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States push back against DOL's PAID program

There's a lot for employers to like about the U.S. Department of Labor's new Payroll Audit Independent Determination program—known as PAID. Some state officials aren't so enthusiastic.

The pilot PAID program, which runs through October, lets employers self-report Fair Labor Standards Act violations to the DOL. If the DOL approves and affected employees agree, employers can simply pay the back wages, without being liable for the usual fines and penalties.

The wage-and-hour amnesty shows every sign of being popular among employers.

But the PAID program reviews aren't so positive for some state attorneys general, who claim it could cheat workers and might encourage employers to cut corners on pay compliance.

Led by New York's Barbara Underwood, 10 state AGs last month voiced objections to PAID in a letter to Secretary of Labor Alex Acosta. Specific concerns:

- PAID doesn't require employers to pay interest on back pay. The attorneys general said that means employers are, in effect, getting unlawful, interest-free loans from their employees.
- The program doesn't allow for liquidated damages for wage violations. The AGs said that removes a major deterrent for employers to not break the law.
- PAID doesn't require employers to pay employees at a higher state or local minimum wage or overtime wage rates.
- Finally, the attorneys general expressed concerns that employees might be coerced into giving up rights to back pay and damages in exchange for expedited recovery of back pay under the PAID program.

Signing the letter to Acosta were the attorneys general for California, Connecticut, Delaware, District of Columbia, Illinois, Maryland, Massachusetts, New Jersey, New York, Pennsylvania and Washington.

Advice: If you participate in PAID, contact your attorney. The AGs' letter just offered plaintiffs' attorneys a clear

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roadmap for pursuing wage-and-hour claims against participating employers.

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