

The Department of Labor (DOL) is responsible for conducting workplace investigations and bringing enforcement actions against companies in violation of the Fair Labor Standards Act (FLSA), Family and Medical Leave Act (FMLA), and related statutes governing wage payments. Since preparation for an inspection is critical, following is a checklist of steps to ensure you are ready and minimize your risk of penalties.

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## Pre-Investigation

### **Develop a Wage and Hour Program**

As part of a comprehensive program, review current and recent 1099s and agency vendor agreements to ensure the job duties of those paid as independent contractors are not those of employees. Also examine job descriptions to make sure they accurately reflect the work being done presently and justify the applicable exemptions. You'll want to review time keeping systems to verify that non-exempt employees are being paid for all work performed as well. Lastly, make sure payroll records and recordkeeping retention policies and procedures are current, accurate, and compliant.

### **Conduct Internal or External Audits**

Conduct regular wage audits and make sure recommendations are followed and the actions to address problem areas documented.

### **Train Staff**

Provide managers the information they need to be compliant with applicable laws. All employees should also understand fundamental information, such as the policies and procedures you have in place to comply, their own recordkeeping responsibilities as well as their rights. For key employees, share the DOL's inspection rights and your inspection procedures.

### **Establish Inspection Response Protocols**

Key steps in preparing your team for a DOL inspection include developing a list of those who need to be notified, identifying team members and their responsibilities, and arming them with the job descriptions, payroll records, and policies they'll need.

## Preliminary Inspection Process

### **Protect Your Interests upon DOL Arrival**

When the DOL arrives, follow your Inspection Response Protocols. You'll also want to verify the credentials of the investigator and clarify the scope of the review. Depending on the scope, you may need to request additional time.

### **Understand the Basics of the Opening Conference**

The DOL must hold an opening conference at the start of every investigation. Be sure you familiarize yourself with the requirements for the parties involved as well as best practices to follow.

## Document Production

### Follow Best Practices

When providing records to the DOL, make sure you label all documents “confidential and proprietary” and keep copies. Track what you produce as well. And if you’re asked to provide confidential or trade secret information, question the request. Most importantly, don’t give more than requested or volunteer information.

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## On-Site Inspections

### Understand Possible Audit Activities

Be sure you know what activities DOL can conduct during an audit, such as holding “stop and talk” interviews with hourly employees and taking handwritten notes of potential FLSA violations.

### Perform Employer Audit Duties

Be polite and professional while maintaining your rights. Always accompany the investigator. And use the audit as an opportunity to learn about the DOL’s focus by taking notes about what they do and say.

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## Employee Interviews

### Know the Investigator’s Role

Hourly employees should be afforded privacy during the interviews. During the conversations, the investigator may take notes, ask to record the interviews, ask witnesses to write statements, and ask questions about documents that have been produced.

### Prepare Employees

For those scheduled to be interviewed, make sure you explain that the DOL will ask them questions related to their jobs. And encourage honesty. While you can’t coach employees, it’s a good idea to remind them of the applicable policies, procedures and training in place at the company.

### Understand the Employer’s Role

You have the right to schedule interviews in advance at a time that won’t unduly hinder normal business operations. While you can’t sit in on non-exempt employee interviews, you can and should attend management interviews. And keep in mind that you can’t retaliate against an employee because of anything they say in an interview.

### Prepare Management

Let managers know that they are regarded as your agents and, consequently, what they say will be attributed to you. If you’re participating in an interview, be sure to help the witness speak up for their rights.

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## Findings

### Understand the Closing Conference

If the DOL plans to issue findings of back wages due, it must hold a closing conference at the close of the investigation. At the conference, the investigator will share the findings and explain your rights. Be sure to take notes. If there’s a violation, the DOL may wish to issue a press release.

### Follow Up the Audit

After the audit, you can take several different actions, such as paying the amount without question or contesting the findings. Many factors can affect that decision, including the accuracy of the alleged violations, what you’ll need to do to comply and whether the penalties seem excessive.