher than actual levels.

Further, the trust fund balance currently includes approximately \$110 million from a one-time federal grant received by the department in 2003. Without these monies, the fund's actual balance would be \$448.1 million. The significance of this issue is highlighted by the fact that since 2006, benefits dispersed to applicants have exceeded premiums collected, thereby resulting in a decreasing fund balance. According to a department report, for the year ending December 31, 2007, the trust dispersed \$458,832,000 in benefits and collected \$390,392,000 in premiums and interest, resulting in a decrease of \$68,440,000 in the fund. If this trend were to continue, the balance could continue to deteriorate. Department officials report that unless action is taken to address this situation, the trust fund balance could be in danger of decreasing too much.

Additionally, the U.S. Department of Labor provides each state a recommended trust fund balance to ensure that each can successfully weather poor economic periods. According to Tennessee Department of Labor and Workforce Development officials, Tennessee should maintain a balance of approximately \$1 billion in its trust fund. However, Tennessee's trust fund falls far short of this recommended level. Tennessee ranks 35th nationally in terms of meeting its recommended trust fund balance.

According to a March 2008 U.S. Department of Labor report on trust fund solvency, Tennessee had a high-cost multiplier of 0.30 for calendar year 2007 and ranked 35th in the nation. The high-cost multiplier, 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 1.58 to .04 with the U.S. average being 0.36. The higher the score the better the chances are that the state will be able to successfully weather a low economic period. According to Tennessee Department of Labor officials, the federal government would like to see states have a high cost multiplier of 1.0.

The department submits (no later than January 30 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 Table 4 for a summary of the annual reports for 2004 through 2007.

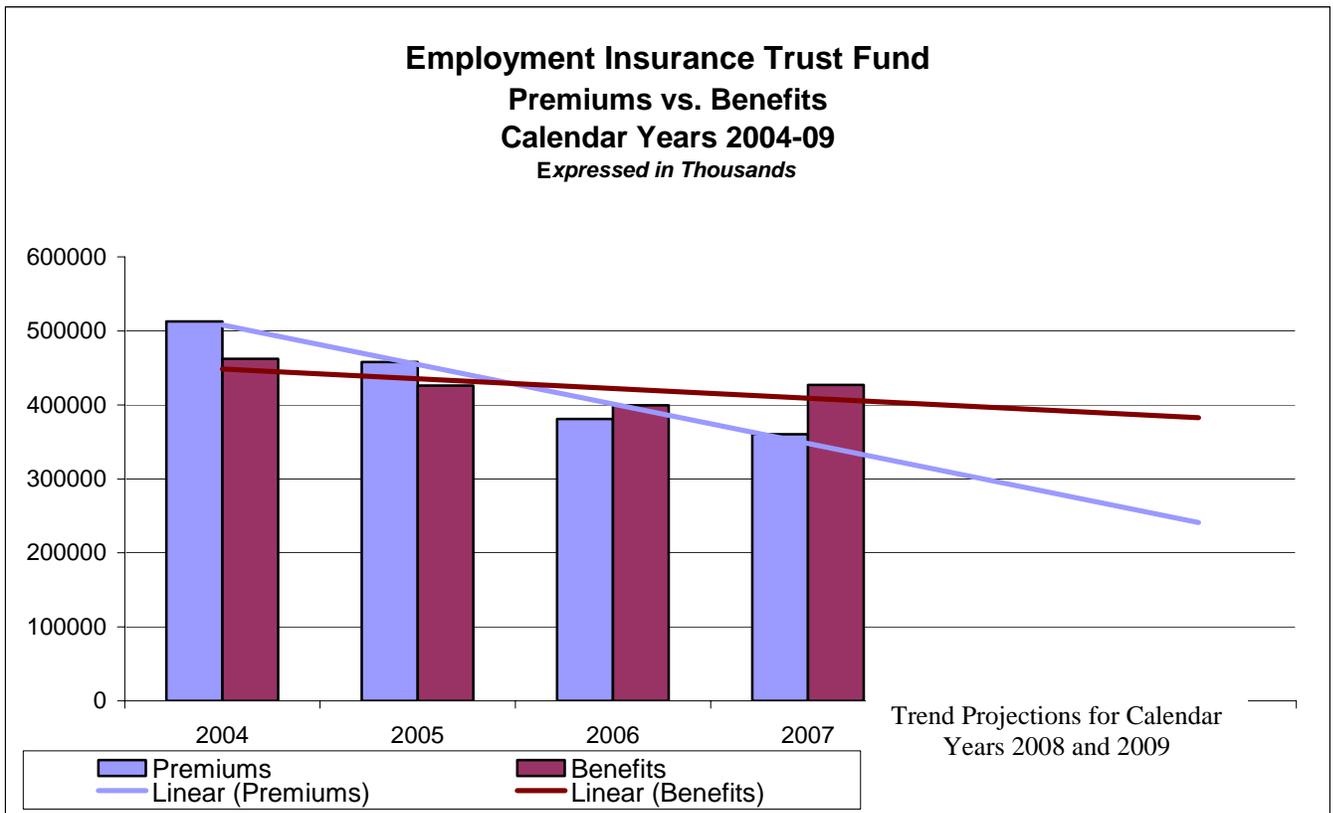
Table 4
Employment Security Trust Fund
Revenues, Benefits, and Ending Fund Balance
As of December 31, 2004-2007

