

THE WORKPLACE: PROBLEMS IN HIRING

How to Handle When the Labor Commissioner Visits

Imagine this scenario: You're at work minding your own business, focusing on some critical task that must be completed by the end of the day, when your receptionist calls and says there is someone from the Labor Commissioner's Office standing in front of her. He wants to inspect your premises and audit your payroll records. What do you do now?

First of all, don't panic. Regardless of whether the auditor is from the U. S. Department of Labor or the state Labor Commissioner's Office (DLSE), you should greet the auditor in a professional and courteous manner. Being respectful to the auditor goes a long way and may actually reduce the risk of large penalties and assessments being imposed against your company.

Often, the auditor will agree to return at a later date convenient for you and your lawyer. Pick a time that is sufficiently far enough for you to: advise your lawyer of the auditor's visit; compile the documents that are the subject of the audit; and have your lawyer review your records to see if he or she can identify any problems that can be remedied now.

If you or your lawyer identified problems in your wage and hour practices, do not delay in correcting them. This is "the band-aid" effect. At the very least, you have stopped the bleeding and contained the amount of amount of money you may owe.

When the auditor returns, he may want to interview a representative sampling of your employees in private. This is entirely voluntary on the part of your employees and they should not be forced to do so. The auditor will likely tell employees they can contact him privately and provide them with his business card. The auditor may also call former employees. Be careful not to intimidate or threaten employees. If the auditor wants to speak with management level employees, you should have your counsel present during the interviews. Consider whether your employees may be willing to share any perceived problems in your payroll practices.

During the course of an audit, it may become clear you made mistakes. Often these are unintentional and simply caused by ignorance of the ever-changing employment laws. If the errors are reflected on your payroll records, the auditor may allow you to do a self-audit and will instruct you how to do this. Should there be payments due, before providing payments to employees, make sure the employees sign the auditor's release form, or some other document confirming they have received the funds and been paid in full.

Obviously, audits are not fun. They feel invasive of your company's privacy and "big brother-ish." The best way to obtain a good result in an audit is to do a self-audit now, before the auditor ever knocks on your door. Here are some critical areas to pay attention to and to fix now if you can:

- **Overtime:** Are you paying the correct overtime premiums for hours worked in excess of 8 in the day and 40 in the work-week?
- **Exempt/Non-exempt:** Have you incorrectly characterized employees as "exempt" (where they are not entitled to overtime) rather than "non-exempt" (where they are entitled to overtime)?
- **Independent Contractors:** Have you incorrectly identified workers as "independent contractors" when they are truly employees?
- **Meal Periods:** Are your employees clocking in and out and taking a minimum 30 minute duty free meal period after no more than 5 hours of work?
- **Rest Periods:** Are your employees being provided a net 10 minute rest break approximately in the middle of each 4 hour work period?

- **Working Off the Clock:** Are your employees being permitted or compelled to work "off the clock?"

- **Cash Payments:** Are your employees being paid in cash?

- **Correct Wage Statements:** Do your itemized wage statements contain all the required data and



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SUE
BENDAVID-ARBIV

correctly reflect all hours worked and pay rates?

- **Rounding Policies:** If you are rounding employees' time, are your rounding policies in compliance with the law and allow employees to be paid accurately?

- **Time Clock Corrections:** If you are making changes to time records, are you asking employees to initial the corrections to verify they are accurate?

- **Failure to Clock In and Out:** If employees fail to clock in and out, are you making corrections to accurately reflect hours worked and having employees initial to verify that the time listed is correct?

- **Child Labor:** Do you have minors working for you? If so, do they have the appropriate permits?

ate permits?

Correcting these mistakes now will not only save you headaches and heartaches during an audit, but will also save you time and money. Errors can prove extremely costly. In fact, after much recent debate, the California Supreme Court just ruled that meal and rest period violations can result in penalties going back for three years. Thus, now more than ever companies should focus on compliance and self-audits.

Sue Bendavid-Arbiv is a shareholder with the Encino law firm of Lewitt, Hackman, Shapiro, Marshall & Harlan. She specializes in representing employers in employment law matters.