

THE DOL'S NEW GET PAID INITIATIVE

Labor and Employment Alert
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The United States Department of Labor (“DOL”) has announced the anticipated launch of a six-month pilot program to encourage employers to conduct voluntary self-audits of their Fair Labor Standards Act (“FLSA”) compliance and self-report any findings to the DOL. Participating employers commit to making full back payments to affected employees. In exchange, those employers will be relieved of liability for liquidated damages and civil penalties for those violations, and have limited protections from subsequent lawsuits.

Called the Payroll Audit Independent Determination program (“PAID”), this program represents a change from the historical approach of the DOL. Although the DOL has long supervised settlements, there has not been a mechanism for employers to receive favorable treatment for pro-actively identifying and fixing errors. Participation in this pilot program is voluntary; an employer does not have a statutory obligation to disclose to the DOL any discrepancies or violations that it discovers on its own.

PAID has some notable limitations. First, an employer’s participation in the pilot program will not resolve any outstanding liability for state law non-compliance. In states like New York, which has a substantially longer statute of limitations period than does federal law, and which imposes additional requirements such as call-in, split-shift, and spread of hours pay, this is an important consideration.

Second, employees can choose whether to accept a participating employer’s offer of back pay, and in exchange waive his or her right to sue for damages under the FLSA. Some employees may choose not to participate and may instead commence a lawsuit. Self-incriminating documents that the employer has disclosed to the government as part of the PAID process could be subject to disclosure in the lawsuit, or otherwise made public through Freedom of Information Act requests. And the waiver and release entered into by employees who do accept the back payments will be limited to claims related only to the disclosed violations.

The program is not available with respect to violations or alleged violations that are subject to pending or threatened litigation, arbitration, or investigation.

Nevertheless, this program may be a useful tool for some employers to address concerns regarding their current wage and hour compliance.

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Please contact your Hodgson Russ Labor and Employment attorney if you wish to discuss whether participation in the PAID program may be make sense for your business.