	2004	2005	2006	2007
Premiums Collected and Interest Earned	\$545,782,000	\$489,763,000	\$411,723,000	\$390,392,000
Expenditures (Benefits Paid & Reed Act Expenditures)	\$467,405,000	\$427,158,000	\$414,626,000	\$458,832,000
Ending Balance	\$566,813,000	\$629,418,000	\$626,515,000	\$558,075,000

Source: Information obtained from the Department of Labor and Workforce Development Statement of Revenue, Expenditure and Changes in Fund Balance.

See Chart 2 for a trend analysis of the unemployment trust fund from 2004 through 2007.

Chart 2
Trend Analysis of Unemployment Trust Fund for Calendar Years 2004-09



Source: Trend Analysis was generated from information obtained in the Department of Labor and Workforce Development Statement of Revenue, Expenditure and Changes in Fund Balance.

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 4 (which is used when the fund balance is less than \$675 million but more than \$600 million) is being used. Department officials reported the majority of employer premiums are collected in the first two quarters of the year. Therefore, they state that while it appears that the fund has a fair amount of money in it, the department anticipates the fund’s balance to deteriorate as the year progresses as the amount of benefits dispersed to applicants exceeds premiums collected.

According to department officials, the department is working on a bill to be submitted to the General Assembly in the next legislative session to address the trust fund’s deteriorating situation. Specifically, the bill will recommend increasing Tennessee’s taxable wage base for unemployment insurance. Tennessee currently has a \$7,000 taxable wage base for unemployment insurance premium purposes (the lowest allowable by federal law). The proposed bill will gradually increase the taxable wage base over a three-year period (\$8,000 the first year, \$9,000 the second year, and \$10,000 the third year). Tennessee has not raised its taxable wage

base 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.

THE DEPARTMENT SHOULD REVIEW AGENCY FUNCTIONS AND CURRENT EMPLOYMENT IN PREPARATION FOR SUCCESSION PLANNING

With the current employment climate, the aging workforce with many eligible to retire, and the state's recent voluntary buyout, many agencies are facing considerable loss of institutional knowledge and human capital. This is a concern that was expressed in this agency and noted by auditors due to recent events.

According to the department's 2007 strategic plan, approximately 30% of department staff are either currently eligible for retirement or could retire within the next five years. The plan also states that many of the individuals at or near retirement are in manager or supervisor positions and possess a great deal of operational knowledge.

We found that, as of August 2008, the department had 327 employees with 25 years or more of service, approximately 17% of the department's staff. Based on the number of employees who are nearing retirement eligibility, it is important the department begin preparing for succession planning that will allow the department's operations to continue and allow employees, who have been trained, to move into other positions as they become vacant. For example, the Administration Division's information technology group, prior to the voluntary buyout, had 12 employees with 30 or more years of experience. The following table compares the number of employees in each division that have 25+ years of service with the total number of positions in each division.

Staff With 25 Years of Service or More Versus Total Department Staff

Division	Management Staff	Non-Management Staff	Total Staff Identified	Division Total Staff	% of Division
Administration	6	8	14	109	12.84%
TOSHA	7	15	22	105	20.95%
Worker Compensation	3	5	8	175	4.57%
Mines	0	2	2	24	8.33%
Boiler/Elevator	0	3	3	53	5.66%
Labor Standards	0	1	1	28	3.57%
Employee Training	1	7	8	37	21.62%
Adult Basic Education	1	2	3	12	25.00%
Employment Security	59	207	266	1398	19.03%
Total	77	250	327	1,941	16.85%

Source: State Employee Information System showing employees who had 300 months of service or more and were not listed as terminated.

Based on the September 2007 agency five-year strategic plan, the Department of Human Resources is working on an initiative to aid agencies in succession planning. The plan lists a goal of June 30, 2008, for offering a workforce planning, leadership, and succession planning template for agencies to use.

The department should begin identifying areas needing immediate attention and address those areas by ensuring that policies and procedures fully document operations. The department should also begin developing a cross-training initiative to achieve a diversified employee pool from which to promote and ease transition during times of change, such as the recent voluntary buyout. The state's recent Voluntary Buyout Program created a situation where cross-training would have been a valuable asset to the department. The department's director for Title VI, Title IX, and Section 188 of the Workforce Investment Act was one of the employees who left the state through the buyout program. The department moved another employee into the position, but the department was left without the institutional knowledge the previous director had of the position. The department would have been well served to cross-train employees in the Civil Rights Division to aid in a smooth transition and ensure proper documentation so that other employees would have been knowledgeable of the requirements of Title VI, Title IX, and Section 188 of the Workforce Investment Act.

