

RISK MOMENT 01 | CHARGES & AGENCY RESPONSE

DOL WAGE AND HOUR INVESTIGATION RESPONSE CHECKLIST

USE THIS CHECKLIST WHEN

A U.S. Department of Labor Wage and Hour Division investigator contacts your organization, arrives at your workplace, or requests wage-and-hour records.

FIRST PRINCIPLE

A DOL investigation may begin with little or no advance notice. What your organization says, produces, and preserves from the first contact matters.

STAY CALM**DO NOT SPECULATE****WORK IN ORDER****DEFENDING YOUR RIGHT TO DO BUSINESS GOD'S WAY**

PHASE 1

THE FIRST TEN MINUTES

- ☐ Greet the investigator courteously and remain professional.
- ☐ Request the investigator's name, title, office, and government credentials.
- ☐ Record the investigator's telephone number, email address, and any case or reference number.
- ☐ Independently verify the contact through an official DOL telephone number if the investigator's identity is uncertain.
- ☐ Ask which law or laws are being investigated.
- ☐ Ask for the general period, locations, and employment practices under review.
- ☐ Do not demand the identity of a complainant. DOL generally treats complaint information as confidential.
- ☐ Notify the organization's designated executive, human-resources leader, and qualified employment counsel.
- ☐ Designate one person to coordinate the organization's response.
- ☐ Direct managers and employees to send company-level document and policy questions to the response coordinator.
- ☐ Avoid guessing, speculating, or offering an immediate explanation of the organization's entire pay system.
- ☐ Do not refuse access, decline a request, or withhold required records without legal advice.

**SUGGESTED
RESPONSE**

We intend to cooperate appropriately. I need to notify the person responsible for our response and confirm the requested information so we can provide an accurate response.

PHASE 2**PRESERVE AND ORGANIZE**

- ☐ Immediately preserve potentially relevant documents and electronic information.
- ☐ Suspend routine destruction of relevant records.
- ☐ Tell managers not to delete, edit, recreate, conceal, or backdate anything.
- ☐ Preserve payroll, timekeeping, scheduling, classification, personnel, policy, and contractor records.
- ☐ Preserve relevant emails, text messages, system data, and prior document versions.
- ☐ Ask for document requests in writing whenever practicable.
- ☐ Confirm the requested categories, period, format, deadline, and method of production.
- ☐ Request additional time promptly if accurate production cannot reasonably be completed by the proposed deadline.
- ☐ Begin a central investigation file and production log.

PHASE 3**REVIEW BEFORE PRODUCING**

- ☐ Collect payroll records for the applicable retention period.
- ☐ Collect time records, schedules, wage-rate information, and overtime calculations.
- ☐ Collect job descriptions and exemption analyses for employees classified as exempt.
- ☐ Collect independent-contractor agreements, invoices, and classification documentation.
- ☐ Collect the handbooks and compensation policies in effect during the period under review.
- ☐ Review records for completeness and accuracy; identify missing or inconsistent records.
- ☐ Separate potentially privileged legal communications for counsel's review.
- ☐ Identify confidential medical, religious, donor, personnel, or proprietary information.
- ☐ Produce responsive records through the agreed process and keep an exact copy.
- ☐ Record what was produced, when, and how it was delivered.
- ☐ Meet confirmed deadlines or request an extension before the deadline expires.

PHASE 4**MANAGE INTERVIEWS AND WORKPLACE ACCESS**

- ☐ Ask the investigator to explain the anticipated interview and workplace-tour process.
- ☐ Consult counsel concerning procedural or scope questions.
- ☐ Do not interfere with private employee interviews.
- ☐ Do not ask employees to report what they told the investigator.
- ☐ Do not instruct, coach, or pressure employees about what to say.
- ☐ Tell employees to answer truthfully and not to guess.
- ☐ Make clear that retaliation is prohibited.
- ☐ Record requested interview dates and the employees involved, when that information is known.
- ☐ Have the response coordinator accompany the investigator during permitted workplace tours when appropriate.
- ☐ Protect unrelated confidential areas, documents, and information systems while complying with lawful requests.

