



## You've Been Scheduled for a Wage and Hour Audit... Now What?

**Y**ou've just received that dreaded notice in the mail from the U.S. Department of Labor: "Your company has been scheduled for a Wage-Hour Investigation for the date and time listed above. This investigation is being made to determine the firm's compliance with the provisions of the Fair Labor Standards Act and other related Federal Labor Laws." (This is actual notice language.)

After the panic (justifiable – this is the federal government) subsides, your first thought is *why us?* There are two possible answers. One is that your business is part of a targeted industry group. Typically, as a result of a high-profile case or the discovery of numerous violations in a particular type of organization, the Department of Labor will initiate investigations into these firms through their regional offices. The second, and more likely, possibility is that an employee or former employee filed a complaint with the DOL about pay they believe they were entitled to, but didn't receive. No attorney is needed in this case.

PROXUS Senior Advisor, Greg Gast recently supported a client through the two-month investigation process.

"I was reminded very quickly about the far-reaching scope and serious financial implications of these inquiries," he said.

The initial meeting, which required the employer to produce two years of payroll and employee records, was scheduled one week from the receipt of the notice. Of course, the investigator reminded the employer that they are authorized to show up unannounced. And it should be noted that no one is safe - this was a small non-profit providing vitally needed community services.

Once the DOL has begun an investigation, they are not limited to the issues set forth in the original complaint – anything related to FLSA and FMLA are fair game.

Some of the key areas of focus are:

- **Legal postings and pay polices** - Are they up to date and visible to employees?
- **Record keeping** - Do you have all hours worked and wages paid documented on a weekly basis, regardless of what your pay period is?
- **Child labor (under 18)** - Are employees under 18 restricted to the permitted duties and hours?
- **Minimum wage** – The U.S. DOL will check to see that federal standards are being met, while the state DOL will look for the state minimum.
- **Overtime pay** - Are you paying non-exempt staff time-and-a-half for all hours worked over 40 in a week?

As you scramble to pull the records together and find yourself just a bit comfortable because *most* of it is in order, *don't* relax. A core component of the investigation consists of interviews with employees, current and former, where you are not permitted to be present. Here is where incriminating tidbits

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could come out about working through lunch and not being paid, or starting work before actually signing into work or being told by a supervisor only to put 8-5 on the timesheet even if you work "a little extra." Even a single mention of one of these practices will trigger a whole line of review of that area. As more and more staff are interviewed and the records request grows, you soon find yourself calculating the potential financial damages: Time-and-a-half times X number of hours and multiplied by all affected employees adds up quickly. And that is assuming the investigator doesn't find willful violations going back three years, in which penalties would also be assessed.

Finally, after consuming many hours of unproductive work time and probably a few missed hours of sleep, the investigation is complete. If you are fortunate, you emerge with a few record-keeping violations, which you vow to correct (and need to demonstrate), and a reasonable amount of back-pay obligations that have to be paid by the next pay date. But do not expect a seal of approval from the DOL. All you will get is a form to confirm payment of wages owed, and a warning about what happens if they come back for another round. To paraphrase, the first time is for your *education*, the next time will be *punishment*.

Don't wait for your notice to perform an internal audit. If you get one, it will be too late. Do an internal audit now.

*If you need assistance with the review process or understanding how the wage and hour regulations apply, we can help. Please contact PROXUS Principal **Jeff Green** at 215-654-9140, ext. 102, [jgreen@proxushr.com](mailto:jgreen@proxushr.com) or visit us online at [www.PROXUSHR.com](http://www.PROXUSHR.com).*

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