The department should begin preparing for succession planning by ensuring that proper policies and procedures are in place to aid in continuity; identifying critical positions most

susceptible to potential retirements, such as highly specialized information technology positions, etc.; and cross-training employees to diversify the knowledge base to aid in future transitions.

TIMELINESS OF HIGH PRESSURE BOILER INSPECTIONS

Section 68-122-110, *Tennessee Code Annotated*, states that boilers used or proposed to be used in the state should be inspected as to their construction, installation, condition, and operation. This statute requires that high pressure boilers be inspected annually both internally and externally while not under pressure. It also states that if possible, each high pressure boiler should be inspected externally while under pressure approximately six months after the each internal inspection. As of June 2008, division personnel estimated there were 65,000 boilers requiring inspection. Additionally, unfired vessels are to be inspected internally and externally every two years, where construction permits.

To ascertain the department's compliance with this statute, we obtained database information for all completed inspections for the last three fiscal years. To assess the reliability of the database, we randomly selected a sample of 60 boilers from all inspections completed during FY 2008 and matched data in files to the database information.

Obtaining Data

During this process, staff stated that the database is difficult to work with, especially when system modifications are needed. In fact, staff had difficulties providing the data requested by the auditors. Staff explained that the database is composed of many different tables with multiple relationships between those tables as well as the department lacking access to code or data definitions for this system. For example, one of the data fields initially provided to the auditors listed the current inspection date in one table that did not match the corresponding field in another table. Staff explained that this date is written in two separate tables, but only one was actually correct. The other field was apparently not being updated. Overall staff stated that if a system problem does present itself, diagnosing and manipulating the underlying structure is very difficult due not knowing how fields are connected among tables in the database.

The current system appeared reliable for the limited information we reviewed. However, if certain fields are not updated correctly, delinquency determination, invoicing, etc., could be adversely affected. Due to the complexity of the system and lack of system documentation, we did not conduct further review. Also, we were informed by the Director of Workplace Regulations and Compliance that a new system has been in the works for four years and should come online sometime in fiscal year 2009.

Analysis of Timeliness

Based on the file review, we noted some inconsistency in the timeliness of some inspections during our review. Our random sample, once analyzed, included 5 high pressure

vessels, 15 low pressure vessels, and 40 unfired vessels. We looked at the three most current inspections listed on the Boiler History Report to calculate time between inspections.

High Pressure

High pressure boilers are boilers that operate above 15 psi steam pressure or 160 psi water pressure and 250 degrees F. These boilers are used at power plants, hospitals, manufacturing facilities, and even the neighborhood drycleaner.

High pressure vessels are to be internally and externally inspected annually while the vessel is not under pressure. Our random sample identified five such boilers. We determined that two of the five were inspected late—one was 17 months late and the other was 5 months late. It also appeared that the required external inspections were not being conducted. However, based on discussions with the Chief Boiler Inspector, the internal and external inspections are conducted at the same time. The boiler is dismantled for the internal inspection, and the boiler inspector observes reassembly of the boiler prior to conducting the external inspection. The current system does not track these annual external inspections separate from the internal ones. Therefore, we could not determine for certain that external inspections are in fact completed at the time of the internal inspection. The explanation for not having a separate external inspection entered into the system is that the internal inspection is what is required to issue a certificate, after a boiler is inspected and allowed to operate.

As for the optional external inspection to be conducted while the vessel is under pressure, it appears that this would be a quick way to double-check the boiler to ensure it is working properly. However, these are not consistently performed based on our review.

Low Pressure

Low pressure boilers are boilers that operate below 15 psi steam pressure or 160 psi water pressure and 250 degrees F. These boilers are used for steam heating, hot water heating, and hot water supply. Low pressure boilers can be found in restaurants, hospitals, schools, office buildings, apartment buildings, manufacturing facilities, and laundries.

Low pressure vessels are required to be internally and externally inspected every two years, where construction permits. We found that for all 15 low pressure vessels in the random sample, none had received an internal inspection. As for external inspections, 4 of the 15 vessels were past-due from 3 to 21 months.

Unfired

Unfired pressure vessels are vessels that contain potable hot water, compressed air, or nonflammable gases. These are vessels that operate above 15 psi, are over 5 cubic feet in volume, or 120 gallon capacity (water storage usage). Unfired pressure vessels can be found operating at service stations, hospitals, manufacturing facilities, schools, and farming supply stores.

