

Fact Sheet #44: Visits to Employers

This Fact Sheet provides general information about the laws enforced by the Wage and Hour Division (WHD).

Purpose of Visit

WHD is responsible for administering and enforcing a number of federal laws which set basic labor standards, among them:

- [The Fair Labor Standards Act](#)
- [The Family and Medical Leave Act](#)
- [The Migrant and Seasonal Agricultural Worker Protection Act](#)
- [The field sanitation standards of the Occupational Safety and Health Act](#)
- [The Employee Polygraph Protection Act](#)
- [Certain employment standards and worker protections under the Immigration and Nationality Act](#)
- [Government contracts prevailing wage statutes such as the Davis-Bacon and related Acts and the McNamara-O'Hara Service Contract Act](#)
- [Garnishment provisions of the Consumer Credit Protection Act](#)

An investigator from WHD may conduct an investigation to determine whether these laws apply to an employer. If the employer is subject to these laws, the investigator will verify that workers are paid and employed properly according to the laws administered, and that youths under age 18 are employed as provided by the child labor provisions. The WHD does not require an investigator to previously announce the scheduling of an investigation, although in many instances the investigator will advise an employer prior to opening the investigation. The investigator has sufficient latitude to initiate unannounced investigations in many cases in order to directly observe normal business operations and develop factual information quickly.

An investigator may also visit an employer to provide information about the application of, and compliance with, the labor laws administered by WHD.

Why is an employer selected for an investigation?

The WHD conducts investigations for a number of reasons, all having to do with enforcement of the laws and assuring an employer's compliance. WHD does not typically disclose the reason for an investigation. Many are initiated by complaints. **All complaints are confidential; the name of the worker and the nature of the complaint are not disclosable; whether a complaint exists may not be disclosed.**

In addition to complaints, WHD selects certain types of businesses or industries for investigation. The WHD targets low-wage industries, for example, because of high rates of violations or egregious violations, the employment of vulnerable workers, or rapid changes in an industry such as growth or decline. Occasionally, a number of businesses in a specific geographic area will be examined. The objective of targeted investigations is to improve compliance with the laws in those businesses, industries, or localities. Regardless of the particular reason that prompted the investigation, all investigations are conducted in accordance with established policies and procedures.

Investigation Procedures

Investigations may be conducted under any one or more of the laws enforced by WHD. Most employers are subject to the Fair Labor Standards Act (FLSA), which is the primary federal law of most general application requiring payment of the [minimum wage](#) and [overtime premium pay](#), keeping certain basic payroll and employment records, and limiting the working hours and types of jobs for certain underage youths. The procedures described below for FLSA investigations are generally applicable to WHD investigations under other laws.

Section 11(a) of the FLSA authorizes representatives of the Department of Labor to investigate and gather data concerning wages, hours, and other employment practices; enter and inspect an employer's premises and records; and question employees to determine whether any person has violated any provision of the FLSA.

The WHD investigator will identify himself/herself and present official credentials. The investigator will explain the investigation process and the types of records required during the review.

An investigation consists of the following steps:

- Examination of records to determine which laws or exemptions apply. These records include, for example, those showing the employer's annual dollar volume of business transactions, involvement in interstate commerce, and work on government contracts. **Information from an employer's records will not be revealed to unauthorized persons.**
- Examination of payroll and time records, and taking notes or making transcriptions or photocopies essential to the investigation.
- Interviews with certain employees in private. The purpose of these interviews is to verify the employer's payroll and time records, to identify workers' particular duties in sufficient detail to decide which exemptions apply, if any, and to confirm that minors are legally employed. Interviews are normally conducted on the employer's premises. In some instances, present and former employees may be interviewed at their homes or by mail or telephone.
- When all the fact-finding steps have been completed, the investigator will ask to meet with the employer and/or a representative of the firm who has authority to reach decisions and commit the employer to corrective actions if violations have occurred. The employer will be told whether violations have occurred and, if so, what they are and how to correct them. If back wages are owed to employees because of [minimum wage](#) or [overtime](#) violations, the investigator will request payment of back wages and may ask the employer to compute the amounts due.

Employers may be represented by their accountants or attorneys at any point during this process. When the investigator has advised the employer of his/her findings, the employer or representative may present additional facts for consideration if violations were disclosed.

What enforcement *remedies* are available under the laws administered?

The FLSA gives the Department of Labor ("Department") the authority to recover back wages and liquidated damages (to be paid to employees), and to assess civil money penalties (to be paid to the government), in instances of minimum wage, overtime, and other violations.

What enforcement *procedures* are provided under the laws administered?

The Department makes every effort to resolve most compliance issues administratively. If appropriate, the Department may litigate and/or recommend criminal prosecution.

Administrative procedures:

- The Department is authorized to supervise the payment of unpaid minimum wages and/or unpaid overtime compensation owed to any employee(s).
- In lieu of litigation, the Department may seek back wages, liquidated damages, and civil money penalties, if applicable, through settlements with employers.

- Civil money penalties may be assessed for child labor violations and for repeat and/or willful violations of FLSA minimum wage or overtime requirements.

Litigation procedures:

- The Department may file a lawsuit in U.S. District Court on behalf of employees for back wages and an equal amount in liquidated damages.
- The Department may seek a U.S. District Court injunction to restrain violations of the law, including the unlawful withholding of proper minimum wage and overtime pay, failure to keep proper records, and retaliation against employees who file complaints and/or cooperate with the Department.
- The Department may seek an order for payment of civil money penalties from a U.S. Department of Labor Administrative Law Judge where appropriate.
- An employee may file a private suit to recover back wages, an equal amount in liquidated damages, plus attorney's fees and court costs. In such a case, the Department will not seek the same back wages and liquidated damages on that employee's behalf.
- The FLSA provides that DOL may seek a U.S. District Court order to prevent the shipment of the affected goods.

Criminal prosecution:

- Employers who have willfully violated the law may be subject to criminal penalties, including fines and imprisonment.

Retaliation is prohibited

Employees who have filed complaints or provided information cannot be discriminated against or discharged on account of such activity. If adverse action is taken against an employee for engaging in protected activity, the affected employee or the Secretary of Labor may file suit for relief, including reinstatement to his/her job, payment of lost wages, and damages.

Other laws administered by WHD

Many of the above provisions are found in other laws administered by WHD. For example, the Migrant and Seasonal Agricultural Worker Protection Act also provides for the assessment of back wages, civil money penalties, criminal sanctions, fines and imprisonment.

In the case of the government contracts statutes, contract funds may be withheld for violations under the Walsh-Healey Public Contracts Act, McNamara-O'Hara Service Contract Act, Davis-Bacon and Related Acts, and Contract Work Hours and Safety Standards Act. Administrative hearings or, in some cases, court action may be initiated to recover back pay under these laws. In addition, liquidated damages may be assessed for certain violations. Violators of these laws may also lose their Federal contracts and be declared ineligible for future contracts for a specified period.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website:

<http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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