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Managing a Compliance Audit: Best Practices

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Executive Summary

As the Department of Labor's Wage and Hour Division steps up its compliance investigations, many organizations face increased risk of scrutiny and financial fallout caused by a compliance audit. But past investigations provide a valuable road map to businesses facing an audit, detailing best practices before, during and after an audit to minimize penalties and protect the organization while ensuring the process goes as smoothly as possible.

Compliance Investigations on the Rise

Over the past two years, the Department of Labor's Wage and Hour Division (WHD) has been steadily increasing its investigative resources to better target organizations with potential compliance violations. Organizations found to be non-compliant can face costly litigation, penalties, sanctions and back wages payments.

WHD investigations are typically triggered one of three ways: (1) if an employee or union files a complaint with the agency, (2) if an organization operates in a specific industry targeted as a "persistent violator" of compliance regulations (such as agriculture, hospitality or janitorial industries), or (3) if an organization is randomly selected for an audit.[1] This opens many organizations in many industries to the possibility of a compliance audit.

Managing an Audit: Best Practices

Past investigations reveal best practices organizations can implement before, during and after an audit to smooth the investigation process while limiting the organization's exposure as much as possible.

Before an Audit

Audit preparation can actually begin before the investigation takes place by implementing internal policies and activities that help create a "culture of compliance," including:

- **Pristine recordkeeping.** The FLSA (Fair Labor Standards Act) stipulates specific records an employer is required to keep and update for covered, nonexempt employees. These include employee information such as name, Social Security number, address, birthdate and occupation, as well as employment details such as total hours worked per workweek, regular rate of hourly pay and total wages paid each pay period. Although the FLSA is explicit about the records employers must keep, how employers record and update them is up to the organization. An integrated workforce management system that includes time and attendance, payroll and HR information can significantly streamline and automate the recordkeeping process.

- **Accurate overtime.** Overtime issues are one of the most common complaints filed with the WHD. By ensuring overtime eligibility and calculations are accurate, employers can avoid a potential investigation or postpone an inevitable one. Employers must not only confirm that eligible employees (that is, employees who qualify as nonexempt and covered by FLSA provisions) are receiving overtime compensation, but that the compensation they receive is calculated correctly and paid during

the appropriate pay period. Additionally, organizations must implement internal policies that support the tracking of all hours worked in order to discourage "off-the-clock" hours and informal comp time agreements. Both these activities are prohibited by the FLSA and serve as seeds for employee complaints that could grow into full-blown compliance audits.

- **Child labor regulation compliance.** If an organization employs minors, it is crucial for the organization to ensure that it meets all child labor obligations. Employers in industries with special child labor laws, such as agriculture, may already be aware and actively managing these types of regulations, but every organization with employees who qualify as child laborers needs to conduct a self-audit to confirm that the operation is acting responsibly and in the interest of these FLSA-protected workers.

- **FLSA manager education.** Managers play a key role in daily compliance activities. Supervisors must not only practice "good compliance" but understand why it is necessary. Educating managers on basic compliance requirements and connecting it to supportive internal policies allow managers to prioritize compliance in both their work routines and their decision making.

- **Documenting compliance efforts.** Establishing a culture of compliance is important, but being able to prove compliance efforts is extremely valuable in the face of an investigation. Every internal compliance effort or activity must be documented to demonstrate how the organization is actively meeting its compliance obligations. This might include outlining overtime policies and employees' time tracking responsibilities in an employee handbook, tracking supervisor compliance education or recording internal compliance audit procedures and outcomes.

During an Audit

A compliance audit is an understandably stressful event, but following these best practices[2] can smooth the process.

- **Determine the scope of the investigation.** This allows the organization to provide information that is relevant only to the issue being investigated, protecting it from revealing other compliance-related problems. If the investigator will not outline the scope of the investigation, the best way to proceed is to provide only the specific information he or she is requesting.

- **Understand the information being provided.** When turning over documents or records to the investigator, be sure to explain what they contain to avoid misinterpretation by the investigator. If an investigator shows up unannounced leaving no time to review and prepare the appropriate records, ask to reschedule the meeting. Be sure to record all documents provided to the investigator.

- **Consider engaging legal representation.** Legal counsel can provide valuable insight on precedents set by previous investigations and help guide the organization through the audit process.
- **Remain professional.** Provide the investigator with an area to work or conduct interviews and maintain communication to stay aware of the investigator's progress instead of waiting until the investigation ends.

After an Audit

At the conclusion of the audit, it is crucial to address and rectify any violations and implement policies that ensure compliance going forward.

- **Record the investigator's findings.** Although organizations will receive a document outlining any actions or penalties assessed due to identified violations, the investigator will not necessarily provide an official document outlining the violations themselves. Capture the investigator's findings in an internal document and review it carefully with legal counsel.[3]
- **Document steps taken to rectify violations.** Documenting compliance efforts is just as important after the audit as before. Maintain an internal record of changes to policies and activities and note the organization's progress toward increased compliance.
- **Conduct compliance self-audits.** Self-audits are a useful strategy to ensure future compliance. Whether this involves assembling an internal audit committee or hiring an external compliance expert, pursuing (and documenting) internal audits will identify and rectify potential compliance issues before they become problems.

Conclusion

In the face of increasing audits, an organization that employs compliance best practices before, during and after an audit can mitigate its potential to become an investigation target, cooperate with investigators while protecting its best interests, and establish a culture of compliance that will benefit the organization for years to come.

This document simplifies a complex Act as it is understood by Attendance on Demand, Inc. It is not to be taken as legal advice. For further information about FMLA compliance, please contact the U.S. Department of Labor at www.dol.gov or 1-866-4-USA-DOL.

Footnotes/Bibliography

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About Attendance on Demand, Inc.

Attendance on Demand employee time and attendance service supports the labor management needs of thousands of companies and a quarter of a million employees across North America. Launched in 2006, Attendance on Demand is a rapidly deployed, cloud-based solution that minimizes a company's risk and technology investment while providing advanced features for securely managing labor data—calculating pay rules, scheduling employees, budgeting labor, and automating record keeping for labor law compliance. With over 99.9962% uptime and above average customer retention rates, Attendance on Demand removes the worry of maintaining expensive infrastructure. An extensive North American distribution network helps organizations use Attendance on Demand to reduce labor expenses and improve decision making.

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