

Department of Labor Announces New Payroll Audit Pilot Program

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The US Department of Labor (DOL) Wage and Hour Division recently announced that it will launch a new Payroll Audit Independent Determination (PAID) program. PAID will provide employers with the option to proactively address inadvertent wage and hour underpayments under the Fair Labor Standards Act (FLSA), while potentially avoiding monetary penalties and liquidated damages. The DOL plans to implement this pilot program nationwide for a period of six months, at which time the DOL will reevaluate PAID's effectiveness.

Employers covered by the FLSA are eligible to participate in PAID and seek early resolution of potential wage and hour violations. To participate in the program, an employer must first conduct an audit of its compensation practices. If non-compliant practices are identified during the audit, the employer may then contact the DOL and request participation in PAID.

If deemed eligible for the program, the employer must then provide the following information to the agency:

- specific identification of all potential violations,
- identity of all employees affected,
- the timeframes in which employees were affected, and
- the amount of back wages the employer believes are owed to each employee.

The employer will also be required to provide several certifications to the DOL including, but not limited to, certifications about its audit practices and a certification that it will adjust its pay practices going forward so as to avoid future violations.

If the DOL determines that back wages are owed to employees, the employer must pay all of these wages no later than the next regularly scheduled pay period that occurs after it receives the final determination. Of particular importance, employers who self-report and cooperate with the agency to remedy violations under the PAID program will not be required to pay liquidated damages or civil monetary penalties. Employees must also waive any FLSA claims for the specific violations that were voluntarily corrected by the employer to receive payment. The waivers will have no impact on state law claims.

The PAID program is expected to launch in April 2018. In the meantime, we recommend that employers consult with their counsel to determine whether participation in the PAID program can be utilized to minimize the significant risks associated with wage and hour violations.

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