



USDOL To Focus Upon Top-Down Industry Compliance

Insights

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Fisher Phillips participated last week in a Washington, D.C. "Stakeholder Forum" conducted by the U.S. Labor Department's Wage and Hour Division. A recurring theme during this session was the Division's focus upon industry- and sector-wide compliance initiatives under the federal Fair Labor Standards Act.

The Division is particularly concerned about what it calls "fissured" industries, a term it uses to refer to arrangements it sees as resulting in a dilution of both the employment relationship and the responsibility for FLSA compliance. Examples the Division gave included:

- Construction, in which the participants might include the property owner, a general contractor, and multiple subcontractors;
- Pyramided retailing and manufacturing carried out at different levels by a variety of contractors or subcontractors;
- Prepared-food retailing conducted through local establishments, some of which are company-owned and others of which are operated by franchises or under similar arrangements; and
- Branded hotels operated under a host of different business relationships through the brand owner, franchises, or independent companies with or without an ownership interest in the property.

As one representative put it, the Division will be looking for ways to "tie these levels or parts together" for purposes of asserting compliance responsibility under the FLSA. For instance, Division investigators will be gathering industry- and company-specific "structural information" as a part of their audits. They are also likely to be looking for opportunities to assert that different entities exercise sufficient control over (or are so operationally integrated with one another with respect to) a group of employees that each component is those workers' joint-employer for purposes of complying with the FLSA.

Even if there is no joint-employment, the Division will be searching for other avenues to "bring pressure to bear" upon brand owners or others at the highest levels of an industry. The goal will be to induce topmost officials to insist upon and monitor FLSA compliance by others with whom they share a business relationship. Exchanges between presenters and participants suggested that the Division will be open to relying upon adverse publicity and collaboration with consumer groups if it feels that this is necessary. The Division hopes that those with the power to do so will "care enough

feels that this is necessary. The Division hopes that those with the power to do so will "care enough about the brand" to work toward causing others in the industry to fall in line.