

CHRISTIAN EMPLOYERS ALLIANCE

DOL WAGE AND HOUR INVESTIGATION RESPONSE GUIDE

RISK MOMENT 01 | CHARGES & AGENCY RESPONSE

**PREPARED, NOT
PANICKED**

A practical response framework for Christian employers facing a U.S. Department of Labor Wage and Hour Division investigation.

DEFENDING YOUR RIGHT TO DO BUSINESS GOD'S WAY

2027 CURRICULUM

RISK MOMENT 01

1. The Threat

A U.S. Department of Labor Wage and Hour Division investigator may contact your organization with little or no advance notice.

The investigation may begin with a telephone call, written request, scheduled conference, or unannounced visit. It may have been prompted by an employee complaint, an industry-wide enforcement initiative, or another agency referral. The Department generally will not disclose whether a complaint exists or identify the person who made it.

From the first contact, what your organization says, produces, and preserves matters.

A Wage and Hour Division investigation may examine:

- Minimum-wage and overtime compliance;
- Employee exemption classifications;
- Independent-contractor classifications;
- Timekeeping and payroll records;
- Employment of minors;
- Family and Medical Leave Act compliance;
- Break time and space for nursing employees;
- Federal-contractor wage requirements; and
- Other laws administered by the Wage and Hour Division.

Potential exposure can include unpaid wages, an equal amount in liquidated damages, civil monetary penalties, injunctive relief, and legal expenses. The ordinary limitations period for an FLSA claim is two years, but it may extend to three years if a violation is found to be willful.

A classification error affecting several employees can quickly become a substantial financial liability.

The first objective is not to argue with the investigator. It is to establish an orderly, accurate, and legally informed response.

THE LEGAL FRAMEWORK

2. What the Law Requires

The Wage and Hour Division administers and enforces the Fair Labor Standards Act and several other federal labor laws. The particular rules that apply depend on the organization, its employees, its operations, and the stated scope of the investigation.

Minimum Wage and Overtime

The FLSA generally requires covered, non-exempt employees to receive at least the applicable federal minimum wage and overtime compensation at one and one-half times their regular rate of pay for hours worked over 40 in a workweek.

State and local laws may impose higher minimum wages, daily overtime, meal-and-rest-period requirements, or other employee protections.

Exempt and Non-Exempt Employees

Paying an employee a salary or giving the employee a managerial title does not automatically make that employee exempt from overtime.

Most exemptions require the employer to establish that the employee satisfies:

- The applicable salary-basis requirement;
- The applicable salary-level requirement; and
- The duties test for the claimed exemption.

These standards can change through legislation, regulation, or litigation. Confirm the current requirements with qualified employment counsel before relying on an exemption.

Employees and Independent Contractors

Calling a worker an independent contractor, issuing a Form 1099, or signing a contractor agreement does not determine the worker's status under the FLSA.

The controlling test and the Department's enforcement position can change. Classification should be reviewed under current federal law and any applicable state-law tests. A worker may qualify as an independent contractor under one law but be treated as an employee under another.

THE LEGAL FRAMEWORK

Recordkeeping

Covered employers generally must maintain accurate records showing employees' hours worked, wages, pay rates, deductions, and other required information.

Under the federal rules, payroll records generally must be preserved for at least three years. Records used to calculate wages - such as timecards, work schedules, and wage-rate tables - generally must be retained for at least two years. Other federal, state, contractual, or benefit-plan requirements may require longer retention.

When an employer's records are incomplete or inaccurate, employees may be permitted to establish their hours through testimony or reasonable estimates. The burden may then shift to the employer to rebut that evidence.

Investigative Authority

Federal law authorizes the Wage and Hour Division to investigate wages, hours, and employment practices; examine required records; inspect covered workplaces; and question employees.

A typical investigation may include:

- An initial conference with the employer or its representative;
- A workplace tour;
- Review of payroll, timekeeping, and employment records;
- Private interviews with current or former employees; and
- A final conference to discuss the investigator's findings.

The scope of the government's authority - and the employer's available objections - can depend on the law being investigated, the records requested, and whether the Department issues a subpoena or seeks other legal process. Counsel should evaluate those questions before the employer refuses access or production.

IMPORTANT

This guide addresses Wage and Hour Division investigations. Other DOL agencies conduct different investigations involving employee benefits, workplace safety, federal contracting, and other laws.

