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The DOL Wants Employees to Get PAID

On March 6, the U.S. Department of Labor (DOL) announced a new self-audit program – the Payroll Audit Independent Determination Program (the PAID program). Operating on a pilot basis for just six months, the PAID program allows employers to self-report violations of the minimum wage and overtime provisions of the federal Fair Labor Standards Act in order to avoid penalties, and potentially litigation, by proactively paying back wages to impacted workers.

In exchange for participation in the program, the DOL will not require the employer to pay liquidated damages or civil monetary penalties. To receive payment pursuant to the PAID program, employees are required to sign a release covering the self-reported wage and hour issues. However, employees can choose not to sign the release, forego payment through the PAID program and proceed with their own wage claim. It remains questionable whether the PAID program protections and the employee release extend to state departments of labor and state wage and hour claims.

An employer is eligible to participate in the PAID program so long as the employer (a) has not received communications from an employee's representative or counsel expressing interest in litigating or settling the same issue, and (b) agrees to adjust its practices to avoid the same potential violations in the future. To participate in the PAID program, the employer provides to the DOL an explanation of the scope of the potential violations, the identities of the affected employees, the timeframes in which each employee was affected and the amount of back wages the employer believes are owed to each employee. The employer must also certify that it has reviewed all of the compliance assistance materials on the PAID program website. The DOL will then evaluate the information and follow-up with the employer to discuss next steps, including the collection of any other information necessary for the DOL to assess the back wages due. Thereafter, the DOL will issue a summary of unpaid wages, along with forms describing the settlement terms for each employee.

Additional information regarding the PAID program is available here (<https://www.dol.gov/whd/PAID/>). Employers considering participation are advised to consult with their human resources advisors or legal counsel for further consideration of the benefits and drawbacks of participation based on their specific wage and hour concern.

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