



HR & BENEFITS UPDATE

250 New Investigators, Renewed DOL Enforcement Emphasis Signal Rising Wage & Hour Risks For Employers

April 15, 2009

U.S. employers should audit existing wage and hour practices and documentation and take other steps to defend against the heightened emphasis on enforcement of federal wage overtime, minimum wage, child labor and other wage and hour laws announced by the U.S. Department of Labor Wage & Hour Division (WHD). In a March 5, 2009 [WHD Press Release](#), recently appointed Obama Administration Secretary of Labor Hilda Solis announced that WHD is adding 250 new field investigators and taking other steps to strengthen its enforcement of federal minimum wage, overtime and child labor laws. In her March 5, 2009 Press Release, Secretary Solis stated, "The addition of these 250 new field investigators, a staff increase of more than a third, will reinvigorate the work of this important agency, which has suffered a loss of experienced personnel over the last several years."

The announced expansion of staffing comes in part in response to two reports made to Congress by the Government Accounting Office (GAO) over the past year, which were highly critical of the enforcement activities of the WHD under the Bush Administration. In a [2009 GAO Report To Congress](#) released March 25, 2009, the GAO reported that a recent GAO audit of WHD enforcement found that sluggish response times, a poor complaint intake process, and failed conciliation attempts, among other problems left workers vulnerable to wage theft. The 2009 Report followed up on a [2008 GAO Report To Congress](#) that case studies showed that WHD inadequately investigated minimum wage and overtime complaints by inappropriately rejecting complaints based on incorrect information provided by employers, failing to make adequate attempts to locate employers, not thoroughly investigating and resolving complaints, and delaying initiating investigations for over a year and then dropping the complaint because the statute of limitations for assessing back wages was close to expiring.

The continuing emphasis of the DOL upon FLSA enforcement, coupled with the growth in FLSA enforcement actions by private plaintiffs, provides an important warning to employers of low wage workers specifically, as well as employers generally, of the importance of being prepared to defend their worker classification and overtime practices against DOL and/or private litigant investigations. When it updated its regulations governing the classification of workers as exempt versus non-exempt under the FLSA in 2004, the DOL urged employers to review and update their worker classification and overtime practices to comply with the updated regulations. At the same time, the DOL announced its intention to vigorously enforce its FLSA regulations against employers failing to adhere to these updated rules. Despite these widely publicized compliance efforts, DOL studies of employer compliance with overtime rules continue to reflect that 50 percent of employers are not in compliance with these mandates. Therefore, in addition to adjusting existing rates of pay to comply with the increased minimum wage, employers also should:

Audit overtime pay practices to verify they comply with applicable federal and state requirements,

Review workers classified as exempt employees and/or non-employee contractors in light of the FLSA and applicable state wage and hour laws to assess the sustainability of these characterizations against a legal challenge; and

Audit the adequacy of current practices for tracking and documenting time worked by non-exempt workers in light of the FLSA and applicable state wage and hour laws.

Employers are cautioned to keep in mind that employers generally bear the burden of proving that their existing worker classification, wage and overtime practices meet or exceed the minimum standards imposed by the FLSA and any applicable state wage and hour law.

Cynthia Marcotte Stamer, and other members of Curren Tomko and Tarski LLP are experienced with assisting businesses to audit, administer and defend minimum wage, overtime and other wage and hour practices under federal and state wage and hour laws, as well as with other labor and employment, employee benefits and internal controls matters. If your organization needs assistance with assessing, managing or defending its wage and hour or other labor and employment, compensation or benefit practices, , please contact Ms. Stamer at [via this e-mail address](#), (214) 270-2402; or your favorite Curren Tomko Tarski, LLP attorney. For additional information about the experience and services of Ms. Stamer and other members of the Curren Tomko Tarski, LLP team, see the [Curren Tomko Tarski Website](#) or [Cynthia Marcotte Stamer, P.C. Website](#).

More Information

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