

Wage and Hour Partner Speaks with Law360 on DOL's Prelitigation Liquidated Damages Reboot

News

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Michelle Anderson recently spoke with *Law360* on the one-year anniversary of the U.S. Department of Labor formally restoring the use of prelitigation liquidated damages to facilitate settlements. After being restored in April 2021, the Wage and Hour Division secured a whopping \$40 million in liquidated damages.

Michelle said that employers don't have a lot of bargaining power in litigating over liquidated damages and with the Trump-era guidance on abstaining from their use rescinded, employers are at the mercy of the government. She has also seen the DOL in some instances be "heavy handed" and impose liquidated damages even when there appears to be no ill will on the part of the business.

To avoid these scenarios, Michelle recommends that employers think in terms of prevention. "I always tell people, by the time the Department of Labor is knocking at your door, it's too late."

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