

DOL Curtails Practice Of Seeking Double Damages From Employers In Wage Investigations

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The U.S. Department of Labor (“DOL”) has issued new guidance restricting when the government can seek liquidated damages, which double the amount owed by employers, to settle overtime and minimum wage investigations prior to filing a lawsuit in court.

The bulletin changes a practice started by the Obama Administration and continued under President Donald Trump to require employers to not only pay employees back wages owed for violating the Fair Labor Standards Act (“FLSA”) but also an amount equal to the back wages as a penalty to settle a dispute before an enforcement action is filed.

The DOL’s Wage and Hour Division (“WHD”) informed its staff on June 24 that it “will no longer pursue pre-litigation liquidated damages as its default policy from employers.” It also said that any request to pursue pre-litigation liquidated damages to settle a FLSA investigation “must be submitted to and approved by both the WHD Administrator and the Solicitor of Labor (or either of her designees) on an individual basis.”

Effective July 1, 2020, DOL will not assess pre-litigation liquidated damages if any one of the following circumstances exist:

- there is not clear evidence of bad faith and willfulness;
- the employer’s explanation for the violation(s) show that the violation(s) were the result of a bona fide dispute of unsettled law under the FLSA;
- the employer has no previous history of violations;
- the matter involves individual coverage only;
- the matter involves complex section 13(a)(1) and 13(b)(1) exemptions; or
- the matter involves State and local government agencies or other non-profits.

The move was prompted by President Trump’s recent executive order to remove regulatory and enforcement barriers that could stymie an economic recovery following COVID-19, the DOL said.

The new guidance is good news for employers that had been previously given a choice to pay liquidated damages to settle WHD cases or fight the claims in court where it would incur litigation costs and still face the possibility of paying double damages.

It is also good news for employees. According to the DOL, “These efforts should ensure that those employers who genuinely work to understand their obligations under the FLSA and are generally in compliance, and who elect cooperatively to resolve alleged violations without litigation and, therefore, return unpaid wages to workers expeditiously, are not also saddled with doubled damages designed for the litigation context that might jeopardize the ongoing existence of these employers and, as a result, the jobs of American workers.”

For more information on this alert, contact a member of Benesch’s Labor & Employment Practice Group.

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