There were 40 unfired vessels in the random sample. Two of the 40 had internal inspections. As for external inspections, there were 5 of 40 that ranged from one month to four years past-due.

Overall, the Boiler Inspection Division should make every possible effort to ensure timely inspections in accordance with statute. Additionally, the division should consider including optional external inspections in the schedule for high pressure vessels. High pressure boilers, if faulty, can cause severe harm, and this type of inspection would allow testing of important safety cut-offs while the boiler is under pressure. For this reason, any inspection associated with high pressure boilers should be a priority to increase the likelihood of identifying a problem early and repairing it before failure or an accident occurs.

ELEVATOR INSPECTIONS AND FILING OF INSPECTION REPORTS APPEAR TIMELY

This audit included an evaluation of the elevator inspection process and a review of computer data to verify timeliness in accordance with the requirements of Section 68-121-106, *Tennessee Code Annotated*. The auditors did not find any significant problems. A description of the audit work is presented below.

Section 68-121-106, *Tennessee Code Annotated*, requires the department to inspect and license all elevators, dumbwaiters, and escalators operating in the state except those that are dormant or are residential. As of June 2008, the Elevator Inspection Division estimated the current number of elevators to be 12,000. The division is focused on safety, and enforcement action ranges from warning to shut down or condemn. Elevator inspectors must be qualified through the American Society of Mechanical Engineers, which requires initial testing as well as continuing education and recertification every year.

Test Work

Section 68-121-106(3), *Tennessee Code Annotated*, requires that each elevator be inspected every six months following the month of the initial inspection. Section (5A) of the same statute indicates that inspection reports must be filed with the department within 20 days of the inspection. Auditors tested these two requirements. Also, auditors compared paper inspection reports turned in by the inspectors to system Information Reports as a measure of computer data reliability.

The auditors generated a random sample of 60 elevators from those that had been inspected during 2008. For each Elevator ID in the sample, auditors reviewed Operational Summaries (History Report), Accounting Summaries, and Informational Summaries.

- The Operational Summary is a listing of every inspection completed on the elevator since it was initially approved for service or as far back as when the data system was put into service. This report allowed the auditors to identify periods of time between inspections.

- The Accounting Summary lists the invoice date, which is the date when Inspection Report data was entered into the eCMATS system. Once the information is entered into the system, it automatically creates an invoice; therefore, the invoice date can be referred to as the date of input.
- The Information Summary was compared with the paper inspection reports submitted by the inspectors from their home records as a test of data reliability.

Periodic Inspections Are Being Completed Every Six Months

Auditors tested that periodic inspections are being completed every six months by reviewing Operational Summaries. The last three inspection dates for each of the 60 sample elevators were used to calculate the number of days between inspection dates. In addition, the acceptance date of operation and the date of the first inspection were also entered and tested. Results showed that, on average, inspections are conducted within the required time, with an average of 180 days; first-time inspections after initial acceptance of operation averaged 171 days. Inspections were on time 83% of the time in the sample.

Inspection Reports Filed With Department Within 20 Days

Auditors tested that inspection reports are being entered into the eCMATS system within the required time frame. This was done by comparing the most recent invoice date shown on the Accounting Summary to the most recent inspection date shown on the Operational Summary. Any comparison resulting in more than 20 days was viewed as not meeting the statutory requirement. The data showed that 93% of the time, data are entered into the system within the required time period.

Reliability, Comparison of Information Summaries to Inspection Reports

Auditors requested paper inspection reports for the sample of 60 elevators. Reports were collected from the inspectors by the main office and provided to the auditors. The paper reports were reviewed and compared to the system Information Reports. No major issues were observed; of the 45 received reports, 98% had matching inspection dates (i.e., the date the paper report was signed matched the inspection date shown by the system).

During the audit, it was learned that the Elevator Division is taking on additional responsibilities in terms of entities to inspect. According to management, the division will be responsible for inspecting amusement park rides beginning January 1, 2009, in addition to the elevators, dumbwaiters, and escalators across the state.

CONFLICT-OF-INTEREST POLICIES FOR DEPARTMENT BOARDS AND COMMISSIONS

In the March 2004 performance audit, we reported that the department lacked a formal, written conflict-of-interest policy for its board, committee, commission, and council members. At that time, the department responded that the department's General Counsel Office had drafted

a policy, departmental procedures, disclosure forms, and acknowledgement forms, all of which had been sent to the Governor's legal counsel for review. The department also stated that once the drafts were approved, the policy and procedure would be implemented for each board, committee, commission, and council.

