



FLSA Investigations Result In Criminal Convictions

Insights

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A U.S. Labor Department [press release](#) serves as a reminder that violations of the federal Fair Labor Standards Act can result in more than just back-wage payments and other civil remedies.

According to the Wage and Hour Division, a company, the owner, a plant manager, and an office manager were convicted of separate felony counts arising out of two investigations that disclosed "repeat and willful" FLSA violations and other transgressions. Additional remedies imposed included more than \$165,000 in restitution for unpaid overtime and for liquidated damages, \$12,100 in civil money penalties, and a fine of \$10,000.

The individuals were said to have been sentenced to time served, plus probation.

Some Things *Not* To Do

The Division said that other misconduct besides serious FLSA underpayments was involved. The employer reportedly:

- Required "kickbacks" from employees;
- Kept "a second set of time records";
- Withheld these time records from Division investigators; and
- Submitted false payment information to the Division.

FLSA Criminal Penalties

It appears that more than one provision of federal criminal law was asserted in this matter. But [Section 16\(a\)](#) of the FLSA itself also authorizes criminal prosecutions.

Generally speaking, this section can be invoked as to any person who is shown beyond a reasonable doubt to have violated the FLSA intentionally, deliberately, and voluntarily, or with reckless indifference to or disregard for the FLSA's requirements. Of course, "any person" includes corporations, partnerships, and other business organizations. However, FLSA criminal liability can also extend to owners, partners, directors, officers, shareholders, managers, supervisors, and even others.

The penalties include a fine of up to \$10,000, imprisonment for up to six months, or both. However, a person cannot be imprisoned for the first FLSA criminal conviction.

There is a five-year statute of limitations for FLSA criminal enforcement actions.

The Bottom Line

Experience suggests that, up to now, FLSA criminal prosecutions have been fairly infrequent. On the other hand, this recent report demonstrates that enforcement officials are prepared to take this course of action when they believe that egregious circumstances call for it.

Only time will tell whether this hard-line approach will become more common.