



Hospitality Industry Draws U.S. Labor Department's Focus

Insights

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Fisher Phillips recently participated in a closed-door meeting with U.S. Wage and Hour Division officials in Washington, D.C. to discuss the Labor Department's "Hotel and Motel Resort Pilot Initiative." There appears to be no specific strategy or plan as yet for this investigative program, but it is scheduled to begin in the agency's next fiscal year, which commences on October 1, 2010. It *is* definite that the Division will target Hospitality employers on two fronts – compliance with both H2B requirements and the Fair Labor Standards Act.

The Division informed us that it considers Hospitality to be a "high risk" industry. However, when we inquired as to what measures they used to make that determination, the officials had little to share. They identified principally two industry characteristics they seem to be relying upon:

- Hospitality employers hire large numbers of H2B workers and younger employees, both of which groups they believe consist of individuals who are "vulnerable" and are unlikely to complain about violations; and
- As we said in an [earlier post](#), Hospitality is what the Labor Department calls a "fissured industry", by which it means arrangements it sees as resulting in a dilution of both the employment relationship and the responsibility for compliance.

Officials could not state with any certainty that they have received a statistically-significant higher number of complaints or violations in the industry. Instead, they indicate that one purpose of the audits will be to find out whether there are large numbers of violations.

The Division made it clear that it will:

- Target H2B users for review;
- Likely conduct these inspections in certain geographic areas that are not yet specified;
- Investigate *all* employers on the property – including separately owned and operated restaurants, cafes, and the like;
- Audit staffing companies supplying workers to the Hospitality industry; and
- Scrutinize whether the employers are in compliance with their H2B certifications (if applicable) and are complying with the Fair Labor Standards Act (including its child-labor limitations).

The time to prepare is *NOW* – this initiative could begin in just a few months. You should consider conducting an internal compliance audit *immediately*, before the Labor Department selects your property for an audit.