



Be Careful About Signing USDOL Back-Wage Summaries

Insights

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When U.S. Department of Labor Wage and Hour Division investigators conclude that back-wages are due under the federal Fair Labor Standards Act or another law the Division enforces, typically they present to the employer a completed Form WH-56, called a "Summary of Unpaid Wages". This document reflects a variety of information, including the names of each individual the investigator believes should receive a payment and the gross amount of this payment.

The lower, left-hand corner of the form also contains a signature line beneath a statement saying, "I agree to pay the listed employees the back wages shown due and to mail proof of payment to the Wage and Hour District Office shown above" by a date-certain.

To Sign, Or Not To Sign

With varying degrees of forcefulness, the investigator typically seeks to have a management official sign this statement immediately. Normally, this happens at a meeting that the Division refers to as a "Final Conference" – a session that, despite the label, need not and indeed should not be the last conversation between the employer and the Division on unresolved matters of substance. In many instances, at that point the investigator will have provided only a very-general outline of his or her conclusions, rationales, and back-wage calculations.

Employers sometimes *do* sign on-the-spot, even though at this stage management might well be unaware of valid legal defenses or might not realize that significant factual or legal questions or other errors or misconceptions must be resolved before it is possible to know whether, to whom, and to what extent any back-pay is actually owed. Frequently, the employer learns about these issues only when it later consults counsel.

In some situations, Division officials have subsequently deflected an employer's post-signature defenses and/or questions about or challenges to the investigator's factual or legal "findings" by saying that the employer has already committed to an enforceable debt by signing the Form WH-56. For this reason, management might consider taking the position at the Final Conference that it is unable to sign in the absence of sufficient details, time, opportunity, and guidance to evaluate thoroughly the legal and factual reasoning and assumptions underlying the sums presented.

If the employer feels pressured or even compelled to sign the form even though it does not want to do so, then management should consider adding words to the signature block to indicate that it does

so both under protest and subject to its being able to conduct the necessary analysis to show, for example, that no back-wages are due, or that whatever back-wages are due are less than the amounts shown on the form.

The Bottom Line

Management's goal should be to avoid giving the impression that it concedes the accuracy, completeness, or correctness of the investigator's conclusions, at least in situations in which it might later want to dispute them. The employer should make clear that it is not refusing to pay sums that might ultimately turn out to be owed, but that instead it is simply declining to commit to any figures or payments before having had an adequate chance to analyze things.

Of course, an employer should also consider whether it wants counsel's assistance from the *beginning* of the investigation, rather than only after matters have proceeded to the Form WH-56 stage.