



# DOL Provides Long-Awaited Damages Relief to Employers in Wage and Hour Investigations: 3 Top Takeaways

Insights

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The Department of Labor (DOL) just rolled back a Biden-era practice of demanding that employers pay liquidated damages – in an amount equal to back pay – to resolve wage and hour investigations. The Trump administration delivered good news to employers on June 27 with new guidance stating that the DOL's Wage and Hour Division (WHD) has no authority under the Fair Labor Standards Act (FLSA) to seek such damages when an employer wishes to resolve an investigation by paying back wages prior to litigation. This guidance marks a substantial shift in federal wage and hour enforcement and should pave the way for earlier and less costly resolutions of investigations. How will this new guidance impact employers and what are the top three takeaways?

## How We Got Here

- **Federal Wage and Hour Law:** The FLSA established a federal minimum wage, overtime pay, and child labor standards. The law allows employees to sue for alleged violations and authorizes the Secretary of Labor to conduct investigations, supervise settlements, and bring lawsuits to enforce the act. The FLSA's remedies include **back pay and an equal amount of liquidated damages** in lawsuits brought by employees or the Secretary of Labor.
- **Seeking Liquidated Damages:** For decades, the Secretary of Labor only sought liquidated damages if an employer did not resolve a WHD investigation and the DOL Solicitor's Office filed a lawsuit. In 2010, however, the Obama WHD began requiring liquidated damages in an amount equal to its back pay assessment in order for employers to resolve an FLSA investigation. In the years that followed, it became common practice for WHD to demand that employers pay liquidated damages to resolve investigations at the pre-litigation stage.
- **Rollback During First Trump Administration:** In 2020, the first Trump administration issued a field assistance bulletin (FAB 2020-2) directing WHD offices to no longer demand the payment of liquidated damages in the resolution of many pre-litigation matters. The administration sought to temper the broad use of pre-litigation liquidated damages by requiring the approval of the WHD Administrator and the Solicitor of Labor in each case. Moreover, the guidance specifically excluded broad categories of cases from eligibility for pre-litigation liquidated damages.
- **Biden Administration Changes Course:** The Biden DOL rescinded the first Trump administration's guidance in 2021 (with FAB 2021-2). The new guidance contained almost no limitations on the pre-litigation demand for liquidated damages. Instead, WHD offices were only

required to get approval from their Regional Solicitor's Offices to demand liquidated damages. In practical effect, it became a standard practice in most FLSA audits for WHD to demand the payment of liquidated damages to resolve the matter, regardless of the facts of the particular audit or whether the employer had any prior violations.

## Current Enforcement Position

- **Limiting Liquidated Damages:** The DOL's Wage and Hour Division issued new guidance (FAB 2025-3) on June 27 that supersedes all prior guidance. In [this field assistance bulletin](#), WHD conducted a close analysis of the text of the FLSA to determine the proper statutory authority for demanding the payment of liquidated damages. It concluded that the statute only makes liquidated damages available as a judicial remedy **in lawsuits** brought by employees or the Secretary of Labor.
- **No Pre-Litigation Authority:** The section of the statute that gives WHD the power to supervise the payment of back wages in its investigations does not list liquidated damages as also being part of WHD's authority, according to the guidance. As a result, WHD now states that its offices cannot demand, accept, or leverage liquidated damages in any way in **a pre-litigation administrative resolution** of an investigation. Moreover, while WHD recognizes that the Department's Solicitor's Office can seek liquidated damages when it files a lawsuit under the FLSA, it cautions that DOL (including the Solicitor's Office) cannot attempt to obtain the payment of liquidated damages in any matter that it does not actually intend to litigate.

## 3 Main Takeaways for Employers

### 1. You Must Still Comply with the FLSA

The latest guidance is a substantial shift in WHD's enforcement of the FLSA. However, employers should be mindful that the FLSA's minimum wage, overtime, and child labor provisions are still in force. Employers, therefore, remain liable for back pay damages in WHD investigations, as well as civil monetary penalties for certain violations. In addition, employers still face the prospect of liquidated damages in lawsuits brought by employees or the Secretary of Labor. And, in lawsuits brought by employees, employers still face the costly payment of the employees' attorneys' fees and costs.

### 2. You May Be Able to Quickly Resolve Audits

Employers who find themselves subject to a WHD investigation will now face more reasonable demands to resolve any alleged violations. WHD's prior practice of demanding the full payment of liquidated damages often impeded the resolution of matters. In fact, the new guidance states that the prior liquidated damages policy extended the time to resolve investigations by 28 percent, which unreasonably delayed the receipt of wages by affected workers. The new policy will, on average, result in faster resolutions of WHD investigations.

### 3. DOL's Guidance Does Not Affect State Law Requirements

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Many states have their own wage and hour laws – and many of those laws provide for liquidated damages as a remedy. USDOL's guidance in FAB 2025-3 applies only to federal investigations under the FLSA and does not impact these state laws.

### Conclusion

If you would like assistance with reviewing wage and hour compliance measures, or if you need assistance with a USDOL audit, reach out to your Fisher Phillips attorney or any member of our Wage and Hour Practice Group. We will continue to monitor developments related to all aspects of workplace law. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information directly to your inbox.

### *Related People*



**Ted Boehm**  
Partner  
404.240.4286  
Email



**Patrick M. Dalin**

Partner  
610.230.6112  
Email



**Marty Heller**  
Partner  
404.231.1400  
Email

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