

DOL Wage & Hour Audits

An auditor may come knocking at your door if you have errors in your payroll that result in a violation of the Fair Labor Standards Act (FLSA). It is estimated that more than one-half of all employer groups have misclassified their employees under FLSA, though many do not realize it.

Generally the Department of Labor (DOL) will initiate an audit after a current or former employee files a complaint or during a routine investigation. Much like an audit for a potential ERISA violation, the DOL will visit your organization to conduct interviews, examine time clocks and ensure that all employment notifications are available to your employees. The auditor will also review up to three years of wage and hour records to determine if there are any violations in your payroll practices.

To avoid an overtime DOL audit, consider these recommendations:

- Understand the language and content of FLSA to ensure that you will be in compliance with its regulations.
- Conduct an internal audit to reveal any misclassifications before the DOL has an opportunity to do so. Do this annually, or at the very least, when a red flag occurs. Red flags may include a reorganization that affects job classifications, changes in the federal or state law, or an increase in hours worked by employees who are not clearly exempt or non-exempt.

- Review your employees' job descriptions to make sure they are accurate and reflect the jobs that the individuals are actually doing.
- Review your employees' job duties to make sure they fall within the correct exemptions: administrative, executive, professional, computer or outside sales.
- Analyze your organization's timekeeping procedures, methods of calculating regular rate pay and child labor practices (if applicable).
- If your internal audit reveals a problem, remedy the situation immediately. Consult legal counsel again for the best way in which to fix the problem.
- Determine whether the state and

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- Determine if you have properly calculated overtime for non-exempt employees. State laws differ, so make sure you understand your state's overtime laws.
- Make sure that all required employment postings are hung up and are visible to your employees.
- Consider having an attorney perform routine audits to support an argument that you were paying your employees "in good faith."
- federal laws differ in any way, and make sure you are in compliance.
- Pay employees who were misclassified for overtime pay under the supervision of your attorney.



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