



One-Way "Bridge to Justice" Now In Place

Insights

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The U.S. Labor Department/American Bar Association lawyer-referral program we wrote about earlier is underway. This so-called "Bridge to Justice" is now described on the U.S. Wage and Hour Division's website.

As details continue to emerge, there is cause for heightened concern about how this will be handled. First, it appears that the potential remains for referrals to be made under circumstances implicating neither the federal Fair Labor Standards Act nor any other law DOL enforces.

Moreover, program descriptions are replete with references to "violations", worker exploitation, "back wages owed", and so on that will serve as a predicate for referring an employee to a lawyer. But the unfortunate fact is that, at least sometimes, initial DOL determinations of this kind are later shown to be based in whole or in part upon mistaken views of the facts, erroneous legal interpretations, or misapplication of the law to the facts.

In the past, it has usually been possible to work cooperatively with DOL to reach a proper conclusion in these situations. However, it now seems that employers caught up in some appreciable number of these instances will instead have to devote their already-scarce resources to protracted litigation with unjustifiably-emboldened employees and their lawyers.

A referred employee will also "get a form that will allow them or an authorized attorney representative to quickly obtain certain items from the investigation case file." This is part of the "special process for complainants and representing attorneys to quickly obtain certain relevant case information and documents when available." DOL says that whether some kinds of information will be released will depend upon the scope of disclosures permitted by the Freedom of Information Act and other provisions, but at present this is cold comfort.

It remains to be seen to what extent and in what ways the flow of information and materials to employees' lawyers will be limited. While employers must of course abide by their legal obligations in connection with DOL investigations, the existence of this "special process" should cause management to be cautious both in deciding what documents and information will be provided to investigators and in judging how and under what circumstances these things will be disclosed. For example, employers should be prepared to assert at the very outset the confidential nature of financial and employment-related information.

We have seen no reference to any new "special process" whereby *employers* can secure case information from DOL's files.