

This information was presented at a half-day meeting on October 28, 2010 by the Devine Millimet Labor, Employment, and Employee Benefits Practice Group.

How To Survive A Department of Labor Wage-Hour Audit

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A wage and hour audit can occur at any time, with or without prior notice. For that reason, it is important that employers and human resources “preplan” for audits. It is crucial that you understand the potential scope of the investigation, the type of information that the investigator will review, and the location and condition of that information. Decisions should be made in advance as to how the investigator will be treated, the level of access to records and personnel that will be provided, and the persons who will be responsible for interacting with the investigator. Most importantly, employers should decide whether they favor a collaborative approach focused on achieving compliance, or an adversarial approach that is more likely to result in enforcement proceedings.



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prior two to three years and will focus on compliance with laws and rules related to payment of wages, minimum wage, child labor, and record-keeping. The state and federal wage and hour laws authorize representatives of each department of labor to investigate and gather data from employers concerning wages, hours, and other employment practices. If the DOL decides to investigate an employer, investigators are permitted to enter and inspect the company’s premises and records, to interview employees, to make initial determinations as to whether the law has been violated, and to determine if there is money owed to employees. Both the state and federal departments of labor have the authority to levy penalties above the amounts owed to employees and to adjust disputes with employers – or, if a resolution cannot be reached, commence enforcement proceedings.

In many cases, an audit is precipitated by a complaint filed by an employee. Other audits, particularly those conducted by the US DOL, are the result of targeted enforcement initiatives directed at particular industries. While random audits are less frequent, prudent employers should

be prepared for an unexpected visit.

Here are some tips that were shared at the seminar on preparing for a DOL audit:

Consider a self-audit. The information available to employers and HR professionals allows you to conduct a self-audit and identify areas of potential exposure. Employers should identify the areas where they know they are in compliance and where they know they are not in compliance. The potential exposures and penalties associated with non-compliance should be carefully considered in determining when, and how, the employer will respond to known violations. Employers should consider consulting counsel if they are unsure whether or not they are in compliance and in developing a corrective action plan.

Don’t panic! There is no reason to panic, even if you know that there are problems with your records and payroll practices. Make sure that you know your rights going into the investigation and get advice on how to manage the investigation process.

Do not call your legislator or Congressman! Elected officials should not interfere with administrative agencies activities and your efforts to invoke their assistance will likely backfire.

Make compliance a goal. Investigators are more likely to work in a collaborative fashion with employers who make clear that it is their goal to achieve and maintain compliance and to act as a responsible corporate citizen.

Assign a company representative to be

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For more information, please contact Steven Fuchs at 225-6660, ext. 232, sfuchs@heritagepropane.com; or Kevin Bayley at ext. 230, kybayley@heritagepropane.com.

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Kevin Bayley

REMINDER – Cheshire and Hillsborough County Hazardous Waste Generators: SQG Self-Certification due by January 1, 2011

If your facility is located in Cheshire or Hillsborough county, and you are registered as a Small Quantity Generator (SQG) of hazardous waste with the New Hampshire Department of Environmental Services (NH DES), your facilities self-certification form is due to the NH DES by this upcoming January 1, 2011.

NHADA will be hosting a seminar to assist you. This small and informal half-day session will aid in the completion of the

required forms and any site specific questions that you may have. Date for the seminar is December 7 from 8:30 until noon. You can register online at www.nhada.com (<http://bit.ly/cpxqBm>).

If you have any questions regarding your facilities generator status, this rule and its requirements, contact NHADA Environmental Affairs Specialist Dan Bennett at 224-2369 or e-mail Dan at dbennett@nhada.com.

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the liaison for the investigation. This person should be the key contact between the company and the investigator. This person should be knowledgeable of the audit process, the employer's recordkeeping and payroll procedures, and should have access to employer records. Above all, the liaison should be courteous and diplomatic. The investigator should be instructed to communicate through the liaison. Your liaison should keep track of all records reviewed or provided to the investigator, what questions he/she asked, and the response given.

Be courteous to the investigator. You should make the investigator feel comfortable in your workplace. Preferably, set them up in an office near the front office. Be aware of where they are physically placed in your workplace, with whom they will come into contact, and what they will see.

Request a pre-investigation meeting. Everyone benefits from conducting the audit in an organized manner. Find out what records the compliance officer/investigator wants to review and the employees that are to be interviewed. The DOL will

often grant a short delay in initiating the investigation to allow you to assemble the requested documents.

Make the investigator's job easy. It is important to limit the investigator's broad access to company records and employee files. Don't allow a fishing expedition. For example, if the investigator asks for I-9s, don't hand them the whole personnel file, just hand them the I-9s. Don't volunteer information about your company. If you are unsure whether or not DOL is entitled to see certain information, check with your legal counsel.

Don't let investigators leave with original documents! This is an important, but oftentimes overlooked step in the process. The investigator will be fine with copies.

Protect proprietary information. This is an issue that you should discuss with counsel prior to the start of the audit. You must always safeguard confidential company information. Be prepared to discuss this issue with the DOL representative and the option of redacting confidential information from requested records

Self-identify known problems. DOL representatives generally appreciate it when

employers self-identify known violations, as long as the employer also presents the action plan to remedy those violations.

Understand the law before negotiating a settlement. Before attending a DOL informal or settlement conference, have any findings made against your company and any proposed penalties reviewed by counsel. This will help you determine the strength or weakness of your position as you try to reach a settlement, the potential exposure if you do not settle, and creative approaches to settlement that may reduce liability.

This article originally was published in the Devine, Millimet & Branch Labor, Employment and Employee Benefits Group free Friday E-Mail Alert. For information, send an e-mail to employment@devinemillimet.com.

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