PHASE 5**CONDUCT A PRIVILEGED INTERNAL REVIEW**

Under counsel's direction, review the organization's practices for:

- ☐ Unrecorded or off-the-clock work;
- ☐ Automatic meal-period deductions;
- ☐ Remote-work timekeeping;
- ☐ Travel and training time;
- ☐ Overtime calculations;
- ☐ Bonuses and the regular rate of pay;
- ☐ Exempt employee classifications;
- ☐ Independent-contractor classifications;
- ☐ Payroll deductions;
- ☐ Employment of minors;
- ☐ State and local wage requirements; and
- ☐ Federal-contractor requirements, if applicable.

DO NOT RUSH

Do not alter historical records or make rushed classification changes. Counsel should advise whether corrective action is necessary and how it should be implemented.

NON-NEGOTIABLES

Do Not

Never:

- ☐ Destroy, alter, conceal, fabricate, or backdate a record.
- ☐ Create a document and represent it as an original historical record.
- ☐ Ask employees to identify a complainant.
- ☐ Tell employees what to say during an interview.
- ☐ Discourage anyone from cooperating with the investigation.
- ☐ Retaliate against an employee who raises a wage concern or participates in an investigation.
- ☐ Guess or make unsupported factual statements.
- ☐ Give unrestricted access to unrelated files or information systems without addressing scope and confidentiality.
- ☐ Produce attorney-client communications without a privilege review.
- ☐ Reclassify employees merely to make past practices appear compliant.
- ☐ Admit liability before the facts and applicable law have been reviewed.
- ☐ Sign a settlement, waiver, tolling agreement, or back-wage calculation without legal review.
- ☐ Ignore a document request, subpoena, deadline, or follow-up communication.

**RETALIATION
WARNING**

Retaliation may create a separate legal claim even when the underlying wage allegation is ultimately unproven.

CREATE THE RECORD

Document Now

- ☐ The investigator's name, title, credentials, and contact information;
- ☐ The agency, division, and case number;
- ☐ The law or laws being investigated;
- ☐ The stated scope and period under review;
- ☐ Notes from the initial conference;
- ☐ Every record requested and the date of the request;
- ☐ Every record produced and the date of production;
- ☐ Exact copies of all productions;
- ☐ Relevant deadlines and extensions;
- ☐ Interview requests and dates, when known;
- ☐ Workplace-tour details;
- ☐ Oral statements made by company representatives;
- ☐ Written communications with the investigator; and
- ☐ Preliminary findings, calculations, or settlement documents.

ESCALATION POINTS

Escalate Immediately

Contact qualified employment counsel promptly when:

- ☐ A Wage and Hour Division investigator contacts or visits the organization;
- ☐ The Department issues a subpoena or formal demand;
- ☐ The investigation involves exempt or independent-contractor classifications;
- ☐ The investigator alleges willful, repeated, or widespread violations;
- ☐ The organization discovers potentially unpaid wages;
- ☐ Records are missing, inconsistent, or inaccurate;
- ☐ You learn or reasonably believe that an employee complaint may be involved;
- ☐ Sensitive religious, donor, medical, personnel, or proprietary information is requested;
- ☐ The proposed interviews or workplace tour raise questions about scope or procedure;
- ☐ Multiple locations or states are involved;
- ☐ Federal-contract requirements may apply;
- ☐ The investigator announces findings or requests payment; or
- ☐ The organization is asked to sign any settlement or other legal document.

FINAL REVIEW

Before You Close the File

- ☐ Confirm that every request has been addressed.
- ☐ Confirm that the production log is complete.
- ☐ Preserve the investigation file and all related correspondence.
- ☐ Review proposed findings and calculations with counsel.
- ☐ Document any lawful corrective action.
- ☐ Train affected managers and payroll personnel.
- ☐ Schedule a follow-up compliance review.
- ☐ Continue monitoring for potential retaliation concerns.

**CEA MEMBER
SUPPORT**

CEA can help members identify relevant educational resources and connect them with appropriate legal assistance. Contacting CEA does not itself create an attorney-client relationship.

**PREPARED, NOT
PANICKED**

VERIFY | PRESERVE | COORDINATE | REVIEW | RESPOND

LEGAL DISCLAIMER

This resource provides general educational information and is not legal advice. It does not create an attorney-client relationship between the reader and Christian Employers Alliance, its employees, or any attorney associated with CEA. Wage-and-hour requirements depend on the specific facts, applicable jurisdiction, and law in effect at the time. Employers should consult qualified legal counsel regarding any investigation, classification decision, document request, or corrective action.

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DEFENDING YOUR RIGHT TO DO BUSINESS GOD'S WAY