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Authors:

Peter J. Murphy
(860) 251-5950
pjmurphy@goodwin.com

New "PAID" Program Allows Employers
To Resolve FLSA Violations and Avoid Penalties

The Trump administration has already reversed or changed several positions taken by the Department of Labor (DOL) under the Obama administration. That trend continues with the DOL's announcement of the forthcoming Payroll Audit Independent Determination (PAID) program, which will provide employers with an important opportunity to work with the DOL's Wage and Hour Division (WHD) on resolving violations of overtime and minimum wage laws without paying the double damages, civil penalties, or attorney's fees allowed by the Fair Labor Standards Act (FLSA).

The recent announcement of the PAID program is not unprecedented, as the Bush administration reached favorable settlements with employers who reported violations of the FLSA voluntarily. For example, in a 2007 settlement a national retailer agreed to pay over $30 million to more than 80,000 workers after discovering payroll irregularities in its internal audit. In that settlement, the company's payments were limited to just back wages for each employee, plus interest. The DOL did not require the company to pay the double damages or civil penalties allowed by the FLSA.

The Obama administration took a different, stronger stance toward settlements of alleged FLSA violations, as again demonstrated by a 2012 settlement with that same national retailer. In that settlement, the company had to pay $4,828,442 to more than 4,500 employees nationwide—which included double damages for each employee, as well as civil penalties.

Through its announcement of the PAID program [https://www.dol.gov/whd/paid/], the Trump administration has now formally established a voluntary reporting system. According to the DOL updated website, the PAID "program enables employers to expeditiously resolve inadvertent minimum wage and overtime violations without litigation." Importantly, payments through PAID would be once again limited to back wages due, and the "WHD will not require

additional payment of liquidated damages or civil monetary penalties when employers choose to participate in the program and proactively work with WHD to fix and resolve the compensation practices at issue." Employees who accept such payments would be required to waive their right to bring an FLSA lawsuit for those violations at issue–thereby limiting the employer's exposure to double damages and attorney's fees.

The PAID program has been announced as a six-month trial program, which DOL will launch shortly and then reevaluate at the end of that period. Although the PAID program is a positive development for employers, participation in that program should still be assessed carefully with counsel. First, employees retain the right to decline any offered settlement, and pursue litigation in court for back wages, double damages, and attorney's fees. Second, even under a settlement, employers may face continued exposure under relevant state laws.

Questions or Assistance:

If you have questions, please contact Peter Murphy at (860) 251-5950 or pjmurphy@goodwin.com.

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