The department has conflict-of-interest policies for its boards, but not its advisory councils. The policy applies specifically to members appointed to the Board of Boiler Rules, Elevator Safety Board, Board of Employee Assistance Professionals, Medical Care and Cost Containment Committee, Prevailing Wage Commission, Unemployment Insurance Board of Review, and Workforce Development Board. The policy does not mention the Unemployment Compensation Advisory Council, OSHA Labor Advisory Council, or Workers' Compensation Advisory Council. Under the policy, board members are required to sign a conflict-of-interest acknowledgement form and complete a conflict-of-interest disclosure form annually. The policy defines a conflict-of-interest as

A 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. Also, any matter before the governing body in which a member has a financial or personal interest, which is in conflict or gives the appearance of conflict with the discharge of the member's duties.

Department management stated that applying the policy to advisory councils would discourage qualified persons from participating on the councils since many members are selected because of their interest in or knowledge of a subject area. For example, state law requires that the Workers' Compensation Advisory Council include members appointed to represent employers, employees, local government, insurance companies, health care providers, and attorneys. Department management stated that under the current policy, advisory council members would have to declare a conflict on every issue.

RECOMMENDATIONS

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 determine what value the Board of Review provides to the unemployment appeals process or whether it is necessary to the appeals process. If the department finds the board provides little benefit, it should consult with the General Assembly to amend state law creating the Board of Review.
2. The Board of Review should adopt written policies and procedures regarding the review process, including a requirement that all deliberations be documented and that all such documentation be retained. The Board of Review should also establish a method to document the time spent reviewing all cases. These measures should be taken with the goal of improving the transparency and effectiveness of the board.
3. Department officials should expand the categories of authorized reasons for separation from employment for individuals to apply for unemployment benefits over the Internet. Management should change its processes to allow a greater number of applicants to apply for unemployment benefits via the Internet. Management should monitor wait times after this change to see if wait times decrease.
4. The Department of Labor and Workforce Development should strive to implement an electronic method of delivering unemployment benefits as soon as possible in order to maximize economic savings as well as to minimize the security risks of lost or fraudulent checks and unnecessary check cashing costs to the recipient. Since department officials state that many recipients do not have bank accounts, the method established by the department should not require recipients to have a bank account in order to access benefits, for example, an EBT card that can electronically have funds transferred to it.
5. The department should develop and implement formalized, written policies and procedures for investigation and closure of Child Labor and Wage Regulation cases to document management's intent, direct new staff, and to provide a possible management monitoring tool for efficiency and effectiveness of the process. The penalty assessment process should also be documented in written policies and procedures to improve efforts for consistency as well as for continuity when staff and leadership changes arise. The department should also consider enforcing collection of penalties for Wage Regulation violations, especially in instances where an employer does not cooperate or for repeat offenders.

6. The department should develop and implement written policies and procedures requiring inspectors to not only obtain the Federal Employer Identification Number for employers but also to enter that information into the database as soon as it is available to aid in identifying repeat violators of Child Labor and Wage Regulation laws. Additionally, the division should specifically note the case closure date in files for use in monitoring timeliness and work towards establishing time goals.
7. The department should adopt a policy regarding the waiving of the statutory requirement to hold an informal conference within ten calendar days of the request for the review of workers' compensation benefit review decisions. This policy should include requiring a formal document waiving the requirement as well as the filing of that waiver in the review file to help ensure that both the law and due process are followed.
8. The department should monitor the attendance of Medical Care and Cost Containment Committee members to ensure all groups are represented when soliciting advice. When members consistently fail to attend meetings, the Commissioner should consider replacing these members to ensure that all groups are represented to aid in achieving a balanced perspective on regulations and other medical care and cost containment issues in the workers' compensation system.

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 the Department of Labor and Workforce Development's Budget by Program for fiscal year 2009, the department received \$129,744,900 in federal assistance during fiscal year 2006-2007, broken down as follows:

Program	Amount	Percentage
Administration	\$6,278,600	4.84%
TOSHA	\$4,060,900	3.13%
Mines	\$120,100	0.09%
Labor Standards	\$159,600	0.12%
Employment and Training	\$57,109,300	44.02%
Adult Basic Education	\$12,009,100	9.26%
Employment Security	\$50,007,300	38.54%
Total	\$129,744,900	100.00%

The department reports to the U.S. Department of Labor's Civil Rights Center, the Tennessee Department of Human Resources, and the Tennessee Comptroller of the Treasury with respect to Title VI compliance. The department has a Title VI Coordinator who is responsible for coordinating activities related to Title VI, Title IX of the Education Amendments Act of 1972, and Section 188 of the Workforce Investment Act (WIA). The coordinator's responsibilities include:

- conducting annual training for all division coordinators;
- conducting Management Institute Training for all division administrators, directors, managers, and supervisors, regarding Title VI, Title IX, and Section 188 of WIA;
- conducting training for top-level departmental executives (senior staff);
- disseminating all Title VI, Title IX, and Section 188 of WIA resources, including posters and brochures, to division coordinators;
- maintaining complaint logs and conducting any necessary investigations;

- educating division coordinators on necessary monitoring techniques to ensure departmental compliance; and
- submitting annual Title VI and Title IX information to contractors, vendors, grantors, and subrecipients in a timely manner.

