

Did You Know: DOL's New PAID Program

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The Department of Labor's Wage and Hour Division (DOL-WHD) recently announced its Payroll Audit Independent Determination (PAID) program to assist employers in determining their compliance status to the Fair Labor Standards (FLSA). The PAID program is a six-month voluntary pilot program which FLSA-covered employers can participate in to self-audit their compliance with the overtime and minimum wage provisions of the FLSA. An employer who has a claim under investigation, in litigation, arbitration, or one where an employee's attorney has initiated communication is not eligible to participate in PAID.

The purpose of the program is to "facilitate resolution of potential overtime and minimum wage violations" while educating employers on compliance with the law and ensuring employees receive any back wages owed without necessarily the need for litigation. If an employer finds themselves in non-compliance with overtime and/or minimum wage requirements after completing a self-audit system, they may make restitution of payment of back-wages to affected employees through the PAID program. Once the six-month pilot program has ended, the DOL will evaluate the program for effectiveness and determine its continued role in assisting employers with compliance.

In general, a FLSA-covered employer is one whose annual sales total \$500,000 or more, or who are engaged in interstate commerce. As most private employers are engaged in interstate commerce (i.e. mailing documents throughout the United States qualifies as being engaged in interstate commerce), they would be covered under the FLSA regardless if their annual sales do not total \$500,000. The FLSA includes employees working in the private sector and most federal, state, and local agencies.

Included in the FLSA regulations are provisions for minimum wage, overtime pay, recordkeeping, and youth employment. However, the FLSA does not require - although state laws may vary - that an employer provide:

- vacation, holiday, severance, or sick pay;
- meal or rest periods, holidays off, or vacations;
- premium pay for weekend or holiday work;
- pay raises or fringe benefits; or
- a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

The DOL-WHD is tasked with monitoring employer compliance with the FLSA. Through directed audits (i.e. an industry targeted by the DOL) and employee complaints, the DOL works to discover violations and recover lost wages for employees. The following

data shows the past three-year audit resolution for Wage and Hour audits conducted by the DOL from both minimum wage and overtime violations.

Fair Labor Standards Act Enforcement Statistics

		Cases with Violations	Back Wages	Percent of FLSA Back Wages	Employees Receiving Back Wages (duplicated ¹)	% of Employees Receiving FLSA Back Wages
FY 2015	Minimum Wage	10,642	\$37,828,554	22%	86,229	39%
	Overtime	10,496	\$137,701,703	78%	173,330	78%
FY 2016	Minimum Wage	10,722	\$34,964,350	17%	81,870	34%
	Overtime	10,884	\$171,917,225	83%	209,819	87%
FY 2017	Minimum Wage	10,687	\$31,213,737	16%	69,588	34%
	Overtime	10,823	\$157,592,682	83%	183,272	89%

Source: U.S. Department of Labor, Wage and Hour Division

Employers should also review their state and/or local wage and hour laws for compliance (see state by state chart provided below). States may have requirements that are more stringent than federal law. For example, while federal minimum wage is \$7.25 and there is a push for \$15.00 per hour as minimum wage, many states are moving faster than the federal law to get to \$15.00 per hour.

While details are still being pushed out by the DOL, initial published [FAQ's](#) identify that through the PAID program an employer would receive educational materials about the program, the FLSA, and compliance assistance. The employer would be able to self-audit their compensation practices to identify any potential areas of non-compliance. If determined to be in non-compliance, the employer and the WHD Division would discuss the findings and implement a plan for payment of back wages. Interestingly, an employee does not have to accept any back-wages from the employer, if it is determined they are owed through PAID. The employer may not retaliate against any employee who chooses to maintain their rights under the FLSA. If an employee chooses to accept back wages for violations found through the self-audit of the PAID program, their rights are still maintained for other violations not identified or future violations.

The Fair Labor Standards Act is complex and can be confusing for employers, especially when identifying which employees are entitled to the overtime provisions of the Act. The DOL has many resources available through its website to assist employers applying

the laws to its business practices. A trusted benefits advisor can be a valuable resource providing tools, resources, and consultative services with Human Resources professionals experienced in compensation and payroll practices.

Consolidated State Minimum Wage Update Table (Effective Date: 01/01/2018)							
Greater than federal MW		Equals federal MW of \$7.25		Less than federal MW		No MW Required	
AK	\$ 9.84	IA	\$ 7.25	GA	\$ 5.15	AL	-
AR	\$ 8.50	ID	\$ 7.25	WY	\$ 5.15	LA	-
AZ	\$ 10.50	IN	\$ 7.25			MS	-
CA	\$ 11.00	KS	\$ 7.25			SC	-
CO	\$ 10.20	KY	\$ 7.25			TN	-
CT	\$ 10.10	NC	\$ 7.25				
DC	\$ 12.50	ND	\$ 7.25				
DE	\$ 8.25	NH	\$ 7.25				
FL	\$ 8.25	OK	\$ 7.25				
HI	\$ 10.10	PA	\$ 7.25				
IL	\$ 8.25	TX	\$ 7.25				
MA	\$ 11.00	UT	\$ 7.25				
MD	\$ 9.25	VA	\$ 7.25				
ME	\$ 10.00	WI	\$ 7.25				
MI	\$ 9.25						
MN	\$ 9.65						
MO	\$ 7.85						
MT	\$ 8.30						
NE	\$ 9.00						
NJ	\$ 8.60						
NM	\$ 7.50						
NV	\$ 8.25						
NY	\$ 10.40						
OH	\$ 8.30						
OR	\$ 10.25						
RI	\$ 10.10						
SD	\$ 8.85						
VT	\$ 10.50						
WA	\$ 11.50						
WV	\$ 8.75						

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