

What to expect if BOFE investigators knock at your door

The California Labor Commissioner's Office has ramped up wage-and-hour compliance investigations by its Bureau of Field Enforcement unit. BOFE investigates complaints and takes enforcement actions that can include audits of a company's payroll records and workers' compensation insurance coverage, and the issuance of citations for violations of California Labor Code sections.

BOFE is a particularly efficient state agency. From 2010 to 2016, the ratio of BOFE citations to inspections increased from 45% to 85%. Assessed wages per inspection increased from around \$2,400 to more than \$15,000.

What the BOFE does

The bureau conducts on-site inspections that usually include a review of a company's overall compliance with minimum wage and overtime laws, and the laws governing the provision of meal periods and rest breaks.

California Labor Code section 90 provides that the Labor Commissioner, including the bureau, "shall have free access to all places of labor." In the course of a BOFE investigation, the investigator will typically inspect the worksite for violations, interview employees and other workers and inspect or excerpt employment records.

Generally, investigators will seek to inspect a list of employees and their contact information, as well as time and payroll records and copies of the company's workers' compensation insurance policy.

A BOFE investigator's process typically includes the following:

- Interviews with employees to determine whether they have sufficient opportunities to take meal and rest breaks, and whether they take them
- A review of the employer's pay stubs to ensure that all California Labor Code section 226(a) requirements are met
- A review of the time records showing when employees clock in and out from work, and when they take meal periods
- A review of payroll records to ensure that minimum wages are paid
- A review of the classification of workers as employees or independent contractors.

Based on the results of the investigation, the Labor Commissioner may issue administrative citations for certain violations of the California Labor Code. Specified procedures are provided for companies to appeal citations.

Note: Transportation companies have been particular targets of BOFE investigations. In a recent report on the bureau's enforcement efforts, it listed one assessment for "\$220,457 for multiple wage theft violations for illegally misclassifying drivers as independent contractors in San Francisco."

How to prepare for BOFE

What can your company do to be ready if BOFE investigators knock on your door?

Consider conducting a self-audit to ensure compliance with California's wage-and-hour laws. Such an audit would likely include a review of your pay stubs, meal and rest break policies, workers' compensation insurance policies and time and payroll records.

Review your workplace to ensure that all required posters are displayed and are current. Identify any workplace safety issues.

Designate a staff representative with knowledge of the company's wage-and-hour policies and practices to serve as the company's primary point of contact for the investigator. The representative should understand the scope of the investigator's inspection authority and know when to consult your attorney to address any questions about the investigator's demands. The representative should also know where company policies, records and information are located, and how to obtain them promptly in response to a request.

Educate bosses, employees

Since a BOFE investigator will also want to interview employees, you may want to ensure that they are aware of your policies and in compliance with them. You may want to have managers and supervisors review the company's meal and rest break policies with employees at regular meetings so employees know their opportunities to take breaks.

Employees should also be reminded of policies that strictly prohibit off-the-clock work and require employees to report all time worked. Consider implementing a process where, for every payroll period, employees attest that they took their meal and rest breaks and reported all of their time worked.

Set a professional tone

If an investigator appears unannounced at your workplace, your first interaction will usually set the tone for the rest of the investigation. Be professional, request identification, and consider asking to reschedule the inspection for a later time when you can have a principal for the company or legal counsel present.

Depending on the volume of records involved, consider negotiating with the investigator over whether he or she will accept a sample of records for initial inspection.

For employees selected for interviews, explain the process and make sure they understand it is important to be truthful. Address any of their concerns. Notify them that they are not required to sign anything. Provide a written reminder of the company's policy that prohibits retaliation because of their participation in the investigation.

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