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, according to its 2007-2008 Title VI plan. 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.

The Title VI plans states that 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 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 the 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 Case Management and Activity Tracking System 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.

**Workforce Investment Act Enrollment Data
Fiscal Year 2008**

Participants	Black	White	Asian	American Indian/Alaska Native	Hawaiian/Pacific Islander	Multi-Racial	Not Reported
Total	18,706	53,589	386	228	91	204	1,212
Percentage	25.14%	72.01%	0.52%	0.31%	0.12%	0.27%	1.63%

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 U.S. Department of Labor Civil Rights Center for processing. The department received 19 complaints between October 1, 2005, and September 30, 2007; 16 of the complaints have been settled, and 3 are pending.

Department Contracts for Fiscal Year 2009

Vendor	Contract Amount	Services Provided	Ownership	Funding
HCL Technologies	\$4,800,000.00	Programming and systems services	Other minority/disadvantaged	State
TRI-COR Industries	\$17,686.68	Equipment maintenance	Hispanic	State/ Federal
Workers' Compensation Research Institute	\$585,000.00	Research and benchmark the performance of the workers' compensation systems in 12 states	Not minority/disadvantaged	State
Focus Computer Management & Consulting	\$7,040.00	System software support and maintenance	Small Business	Federal
Center for Workforce Learning, LLC	\$39,800.00	Consulting/Performance LWIA	Female	Federal
Lester Consulting	\$10,200.00	System software support and maintenance	Female	Federal
Bank of America	\$92,000.00	Banking services	Not minority/disadvantaged	Federal
Fairfax Imaging, Inc.	\$1,310,763.00	Imaging hardware and software	Small Business	Federal
Geographic Solutions	\$149,481.00	Software update and maintenance	Small Business	Federal
Intergis, Inc.	\$230,940.00	Mainframe hardware and software support	Not minority/disadvantaged	Federal
On Point Technology	\$489,999.96	Program software and support	Small Business	Federal

Information on the gender and ethnicity of the members of the ten boards administratively attached to the department is shown below.

**Board Members by Gender and Ethnicity
As of July 1, 2008**

Board	Female	Male	Black	White	Other
Board of Boiler Rules	0	6	1	5	0
Board of Employee Assistance Professionals	2	2	1	3	0
Elevator Safety Board	1	3	1	3	0
Board of Review	3	0	1	2	0
Medical Care and Cost Containment Committee	2	7	2	7	0
OSHA Labor Advisory Council	2	4	1	5	0
OSHA Review Commission	1	2	1	2	0
Prevailing Wage Commission	0	4	0	4	0
State Unemployment Compensation Advisory Council	1	2	0	3	0
Advisory Council on Workers' Compensation	2	12	0	13	1

Source: Information provided by Department of Labor staff.

A summary of the department employees' title, gender, and ethnicity is included below. As of October 2008, the department had 1,513 staff, of whom 39% were male and 61% were female. Nineteen percent of the staff were black.

**Tennessee Department of Labor and Workforce Development
Staff by Job Title, Gender, and Ethnicity
As of October 2, 2008**

Title	Gender		Ethnicity				
	Male	Female	Asian	Black	Hispanic	Indian	White
Account Clerk	6	14	1	3	0	0	16
Accounting Manager	3	1	0	0	0	0	4
Accounting Technician 1	0	7	0	2	0	0	5
Accounting Technician 2	1	5	0	1	0	0	5
Accountant 2	5	3	1	1	0	0	6
Accountant 3	2	4	1	0	0	0	5
Administrative Assistant 1	0	5	0	2	0	0	3
Administrative Assistant 2	0	5	0	0	0	0	5
Administrative Assistant 3	0	10	0	1	0	0	9
Administrative Services Assistant 2	2	45	0	12	0	0	35
Administrative Services Assistant 3	1	5	0	1	0	0	5
Administrative Services Assistant 4	2	3	0	0	0	0	5
Administrative Services Assistant 5	4	4	0	3	0	0	5
Administrative Secretary	0	29	1	4	0	0	24
Affirmative Action Officer 2	0	1	0	1	0	0	0

