

PREPARE NOW: HOSPITALITY INDUSTRY DRAWS U.S. LABOR DEPARTMENT'S FOCUS

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Recently U.S. Department of Labor's Wage and Hour Division officials unofficially announced the Department's "Hotel and Motel Resort Pilot Initiative." Although no specific strategy or plan has been set forth for this investigation program, it is scheduled to begin in the agency's next fiscal year, which commences on Oct. 1, 2010. Under this initiative, the Division will target and audit hospitality employers in two areas—compliance with H2B requirements and the Fair Labor Standards Act.

The Wage and Hour Division considers hospitality to be a "high risk" industry for wage and hour violations, identifying several industry characteristics to putting it in this "high risk" category:

- Hospitality employers hire large numbers of H2B workers and younger employees, both of which groups they believe are "vulnerable" and unlikely to complain about violations.
- Hospitality is what the Labor Department calls a "fissured industry", by which it means arrangements (such as franchises, management agreements, and the like) it sees as resulting in a dilution of both the employment relationship and the responsibility for compliance.

While the specific details of the Wage and Hour Division's audit Initiative have not been announced, the Division likely will:

- Target H2B users for review.

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Andria Lure Ryan

Partner

[404.240.4219](tel:404.240.4219)

- Conduct these inspections in certain geographic areas.
- Investigate all employers on the property including separately owned and operated restaurants, cafes, and the like.
- Audit staffing companies supplying workers to the hospitality industry.
- Scrutinize whether the employers are in compliance with their H2B certifications (if applicable) and are complying with the Fair Labor Standards Act (including its child-labor limitations).

The Division's enforcement priorities focusing on the hospitality industry make it imperative that industry employers focus on prevention and prepare for the government's likely audit. By undertaking the effort now, you can do a thorough analysis and carefully decide what steps best balance your business needs and the interests of risk-reduction.

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