Return of the PAID Program: Here's What Employers Need to Know as DOL Reinstates Back Wage Payment Option

Insights
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The US Department of Labor's latest update rewards employers that proactively resolve potential wage and hour claims and obtain approval of their investigation and resolution. The DOL's Wage and Hour Division first introduced the Payroll Audit Independent Determination (PAID) Program in 2018, but it was shut down in 2021. Yesterday's news that the program has now officially returned follows several other big changes from the DOL: the reboot last month of the opinion letter program, a general reduction in WHD staffing levels, and an announcement earlier this month that it would not seek liquidated damages in pre-litigation settlements. The PAID program's revival highlights the value of employer self-audits and proactive handling of potential wage claims. Here's what you need to know about it and how it might benefit your organization.

Background

The 2018 PAID program was instituted to encourage self-audits of pay practices, and applied to Fair Labor Standards Act (FLSA) minimum wage and overtime violations, including violations based on alleged off-the-clock work and misclassification of employees as exempt.

Employers could not "use the program to repeatedly resolve the same violations," according to the DOL, and could only self-report issues discovered by the company. Employers that were already being investigated, sued, or otherwise facing legal challenges could not use the program.

Worker advocates opposed the practice, and the Biden administration shut the pilot program down shortly after taking office in January 2021. The Trump administration, however, just announced on July 24 that it is reviving the program.

Key Points and Updates for 2025

The 2025 edition of the PAID program is similar to its predecessor, but now includes Family and Medical Leave Act (FMLA) issues along with potential FLSA violations. Employers must resolve wage violations by paying 100% of back wages owed in order to rely on the program, and they can only use the PAID program if they have not already participated within the last three years. Employers are also not permitted to use the PAID program if they are already subject to an investigation or lawsuit. Additionally, the program requires disclosure to WHD about potential worker claims.

Employers cannot rely on the program for workers in the H-1B, H-2A, or H-2B visa program, nor can they rely upon the program for employees working pursuant to the Davis-Bacon Act or the Service Contract Act.

The previous version of the program required payment of back wages “by the end of the next full pay period after receiving the summary of unpaid wages” from WHD. The new program requires payment of “all back wages due within 15 days of receiving the summary of unpaid wages” followed by providing “proof of payment to WHD expeditiously.” Notably, this is a much faster payment timeline than most violations identified through a typical DOL investigation and may not be feasible for all employers.

Employer Benefits and Risks

A key employer benefit touted under the original PAID program was voiding liquidated damages equal to the back wage amount. But the DOL has recently clarified that it never had authority under the FLSA to seek such damages and confirmed that it will not seek liquidated damages from employers in pre-litigation settlements.

The PAID program could, however, help employers that obtain DOL approval of a wage and hour resolution avoid a potential FLSA lawsuit in federal court. Additionally, when employers rely on the PAID program, they have more input in the scope of the review than a traditional investigation or lawsuit.

WHD specifically cautions employers that “participating in the PAID program does not cut off employee rights under other state or local laws.” Some states (such as New York, New Jersey, and Massachusetts) have longer statutes of limitation on wage claims than the FLSA or FMLA or provide triple damages for wage claims. So, employers that come forward to resolve potential claims under the PAID program could unwittingly expose themselves to state law claims. We will discuss the state implications of this program in a future Insight, but employers should consider discussing their options with the Fisher Phillips Wage and Hour Team before making any decisions about this program.

What Should Employers Do Now?

Employers should consider conducting a self-audit with the assistance of experienced legal counsel. Self-audits allow employers to identify and address any issues in their compensation and compliance practices. The Fisher Phillips Wage and Hour Team, and particularly the Audit and Compliance Team, can help plan and conduct audits and guide you through responding to potential claims or government investigations.

Conclusion

If you would like assistance with reviewing wage and hour compliance measures, or if you need assistance with a DOL 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

Marty Heller
Partner
404.231.1400
Email

Chris Schulte
Partner
202.559.2440
Email

Service Focus

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