Title	Gender		Ethnicity				
	Male	Female	Asian	Black	Hispanic	Indian	White
Aging Program Coordinator	1	0	0	1	0	0	0
Attorney 3	5	5	0	2	0	0	8
Attorney 4	1	0	0	0	0	0	1
Audit Director 1	0	1	0	0	0	0	1
Auditor 2	0	1	0	0	0	0	1
Auditor 3	1	1	0	0	0	0	2
Auditor 4	0	2	0	0	0	0	2
Boiler Inspector 2	14	0	0	1	0	0	13
Boiler Inspector 3	1	0	0	0	0	0	1
Board Member	3	6	0	3	0	0	6
Budget Analyst Coordinator	1	0	0	0	0	0	1
Chemist 3	0	2	0	0	0	0	2
Clerk 1	1	6	0	1	0	0	6
Clerk 2	1	17	0	5	1	0	12
Clerk 3	0	17	0	5	0	0	12
Computer Operations Supervisor	0	1	0	1	0	0	0
Commissioner 1	1	0	0	0	0	0	1
Custodial Worker 1	1	1	0	2	0	0	0
Data Entry Operator	2	9	0	2	0	0	9
Data Entry Operations Supervisor 2	0	1	0	1	0	0	0
Database Administrator 2	1	0	0	0	0	0	1
Database Administrator 3	2	0	1	0	0	0	1
Deputy Commissioner	1	0	0	0	0	0	1
Director of Communications	0	1	0	0	0	0	1
Education Consultant 1	1	0	0	0	0	0	1
Education Consultant 2	0	1	0	0	0	0	1
Education Consultant 3	1	2	0	0	0	0	3
Elevator Inspector 2	23	0	0	0	0	0	23
Elevator Inspector 3	2	0	0	0	0	0	2
Elevator Inspector 4	1	0	0	0	0	0	1
Employment Counselor 2	8	14	0	5	0	0	17
Employment Program Specialist 1	8	7	0	2	0	0	13
Employment Program Specialist 2	2	3	0	1	0	0	4
Employment Program Specialist 3	2	2	0	2	0	0	2
Employment Program Specialist 4	0	1	0	0	0	0	1
Employment Security District Manager	0	2	0	0	0	0	2
Employment Security Interviewer 2	90	308	1	102	5	1	289

Title	Gender		Ethnicity				
	Male	Female	Asian	Black	Hispanic	Indian	White
Employment Security Interviewer Supervisor	12	21	0	10	0	0	23
Employment Security Manager 1	3	6	0	2	0	0	7
Employment Security Manager 2	6	9	0	4	0	0	11
Employment Security Manager 3	6	2	2	1	0	0	5
Employment Security Division Assistant Director 1	3	0	0	0	0	0	3
Employment Security Division Assistant Director 2	0	3	0	0	0	0	3
Employment Security Division Director 1	3	0	0	0	0	0	3
Employment Security Division Director 2	3	1	0	1	0	0	3
Executive Administrative Assistant 1	0	1	0	0	0	0	1
Executive Administrative Assistant 2	2	2	0	0	0	0	4
Executive Administrative Assistant 3	2	3	0	3	0	0	2
Executive Secretary 1	0	5	0	0	0	0	5
Executive Secretary 2	0	1	0	0	0	0	1
Facilities Manager 3	1	0	0	0	0	0	1
Fiscal Director	1	0	0	1	0	0	0
General Counsel 3	1	0	0	0	0	0	1
Grants Analyst 2	1	0	0	0	0	0	1
Grants Analyst 3	4	2	0	2	0	0	4
Grants Program Manager	5	1	0	2	0	0	4
Graphics Designer 1	0	1	0	0	0	0	1
Human Resources Analyst 2	0	2	0	1	0	0	1
Human Resources Analyst 3	0	3	0	0	0	0	3
Human Resources Technician 3	0	3	0	3	0	0	0
Human Resources Transactions Supervisor	0	1	0	1	0	0	0
Industrial Hygienist 3	14	4	0	2	0	0	16
Industrial Hygienist Manager	1	2	0	0	0	0	3
Industrial Hygienist Supervisor	9	1	0	0	1	0	9
Information Resource Support Specialist 2	4	3	0	1	0	0	6
Information Resource Support Specialist 3	6	1	0	0	0	0	7
Information Resource Support Specialist 4	4	2	0	0	0	0	6
Information Resource Support Specialist 5	0	1	0	0	0	0	1
Information Officer	0	1	0	0	0	0	1

