

New US DOL Pilot Program Aims to Resolve FLSA Disputes More Quickly

Working Together

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The U.S. Department of Labor (DOL) has announced a new nationwide pilot program to facilitate resolution of potential overtime and minimum wage violations under the federal Fair Labor Standards Act (FLSA). When launched, the Payroll Audit Independent Determination (PAID) program will allow employers to conduct self-audits of their compensation practices for potential non-compliance and resolve inadvertent violations without litigation.

The advantage to employers is that, while the DOL's Wage and Hour Division (WHD) will require payment of all back wages due, it will not require additional payment of liquidated damages or civil monetary penalties when employers choose to participate in the program and proactively work with WHD to fix and resolve the compensation practices at issue.

What Types of Violations Will the Program Address?

The PAID program will cover violations of the FLSA's minimum wage and overtime pay requirements, such as violations based on "off-the-clock" work; failure to pay overtime at the rate of 1-1/2 times the regular rate of pay; and misclassification of employees as exempt from the FLSA's minimum wage and overtime requirements.

What Must an Employer Do to Participate in the Program?

Generally, an employer may participate in the program if it discovers that its compensation practices are non-compliant or if it believes that its practices may be lawful but wishes to proactively resolve potential claims anyway. The employer will be required to provide to WHD information concerning:

- The potential violations;
- Which employees are affected;
- The timeframes in which each employee was affected; and
- The amount of back wages the employer believes is owed to each employee.

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The employer would then contact WHD to discuss the issues, and would be required to submit to WHD a certification that the employer will adjust its practices to avoid the same potential violations in the future. WHD will then evaluate the information and discuss next steps with the employer. If WHD assesses that back wages are due, it will issue a summary of unpaid wages and settlement terms for the affected employee(s) to sign in order to receive payment. The settlement will contain a release of claims against the employer, but would be tailored to only the identified violations. If the employee accepts the settlement, the employer would be required to pay all back wages due by the end of the next full pay period and provide proof of such payment to WHD. It is the employee's choice whether or not to accept the payment of back wages and employers are prohibited from retaliating against the employee for his or her choice.

Are Any Employers Excluded from Participating?

While all employers covered by the FLSA will be eligible to participate in the pilot program, the program cannot be used to resolve issues for which WHD is already investigating the employer or which the employer is already litigating, or if an employee's representative or attorney has already communicated an interest in litigating or settling the issue.

Can an Employee in Connecticut Still Collect Double Damages under State Law?

The PAID program is for violations of the FLSA, which is a federal law, and so a settlement under the PAID program would not necessarily dispose of an employee's wage claims under state law. But even though Connecticut law generally mandates double damages for wage violations (CGS §31-68), an employee must file an action in state court to recover these damages. An employee who receives his or her back wages in full through the PAID program may, therefore, have less incentive to file a state law claim.

When Will the PAID Program Begin?

The DOL has not yet issued a launch date, but once implemented, the program is expected to be in place for six months, after which WHD will evaluate the effectiveness of the program and identify potential modifications.

Posted in Compensation

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