

# The DOL is coming! Are you prepared?

The Department of Labor collects \$85 million a day from employers that violate the Fair Labor Standards Act. And it knows there's a lot more money out there. How many of those dollars are yours?

Speakers Lori Brown, CPP, Finance Director, Payroll Operations at Hanger, and Stephanie Salavejus, CPP, Vice President and COO at Pensoft, walked workshop attendees at the American Payroll Association's 37<sup>th</sup> Annual Congress through the finer points of wage and hour audits. They also guided attendees through some best practices to minimize the impact of such an audit.

## Who told?

An employee could have complained to the DOL, or you could be in an industry that has a high percentage of infractions, said Salavejus. *Your worst risk:* an employee who's been fired, Brown added. *Two hot industries right now:* hospitality and construction. Worse, Salavejus noted that if you're a repeat offender, the DOL will keep you high on its hit list, regardless of your industry.

And it's easier than ever for employees to file complaints, Brown said. All they have to do is Google *how do you report an employer*. The DOL has an app on its website that makes it even easier for employees to file a complaint, Salavejus added.

## Audit etiquette

The DOL has broad authority to conduct audits; you can't refuse, Salavejus said. She also pointed out that unlike the IRS, the DOL has plenty of money for audits. You can ask for the audit to be rescheduled, but *don't* use this as a stalling tactic. Salavejus said auditors will grant your request for a short delay, but they'll be watching for your next move. If you put them off again, they won't be so accommodating.

Wage and hour audits are conducted through a discovery process—your payroll records and job descriptions. *Best practice:* Gather the records for the auditor. *Worst practice:* directing the auditor to a file cabinet and saying the records are "in there." *Reason:* Every record in the file cabinet now becomes discoverable.

*Another audit tip:* Avoid ineffective defenses, like telling the auditor, "This is the way we've always done it," Brown said.

## Best practices

The best strategy is to avoid audits with good practices, according to Salavejus, and to show your due diligence, Brown added. If you need to make changes to your payroll system, Brown said, annotate and document them. These areas may require your attention:

- **Time sheets:** Exempts should keep time sheets also, Brown said, because if they're ever reclassified as nonexempt, you'll need a record of their working time.
- **Communicating status:** Employees should know their FLSA status when they're hired.
- **Legacy systems:** You must be able to access your old records even when the person who knew those

systems is long gone.

- **Regular rate calculations:** No two companies have the same pay policies, which increases the odds that your regular rate calculation is wrong. Forgetting to include signing bonuses and attendance bonuses are two classic examples of regular rate mistakes, Brown said.