



# FLSA Violations Provoke Criminal Referral

Insights

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As we observed last October, there is reason to wonder whether the U.S. Labor Department has become more inclined than in the past to view criminal prosecution as being an appropriate course of action when it finds violations of the federal Fair Labor Standards Act. This possible predisposition has again surfaced, this time in an especially noteworthy way.

## Collaboration With Local Prosecutors

USDOL's most-recent electronic newsletter reported the Wage and Hour Division's determination that a total of nearly \$25,000 was due under the FLSA to 96 car-wash employees in Los Angeles, California. According to USDOL, the employer involved "was on probation for wage theft after being ordered to pay almost \$1 million in restitution as a result of a criminal wage theft case that began nearly five years ago."

USDOL's article provided few additional details, but news reports from the time indicate that this "probation for wage theft" apparently arose from local proceedings under California *state* law – *not* under the FLSA. And therein lies the kicker: USDOL says that it has referred the matter to *the Los Angeles City Attorney* for criminal prosecution.

## The Bottom Line

Perhaps USDOL concluded that the history and circumstances of this *particular* situation called for an unusual, hard-ball approach.

But the wage laws of states and other jurisdictions sometimes provide for criminal penalties that are more easily invoked and are more onerous than are the FLSA's. Moreover, many of these penalties relate to acts or omissions that violate requirements having no FLSA counterparts.

Has USDOL resolved as a matter of general policy to press state or local enforcement officials to take criminal action under *other* laws or mandates against employers it believes to be in violation of the FLSA? Stay tuned for further developments.