

## **Payroll Audit Independent Determination (PAID) Program Report Wage and Hour Division, U.S. Department of Labor**

This report was prepared in response to the Departments of Labor, Health and Human Services, and Education and Related Agencies, Appropriations Act of 2019, signed by the President on September 28, 2018 (PL. 115-245). The Senate Committee on Appropriations directed the Wage and Hour Division (WHD), *“to submit a report to the Committee no later than 12 months after the date of this Act detailing the outcomes of the Payroll Audit Independent Determination pilot program. The report shall include, at minimum, the number of employers that voluntarily participated in the program, the number of and reason employers were denied participation, and the amount of back wages paid back to employees.”*

### **Key Findings**

- Between April 1, 2018 and September 15, 2019, WHD concluded 74 PAID cases, representing less than one percent of all compliance actions. A total of \$4,131,238 in back wages was paid to 7,429 employees in PAID cases.
- PAID self-audits returned more back wages to employees in less time than compliance actions overall.
  - Back wages due *per case* for PAID cases (\$55,828) were more than four times the average back wages per compliance action (\$11,355).
  - Back wages *per enforcement hour* for PAID cases (\$2,864) were more than ten times greater per enforcement hour than for compliance actions (\$279).
  - PAID self-audits averaged 19 hours of investigator time per case as compared to 41 hours per compliance action agency-wide.
- PAID self-audits reach employers that WHD would not typically prioritize for enforcement, including government establishments and industry sectors with higher wage occupations.
- The program design and implementation are built on existing protocols and practices. The program launch involved a significant outreach effort, typical of a new program or policy. Moving forward, the agency will continue using and evaluating self-audits, consistent with the goals, priorities, and data-driven practices of the agency.

## **Introduction**

WHD prioritizes enforcement around those industries with a history and prevalence of violations, and invests resources where data analytics and evidence suggests strategies will improve compliance beyond those employers investigated. WHD enforcement focuses on the most egregious violators, including those who engage in criminal activity, retaliation, and other forms of exploitation most damaging to the American workforce. Given the size of the organization relative to the number of employers—over 143 million workers and 9.8 million workplaces—WHD uses an array of enforcement and compliance assistance tools to achieve the Division’s mission.

WHD also works with well-intentioned employers to remedy their violations and achieve compliance while conserving resources. WHD has always relied upon a combination of rigorous enforcement and robust education to improve compliance and has long maintained that enforcement alone will never be sufficient to achieve WHD’s mission. WHD believes that most employers want to comply with the laws that apply to their establishments, but in some cases, may need compliance assistance to identify and correct violations. In some cases, employers fail to comply because they do not understand the laws or regulations. WHD designs compliance assistance for those employers who are more likely to comply when they understand their responsibilities.

For employers that *inadvertently* violate the FLSA, WHD created the PAID program, which allows those employers to resolve violations voluntarily, under WHD supervision. The program design built on lessons learned from the agency’s long-standing use of the self-audit tool as well as prior efforts to work collaboratively with employers to promote compliance. WHD also consulted with other DOL agencies on their voluntary compliance programs, including the Occupational Safety and Health Administration’s Voluntary Protection Programs and the Employee Benefits Security Administration’s Voluntary Fiduciary Correction Program. This report shares findings from an assessment of the program’s implementation and results over an 18-month period from April 1, 2018 through September 15, 2019.

## **Program Overview**

WHD designed the PAID program to provide an efficient avenue for employers to resolve specific types of violations of the FLSA and for employees to timely receive the back wages they are due. As one of several compliance tools, the value of the self-audit tool derives from its potential to deliver more back wages to employees with significantly fewer enforcement hours than a full investigation. The self-audit tool did not replace investigations, but rather, provided another option for district offices to effectively manage resources and broaden their reach within the regulated community. WHD can most efficiently address compliance issues with good-faith employers through compliance assistance resources—including WHD online content, printed materials, and outreach activities. These employers, which WHD views as most receptive to compliance assistance, are also best suited for a self-audit intervention like the PAID program.

Self-audits are one of several types of compliance actions available to enforcement staff. All compliance actions are evidence-based and involve an analysis of facts. Self-audits are compliance actions in which the employer conducts the fact-finding and resolves any problems, including the computation of back wages. The employer reports the results of the self-audit to WHD staff prior to implementing any remedies. WHD reviews the audit, checks its accuracy, and supervises the settlement. Under the previous Administration policy, WHD largely discontinued the use of self-audits.

