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DOL pilots PAID program for some FLSA violations

The Department of Labor has announced a pilot program called PAID, which stands for the Payroll Audit Independent Determination program. Under this alternative dispute resolution program, you will self-audit for inadvertent violations of the Fair Labor Standards Act and report them to the DOL. The DOL will then facilitate settlements with employees. In addition, the DOL won't levy penalties on participants. The pilot, which began in April, will run for six months, after which the DOL will evaluate the results.

Get PAID. You can participate in PAID, provided you're not currently being investigated by the DOL, already involved in a lawsuit or you've been informed by an employee's lawyer that a lawsuit is imminent or that the employee wishes to settle a pending lawsuit. You can't use the program to resolve repeat violations.

You must review the DOL's compliance assistance materials, which are available at www.dol.gov/whd/paid, and audit your pay practices—identify the affected employees, how long the problem has persisted and how much they're owed. After your audit, you must contact the DOL to discuss the issue. If it accepts you into the program, back wages must be paid by the end of the next full pay period.

FLSA trouble areas. Your self-audit should cover at least these six FLSA trouble spots.

1. Improper exempt classifications. The administrative exemption seems to present the most problems; it applies only to employees whose job functions support the primary business. *Hint:* If employees must get permission to do something, they're not exempt administrators.

2. Failing to pay for all hours worked. Typical violations include employees working off the clock, including unauthorized overtime and managers' shaving employees' work hours. You need to pay special attention to telecommuters. *Trouble spots:* Employees often deal with their email or texts at home. Sometimes supervisors tell them to work through lunch.

3. Failing to include all pay in employees' regular rates. Overtime pay is calculated by dividing *total* earnings by *total* hours worked. *Heads up:* Ensure that performance bonuses, on-call pay and referral bonuses are included in the regular rate calculation.

4. Failing to include all overtime hours worked at all locations. All of employees' overtime hours must be combined if they're working for the same employer.

5. Wage deductions cut into overtime pay or the minimum wage. Wage deductions are OK, provided employees clearly benefit, the deductions are documented and the deductions aren't made from overtime pay and don't reduce employees' pay to below the minimum wage. Deductions must also be allowed under state wage payment laws. *Hint:* Employees can't be required to pay for required tools.

6. Averaging hours worked during different weeks in a pay period. Employees are paid based on a workweek: one continuous 168-hour period. Employees who work 60 hours during one week and 24 hours during the second week of a two-week pay period must be paid overtime for the 20 overtime hours worked during the first week. You can't average hours over those two weeks, which would result in an overtime liability of only two hours.

SOUNDS GOOD, BUT…: While participating in PAID has advantages, there are disadvantages, too. The DOL stresses that employees aren't giving up their right to sue entirely; any release of claims will be tailored to the violations uncovered. Moreover, employees don't have to accept your offer of settlement. They could, for example, march right into a plaintiff's attorney's office with the settlement offer you've provided them. Retaliating against employees who turn down your offer will not be looked upon kindly. The DOL, for its part, isn't giving up its rights to conduct future investigations of your company.

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