



## Less than the Minimum – The Department of Labor Continues Aggressive Enforcement Efforts in Pennsylvania

Insights

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Two Pennsylvania based companies and their staffing agencies recently learned, the hard way, that the Department of Labor (“DOL”) is aggressively targeting employers who allegedly violate the Fair Labor Standards Act (“FLSA”) by failing to properly pay employees the minimum wage and the overtime hours they may have worked. Both companies utilized temporary workers who were provided by outside staffing agencies to perform work in their facilities. According to the DOL, the temporary workers who worked for one company were paid \$6 an hour, in cash, and did not receive time and a half for any overtime hours they may have worked. The temporary workers who worked for the second company, again according to the DOL, were paid \$6.99 an hour, in cash, and received time and a half for any overtime hours they may have worked, but the overtime pay was calculated using a base rate of \$6.99 an hour rather than \$7.25 an hour. Under the FLSA, the federally mandated minimum wage is \$7.25 an hour and non-exempt employees must receive time and a half for any overtime hours they may have worked. Despite the fact that the temporary workers were *supplied* by and *paid* by outside staffing agencies, the DOL took the position that the staffing agencies and the companies *jointly employed* the temporary workers and, thus, were both responsible for any violations of the FLSA.

As a result of a DOL investigation, the two companies collectively agreed to pay a total of \$763,000 in back pay and damages for purportedly violating the FLSA. In addition to money damages, one of the companies also agreed to implement certain procedures to ensure it complies with the FLSA including:

1. hiring a human resources manager to work with staffing agencies and management;
2. interviewing and obtaining references for staffing agencies;
3. paying temporary workers electronically;
4. requiring staffing agencies to have a supervisor onsite;
5. maintaining proper records of any temporary workers who work at the company’s facilities; and
6. checking the pay records of any staffing agencies used by the company. In addition to money damages and the preventative steps one company agreed (or, perhaps, was forced) to take, the DOL issued a press release identifying the companies and describing the results of its investigation that can be found [here](#).

The DOL's investigation of the two Pennsylvania based companies is yet another example of increasingly aggressive enforcement efforts by federal and state agencies of various workplace laws and regulations. While these aggressive enforcement efforts have been spearheaded by a number of different agencies, the issues of pay practices, the use of temporary workers, and joint employment have become focal points in recent years. Companies not only need to ensure that their pay practices comply with federal and state law, but also need to be extremely careful when utilizing a third party, including staffing agencies, to provide workers to perform services in their facilities. Through its enforcement efforts, the DOL is increasingly making it clear that, from its perspective, a company is jointly responsible for the pay practices of staffing agencies and other third parties who provide workers to perform services in a company facility. Setting aside the quagmire of legal issues surrounding this position, the practical reason for taking this position, to a large extent, is financial; the companies are typically in a stronger financial position than the staffing agencies and are able to pay any damages award. Companies in Pennsylvania and elsewhere who use staffing agencies must be careful when selecting staffing agencies or risk an extremely costly DOL audit and investigation and the potentially negative press that could result from an audit and investigation.