By launching the PAID program, WHD increased the visibility of the self-audit tool, but with specific safeguards that balanced promoting compliance assistance with protecting WHD's enforcement authority. WHD designed the PAID program to serve those employers who seek to resolve a potential violation of the FLSA and intend to take the necessary steps to remain in compliance. To ensure employers are sufficiently educated on their compliance responsibilities, the program requires employers to review compliance assistance materials before applying to the program. Many employers received hands-on technical assistance from the local WHD office.

WHD narrowly tailored employee waivers under the PAID program to the specific FLSA-related compensation practices and periods at issue. The program is limited to FLSA minimum wage and overtime claims within the standard two-year FLSA statute of limitations. While many of WHD's compliance assistance materials emphasize that employers may also be subject to state and local wage and hour laws, WHD does not have jurisdiction to enforce or supervise the settlement of state law claims. A signed release has no effect on any claims that an employee may have under relevant state labor laws. Additionally, employees can choose not to accept the payment of back wages under the PAID program to preserve their private right of action. Consistent with any FLSA compliance action, employers are prohibited from retaliating against any employee for his or her choice. The PAID program does not limit WHD's ability to enforce federal laws, including the FLSA, the Family and Medical Leave Act, the Migrant and Seasonal Agricultural Worker Protection Act, worker protections provided in several temporary visa programs, the prevailing wage requirements of the Davis-Bacon and Related Acts and the McNamara-O'Hara Service Contract Act.

### **Evaluation Approach**

This report presents key findings from an analysis of qualitative and quantitative data collected during the implementation of the PAID program. Data covers a program assessment period starting at the month of the pilot launch through most of the fourth quarter of fiscal year (FY) 2019 (April 1, 2018 through September 15, 2019). WHD launched the PAID program as a nationwide pilot with a commitment to evaluate progress and results after six months. At the end of the pilot, early indications were largely positive, and, based on the available data, WHD estimated that cases required significantly less time to complete than other compliance actions.

Absent any indication that activities should be placed on hold, WHD saw greater benefit to continuing the program, which allowed for additional data collection and analysis to inform an assessment of the program.

WHD carried out the evaluation internally using an approach that helped to clarify program objectives, determine underlying program assumptions, and identify what the agency hoped to learn about the program's design and implementation during the pilot phase. This approach is consistent with evaluation methods typically applied when developing and implementing a new program or modifying and adapting an existing one. The PAID program modified an existing tool in the WHD toolkit (i.e., refining the parameters of the self-audit tool), but also involved a roll-out effort similar to a new program or policy.

In conducting the evaluation, WHD minimized data collection burdens on the field and did not introduce new procedures or protocols for data collection purposes. The agency prioritized working within available resources, including WHD's existing case management and reporting tools, in order to collect and analyze data during the project period. WHD made minor modifications to the case management system to allow the agency to query PAID cases and outreach, although most PAID-related outreach occurred through planned FLSA outreach events, meetings, and presentations. Supplementary data was primarily collected through qualitative interviews with enforcement and outreach staff conducting PAID-related activities; analysis of qualitative data collected from webinars held by WHD and industry stakeholders; testimonials from employees and employers in concluded PAID cases; Congressional inquiries on the program; and media coverage of the program launch. Throughout program implementation, the project team shared and discussed progress, results, and analysis with district office managers and staff for their consideration and input. To that end, WHD sought to identify promising practices and lessons learned that could strengthen the program's design and results.

### **PAID Program Results (April 1, 2018 to September 15, 2019)**

The analysis presented in the following section is based on cases concluded during the program assessment time period from April 2018 through mid-September 2019. The violation rates for PAID cases are not generalizable to employers overall or specific industries. In the WHD context, these cases represent less than one percent of total compliance actions during that same time period. During the program implementation, WHD learned that employer outreach and education required more time than anticipated to attract employers to the program, particularly in response to the employer and legal communities' cautious approach to the pilot. After the pilot, WHD shared employer and employee testimonials online to encourage participation and demonstrate how the program has worked for employers and employees thus far. The comparatively small caseload has allowed WHD to carefully manage resources around the program with little to no perceived impact on other priorities. The list of employers in concluded cases appears at the end of this report in Table 2. WHD continues developing PAID cases, and consistent with policy, does not disclose information on cases until they are closed.