Title	Gender		Ethnicity				
	Male	Female	Asian	Black	Hispanic	Indian	White
Information Systems Analyst 3	3	2	0	0	0	0	5
Information Systems Analyst 4	1	1	0	1	0	0	1
Information Systems Director Employment Security	1	0	0	1	0	0	0
Information Systems Director 2	1	0	0	0	0	0	1
Information Systems Manager 2	3	0	0	0	0	0	3
Information Systems Manager 3	3	1	0	0	0	0	4
Lead Data Entry Supervisor	0	2	0	1	0	0	1
Labor Standards Inspection Director	0	1	0	0	0	0	1
Labor Standards Inspector	7	5	0	1	1	0	10
Legal Assistant	2	2	0	0	0	0	4
Legal Services Supervisor	1	0	0	0	0	0	1
Labor and Workforce Development Assistant Administrator 1	5	4	0	0	0	0	9
Labor and Workforce Development Assistant Administrator 2	0	2	0	0	0	0	2
Labor and Workforce Development Administrator 1	5	3	0	1	0	0	7
Labor and Workforce Development Administrator 2	2	1	0	0	0	0	3
Medical Consultant	1	0	0	0	0	0	1
Mine Rescue Worker	13	0	0	0	0	0	13
Mine Safety Assistant Director	1	0	0	0	0	0	1
Mine Safety Instructor	3	0	0	0	0	0	3
Mainframe Computer Operator 3	2	2	0	3	0	0	1
Network Technical Specialist 3	1	0	0	0	0	0	1
Occupational Safety Specialist 3	16	8	1	3	0	0	20
Occupational Safety Specialist Manager	4	1	0	0	0	0	5
Occupational Safety Specialist Supervisor	8	1	0	1	0	0	8
Office Supervisor 1	0	2	0	0	0	0	2
Office Supervisor 2	2	0	0	0	0	0	2
Office Supervisor 3	0	1	0	0	0	0	1
Program Monitor Regional Director	1	0	0	1	0	0	0
Program Monitor 2	0	1	0	0	0	0	1
Programmer/Analyst 2	1	0	0	0	0	0	1
Programmer/Analyst 3	14	6	6	0	0	0	14
Programmer/Analyst 4	5	3	0	1	0	0	7
Programmer/Analyst Supervisor	1	1	1	0	0	0	1
Procurement Officer 2	0	1	0	1	0	0	0

Title	Gender		Ethnicity				
	Male	Female	Asian	Black	Hispanic	Indian	White
Publications Editor 2	0	1	0	0	0	0	1
Secretary	1	24	1	6	0	0	18
Statistical Analyst 2	6	7	0	3	0	0	10
Statistical Analyst 3	4	1	0	0	0	0	5
Statistical Analyst 4	2	4	0	1	0	0	5
Statistical Analyst Supervisor	2	2	0	0	0	0	4
Statistician 2	2	1	1	1	0	0	1
Statistics Assistant Director	1	0	0	0	0	0	1
Statistics Director	1	0	0	0	0	0	1
Stores Clerk	0	1	0	0	0	0	1
Training Specialist 2	0	1	0	0	0	0	1
Unemployment Accounts Auditor Supervisor 1	3	2	0	0	0	0	5
Unemployment Accounts Auditor Supervisor 2	3	0	0	1	0	0	2
Unemployment Accounts Aide 1	2	5	0	3	0	0	4
Unemployment Accounts Aide 2	2	9	0	3	0	0	8
Unemployment Accounts Auditor 2	24	16	3	7	0	0	30
Unemployment Accounts Auditor 3	7	6	0	1	0	0	12
Unemployment Accounts Supervisor	2	5	0	1	0	0	6
Unemployment Benefit Aide 1	0	6	0	2	0	0	4
Unemployment Benefit Aide 2	1	11	0	4	0	0	8
Unemployment Benefit Auditor	1	12	0	3	0	0	10
Unemployment Claims Adjudicator	7	34	0	10	0	0	31
Unemployment Claims Investigator	1	8	0	3	0	0	6
Unemployment Hearing Officer 2	12	6	0	8	0	0	10
Unemployment Program Specialist 1	2	1	0	1	0	0	2
Unemployment Program Specialist 2	3	2	0	0	1	0	4
Unemployment Program Specialist 3	2	13	0	3	0	0	12
Unemployment Program Specialist 4	3	4	0	0	0	0	7
Veterans' Employment Representative 2	24	3	0	3	1	0	23
Veterans' Outreach Specialist 2	17	5	1	4	1	0	16
Website Developer 1	0	1	0	0	0	0	1
Workforce Development Chief Operating Officer	1	0	0	0	0	0	1
Workforce Development Program Director	2	1	0	0	0	1	2
Workers' Compensation Director	1	0	0	0	0	0	1

Title	Gender		Ethnicity				
	Male	Female	Asian	Black	Hispanic	Indian	White
Workers' Compensation Program Coordinator	3	11	0	1	0	0	13
Workers' Compensation Program Manager	0	1	0	0	0	0	1
Workers' Compensation Representative Supervisor	1	0	0	0	0	0	1
Workers' Compensation Specialist 1	4	5	0	2	1	0	6
Workers' Compensation Specialist 2	14	12	0	2	0	0	24
Workers' Compensation Specialist 3	9	3	0	1	0	0	11
Workers' Compensation Specialist 4	14	8	0	3	0	0	19
Workers' Compensation Specialist 5	3	0	0	0	0	0	3
Workers' Compensation Specialist 6	1	1	0	0	0	0	2
Workforce Development Program Coordinator	0	2	0	0	0	0	2
Word Processing Operator 1	1	5	0	2	0	0	4
	588	925	22	295	12	2	1,182