


WHD Response to Draft Report

U.S. Department of Labor

Wage and Hour Division
Washington, D.C. 20210

MAR 27 2015

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General

FROM: DAVID WEIL 
Administrator

SUBJECT: Response to the Office of Inspector General's Report:
Wage and Hour Division Needs to Strengthen Management
Controls for Back Wage Distributions
Report No. 04-15-001-04-420

The Wage and Hour Division (WHD) appreciates the opportunity to respond to the Assistant Inspector General's February 27, 2015 report titled *Wage and Hour Division Needs to Strengthen Management Controls for Back Wage Distributions*. The report provides three recommendations, and WHD's responses to these recommendations are provided below.

While WHD agrees with the recommendations presented in the report, it is important to restate the context for the overall findings. As the report acknowledges, most back wages (76%) are paid directly to workers by their employers. Of the remaining back wages, the average annual back wages cited by the report that are transferred to the Department of Treasury represent five percent of average annual back wages due to workers during that same timeframe. Between FY 2010-2014, the report estimated an annual average of \$12 million in back wages were transferred to the Department of Treasury. During that same timeframe, WHD found an annual average of \$234 million in back wages due to workers.

As an agency focused on industries that employ vulnerable workers and are most likely to break laws that ensure workers receive a fair day's pay for a fair day's work, WHD recognizes that any back wages due can significantly impact workers earning the minimum wage. The recommendations reinforce the importance of efforts the agency has already undertaken to strengthen its back wage follow-up procedures and systems and give further priority to the actions the agency has identified as next steps.

Recommendation 1: Develop reporting tools that will support greater oversight and performance management of the back wage follow-up and distribution process.

Response: WHD agrees with this recommendation. WHD has initiated a process for developing a set of reporting tools that would complement existing reports and better inform decision-

makers. While the back wage distribution process produces numerous financial reports, they are designed to meet specific financial reporting requirements and reflect the nature of the underlying transaction data, but are not readily conducive to performance reporting by fiscal year. For example, as we have explained to the OIG, the Case Activity Reports will capture only those cases with activities during a specified accounting period. These reports are not designed to function as a ledger of beginning and ending fiscal year balances. WHD will develop custom reports that can provide accurate, timely, and complete data suitable for performance management and oversight. Nonetheless, this audit report has attempted to derive balances from reports not designed to provide that type of information.

Recommendation 2: Promote the continual exploration and use of alternative tools for locating employees due back wages.

Response: WHD agrees with this recommendation. As mentioned above, the vast majority of back wages that employers agree to pay are disbursed to employees, either by the employers or by WHD. If workers cannot be located after three years, the back wages are transferred to the Department of Treasury. Due to the transient nature of the low-wage workforce that WHD primarily serves, finding these workers can be difficult. For example, it is not uncommon for employers to provide incomplete or inaccurate employee contact information. When coupled with the fact that many of the low-wage workers WHD serves speak languages other than English, and move frequently because they work in industries with migratory labor patterns, locating the workers proves challenging.

WHD has undertaken several efforts in recent years to locate workers more effectively. For example, local WHD offices have established more than 40 Memoranda of Understanding (MOUs) with numerous foreign consulates to conduct outreach to workers from those countries and work with the consulates to locate workers who are owed back wages. WHD offices are also piloting the use of other search tools that have been used by law enforcement agencies to locate individuals. One of these tools is CLEAR, the software that OIG auditors used to attempt to locate employees owed back wages.

Most recently, in January 2015 WHD launched a revamped web-based tool called “Workers Owed Wages” (WOW) to replace the online Back Wage Employee Locator System (BWELS). This updated and streamlined web-based application, available in English and Spanish, allows workers or their advocates to answer a series of simple questions to find out if WHD is holding back wages collected on their behalf. If they are owed wages, WOW connects them with the appropriate WHD office. The tool is featured prominently on WHD’s website. Since WOW was launched a few weeks ago, over 150 individuals who have used the tool discovered they are owed back wages. WHD offices are now in the process of confirming identities and addresses and disbursing back wages to these individuals. So far, WOW has enabled WHD to disburse over \$60,000 in back wages to workers.

Recommendation 3: Update the Field Operations Handbook (FOH) and establish uniform procedures for staff to utilize all existing available tools and resources for locating employees due back wages.

Response: WHD agrees with this recommendation. As a result of this audit, we will update the FOH to ensure that it provides adequate guidance to national, regional, and local staff regarding the back wage collection and disbursement process. We will develop training for the relevant staff to ensure that the updated FOH protocols are understood going forward. At the regional level, we have also begun piloting new software tools to help locate employees owed back wages. We will identify which approaches yield the best results and implement the tools more broadly across the agency, as resources allow. In the near term, we will remind the appropriate staff of the already available tools and resources that can be used to locate employees. We will also continue to promote the new WOW web-based system.

Again, thank you for the opportunity to comment on this report.

cc: Patty Davidson
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