**Table 1. PAID Program Results and Compliance Actions<sup>1</sup>**  
**(April 1, 2018 to September 15, 2019)**

<b>Measure</b>	<b>PAID Cases</b>	<b>Compliance Actions</b>
<i>Total Compliance Actions</i>	74	39,991
<i>Total Compliance Actions with Back Wages</i>	72	27,000
<i>Total Back Wages</i>	\$4,131,238	\$454,080,497
<i>Total Employees</i>	7,429	449,412
<i>Back Wages per Case</i>	\$55,828	\$11,355
<i>Employees per Case</i>	100	11
<i>Back Wages per Employee</i>	\$556	\$1,010
<i>Total Enforcement Hours</i>	1,442	1,625,916
<i>Hours per Case</i>	19	41
<i>Back Wages per Enforcement Hour</i>	\$2,864	\$279

- Between April 1, 2018 and September 15, 2019, a total of 74 employers completed the PAID program. Most violations resulted from a failure to pay proper overtime (97%), and most employers had one type of FLSA violation.
- A total of \$4,131,238 in back wages was paid to 7,429 employees in PAID cases.
  - Average back wages per case: \$55,828
  - Median total back wages per case: \$7,965
- The difference between the average and median is due to the distribution of cases. Over half of cases (51%) resulted in back wages under \$10,000, including two cases with no back wages, while ten cases found between \$110,000 and more than \$746,000 in back wages.
- Back wages due *per case* for PAID cases (\$55,828) were more than four times the average back wages per compliance action (\$11,355).
- Back wages *per enforcement hour* for PAID cases (\$2,864) were more than ten times greater than enforcement hours per compliance actions (\$279).
- Back wages *per employee* for PAID cases (\$556) were just over half the back wages from a compliance action (\$1,010).
- Employees per case were nearly 10 times the average for compliance actions—100 employees per PAID case versus 11 employees for compliance actions.
- PAID self-audits averaged 19 hours per case as compared to 41 hours per compliance action agency-wide.<sup>2</sup>

<sup>1</sup> Given the ratio of PAID cases to the total compliance actions, PAID self-audits were not removed from compliance action totals for hours, back wages, and employees for comparison purposes. Compliance actions cover all Acts.

<sup>2</sup> Enforcement hours capture investigator time on a case. Additional non-enforcement hours, which would include conducting outreach and delivering compliance assistance to employers, are not reflected in enforcement hours. In nearly every district office, outreach activities are planned and carried out by a Community Outreach and Resource Planning Specialist (CORPS).

Most outreach events involved adding PAID information to planned FLSA content, leveraging existing stakeholder relationships and activities to discuss PAID, and using the PAID program to establish contacts with stakeholders primarily representing employers and the business community. During the program assessment period, WHD conducted 3,306 outreach events on the FLSA, which would have included sharing information on PAID. During that same time, WHD local offices conducted a total of 283 PAID-specific outreach events.

In terms of efficiency, the back wages per enforcement hour on a PAID case were significantly higher than for compliance actions overall. This difference suggests the PAID self-audit tool is meeting program objectives by allowing district offices to facilitate efficient payment of back wages to employees with limited impact on enforcement hours dedicated to enforcement priorities.

### **Program Participants**

Any FLSA-covered employer who self-selects to apply to the PAID program could be the subject of a WHD investigation; however, not all employers who are the subject of an investigation could also qualify for the PAID program. While some overlap occurred between those industries prioritized for enforcement and those employers who qualified for the PAID program, the majority of employers applying for PAID did not represent industries or industry sectors typically prioritized for investigation. State and local government offices, services, and agencies represented almost a quarter (23 percent) of all concluded cases—the largest group of employers within an industry. The range of industries and employers represented by PAID cases suggests employers are self-selecting consistent with the program’s design. Additionally, employers that were found in violation of the FLSA, either through an investigation or a private lawsuit within the past five years, were ineligible for the program. The emphasis on compliance assistance as part of the application process, combined with the agency’s multi-step screening and intake process, is a significant contributing factor to which employers completed the program. Consistent with WHD’s overall approach to compliance assistance, employers seeking information and technical assistance on PAID were handled separately from enforcement in order to encourage employers to pro-actively approach the agency. WHD did not establish new protocols in order to distinguish an employer’s application status beyond the existing compliance assistance and enforcement data protocols for compliance actions and outreach. Therefore, WHD does not have data on “employers denied”.

### **Program Status**

WHD plans to continue using the PAID self-audit tool, collecting and analyzing program data, and determining how WHD can improve and refine the tool. WHD will continue identifying promising practices and lessons learned and sharing those findings with the field. Moving forward, WHD will continue tracking enforcement hours per case in order to maintain the focus

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on efficiency. The results presented in this report suggest that self-audits have allowed district offices to increase back wages delivered to employees with minimal impact on existing priorities and resources dedicated to enforcement. To that end, WHD is working to further integrate use of the tool into operations, consistent with the goals, priorities, and data-driven practices of the agency.