



Burden of Compliance

How Employers Can Avoid the Growing Threat of Compliance Investigation

Summary

Under the Department of Labor's "Plan/Prevent/Protect" initiative, employers now shoulder 100% of the burden of compliance. As a Department of Labor agency, the Wage and Hour Division continues to target industries and businesses known for pervasive wage and hour violations, that employ "vulnerable workers," that potentially misclassify employees as contractors, and are lax toward FMLA and FLSA provisions. But these organizations can avoid becoming a WHD target by fostering a "culture of compliance." This includes educating workers and supervisors, creating pro-compliance policies, automating compliance activities, conducting compliance audits, and valuing compliance as a business priority.

Plan/Prevent/Protect at a Glance

The Department of Labor's (DOL) Plan/Prevent/Protect initiative places the burden of compliance squarely in employers' laps. By targeting organizations operating under "catch me if you can" non-compliance, the initiative demands employers "take responsibility to find and fix [compliance] problems, rather than waiting for a [DOL] investigator to [...] discover the problems and enforce the law."¹

Plan/Prevent/Protect is overseen by four DOL agencies: Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA), Office of Federal Contract Compliance Programs (OFCCP) and the Wage and Hour Division (WHD). Under the initiative, these agencies now require employers to:

- Create a plan to identify and fix compliance violations
- Implement the plan to prevent future violations
- Ensure the plan effectively protects workers' rights

Bottom line: Employers who do not meet their compliance obligations will find themselves under investigation by one (or more) of these regulatory agencies, potentially facing costly litigation and fines.

WHD Takes Aim

Although each agency has a specific compliance focus, WHD's compliance objectives affect the largest number of businesses. However, these objectives can also be the easiest for organizations to meet.

WHD oversees several regulatory acts including the Fair Labor Standards Act (FLSA) and Family Medical Leave Act (FMLA).

FLSA establishes the minimum wage, overtime pay, recordkeeping and youth employment standards for both private-sector and government employees.² FMLA provides employees with unpaid, job-protected leave for specified family reasons.³

Consequently, under Plan/Prevent/Protect, WHD's priorities generally focus on:

- Overtime pay
- Recordkeeping compliance
- Employee classification
- Medical leave provisions

WHD's Strategy—Who's at Risk?

Past WHD budgets revealed that the agency focused on educating workers on their rights while reducing compliance resources for the businesses that employ them.

The most recent proposed budget shows a request for nearly \$266 million and 305 additional full-time staff to "continue the positive momentum of the last five years toward building a stronger and more effective enforcement program."⁴



With these resources, WHD plans to:

- Expand current efforts to target industries and employers “at high risk of wage and hour violations.”
- Develop a new integrated case management system so investigators can better analyze labor law violation trends and target investigations.
- Continue investigating employee misclassification.
- Increase the enforcement of FLSA and FMLA provisions.⁵

What Does This Mean for Employers?

Unfortunately, the story remains the same. Employers continue to shoulder 100% of compliance responsibility, and certain employers are at increased risk of targeting. These include:

- Employers that operate in industries known for wage and hour violations or that typically employ “vulnerable workers.”
- Employers that heavily rely on contract workers in ways that could be interpreted as employee misclassification.
- Employers not complying with FLSA and FMLA provisions to the letter.

For organizations at increased risk of investigation, let’s examine ways to avoid the risk (and cost) of non-compliance allegations.

Combating WHD with a Culture of Compliance

Companies with a “culture of compliance” have systems in place to ensure they meet their compliance obligations.

Establishing a culture of compliance—even after a violation—is the easiest way to avoid another investigation. Any organization can create a culture of compliance using the five following tips:

- ***Educate workers on their rights.*** Workers who understand their rights under FMLA and FLSA can be the best supporters of compliance efforts. If, for instance, overtime pay is accidentally overlooked, an informed worker can address the use with his/her supervisor instead of lodging a complaint with WHD.
- ***Educate managers/supervisors on their responsibilities.*** In most cases, daily compliance falls into the hands of managers and supervisors. A manager who forgets to document a worker’s FMLA leave could put the organization at risk.
- ***Ensure internal policies reflect compliance.*** Creating internal policies with “built-in” compliance ensures they will never conflict with compliance obligations and eliminate the chance of non-compliant activities.
- ***Use systems that help automate compliance.*** Often, existing workforce systems such as payroll, HR or time and attendance, can automate straightforward compliance issues. For example, a time and attendance system automatically calculates overtime pay, maintains updated employee



records, and tracks FMLA leave. And systems that work together provide a “compliance cushion,” ensuring records used to make compliance decisions are globally up-to-date.

- **Conduct compliance audits.** Audits ensure organizations are meeting their compliance obligations. But they also provide valuable documentation in the face of an investigation. Audits conducted internally or with the assistance of compliance specialists make the case that an organization is taking its compliance responsibility seriously.

Valuing Your Culture of Compliance

When an organization aligns itself with its compliance responsibilities, empowers employees to uphold compliance practices, and implements integrated systems that help automate compliance, it’s likely the organization is meeting its obligations and inoculating itself from initiatives like Plan/Prevent/Protect. As other businesses fall prey to WHD investigations, these employers are likely to emerge ahead of the pack, unscathed and positioned for success.

About Attendance on Demand, Inc.

Attendance on Demand supports the labor management needs of thousands of companies and more than a half million employees across North America. Launched in 2006, Attendance on Demand is a rapidly deployed, cloud-based solution that minimizes a company’s risk and technology investment while providing advanced features for securely managing labor data—calculating pay rules, scheduling employees, budgeting labor, and automating recordkeeping for labor law compliance. With standard uptime over the industry average of 99.995% and above average customer retention rates, Attendance on Demand removes the worry of maintaining expensive infrastructure. An extensive North American distribution network helps organizations use Attendance on Demand to reduce labor expenses and improve decision-making.

This document simplifies a complex Act as it is understood by Attendance on Demand, Inc. It is not to be taken as legal advice. For further information about FMLA and FLSA compliance, please contact the U.S. Department of Labor at www.dol.gov or 1-866-4-USA-DOL.

References

- 1 U.S. Department of Labor. “Department-Wide Regulatory and Enforcement Strategies—‘Plan/Prevent/Protect’ and Openness and Transparency.” DOL.gov. Spring 2010. Web. Accessed 27 Aug 2014. <http://www.dol.gov/regulations/2010RegNarrative.htm>
- 2 U.S. Department of Labor: Wage and Hour Division. “Compliance Assistance — Wages and the Fair Labor Standards Act (FLSA).” DOL.gov. Web. Accessed 26 Aug 2014. <http://www.dol.gov/whd/flsa/>
- 3 U.S. Department of Labor: Wage and Hour Division. “Family and Medical Leave Act.” DOL.gov. Web. Accessed 27 Aug 2014. <http://www.dol.gov/whd/fmla/>
- 4 U.S. Department of Labor. “FY 2015 Department of Labor Budget in Brief.” DOL.gov. Web. Accessed 25 Aug 2014. <http://www.dol.gov/dol/budget/2015/PDF/FY2015BIB.pdf>
- 5 Ibid.



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