FAITH & COMPLIANCE

3. Faithful Stewardship and Religious-Liberty Considerations

A wage-and-hour investigation ordinarily concerns compensation and employment records, not an organization's theology. A Christian employer should keep the investigation focused on the laws and employment practices actually under review.

Religious identity does not automatically exempt an organization or its employees from federal or state wage-and-hour laws. Coverage questions involving churches, ministries, religious schools, nonprofit organizations, and employees performing ministerial functions can be legally complex.

Do not assume that:

- Every employee of a religious organization is exempt from the FLSA;
- Every ministerial employee is automatically outside every wage-and-hour requirement;
- A faith-based job description determines an employee's wage classification; or
- CEA's existing injunctions concerning other federal mandates resolve a wage-and-hour dispute.

If an investigator requests religious-governance documents, statements of faith, clergy records, donor information, or materials unrelated to compensation, ask counsel to evaluate the request before producing them.

FAITHFUL STEWARDSHIP

Christian stewardship includes treating employees fairly, honoring lawful commitments, keeping accurate records, and responding truthfully. It also includes protecting confidential information and obtaining competent advice before making consequential legal decisions.

IMMEDIATE RESPONSE

4. What to Do When DOL Contacts You

1

Remain Courteous and Professional

Do not argue, speculate, or attempt to explain the organization's entire pay system during the first conversation.

2

Verify the Investigator's Identity

Request and record the investigator's full name, official title and office, government credentials, telephone number, email address, agency and division, and any case or reference number. Independently verify the contact through an official DOL number if there is any doubt.

3

Identify the Law and General Scope

Ask which law or laws are being investigated, the general period under review, the locations involved, and the categories of records requested. Do not pressure the investigator or employees to disclose whether a confidential complaint exists.

4

Notify Leadership and Counsel

Immediately notify the designated executive, human-resources leader, and qualified employment counsel. Do not refuse access, decline an interview, or withhold required records without legal advice. Do not begin producing records informally before the organization understands the request and establishes a controlled process.

5

Designate One Response Coordinator

Appoint one person to maintain the request-and-production log, schedule meetings, coordinate with counsel, collect responsive records, preserve correspondence, and ensure that representations made to the Department are accurate.

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.

IMMEDIATE RESPONSE

Continue the Response Sequence

1**Issue a Preservation Notice**

Suspend routine destruction of potentially relevant documents and data. Preserve payroll and timekeeping records, messages, schedules, job descriptions, personnel and classification records, contractor agreements, policies, system data, and earlier document versions. Never edit, recreate, backdate, or clean up existing records.

2**Clarify the Production Process**

Ask for document requests in writing whenever practicable. Confirm the categories, period, format, deadline, secure transmission method, and process for handling privileged, confidential, or nonresponsive material. Request any needed extension promptly; do not assume it is automatic.

3**Review Before Producing**

Counsel and the response team should review collected documents for responsiveness, completeness, accuracy, privilege, confidential information, trade secrets, material outside the stated scope, and facts requiring further review. Keep an exact copy of every production.

4**Prepare for Employee Interviews**

WHD ordinarily interviews employees privately. Employers must not interfere, direct employees what to say, monitor confidential conversations, or retaliate. Employees may be told to answer truthfully, avoid guessing, and ask the investigator procedural questions.

5**Conduct a Privileged Internal Review**

Under counsel's direction, assess unrecorded work, off-the-clock work, meal deductions, remote work, travel and training time, bonuses, classifications, payroll deductions, employment of minors, and state-law requirements. Do not implement a rushed correction without counsel.

CREATE THE RECORD

5. What to Document

Create a central investigation file containing:

- Investigator contact information;
- Notes from the initial conference;
- All written requests and applicable deadlines;
- Correspondence with the Department;
- A production log and exact copies of materials produced;
- Interview dates and participants, when known;
- Workplace-tour details;
- Follow-up requests;
- Notes of oral statements made by company representatives; and
- Findings or settlement documents.

Core Records to Preserve and Review

- Payroll registers, timecards, schedules, and electronic time records;
- Pay rates, wage changes, overtime calculations, bonuses, and commissions;
- Records of deductions and meal periods;
- Employee rosters and job descriptions;
- Exemption analyses and independent-contractor agreements;
- Invoices and payment records;
- Handbooks, compensation policies, and remote-work policies;
- Records concerning minors;
- Government contracts and wage determinations; and
- Prior internal audits or legal advice.

**PRIVILEGE
CHECK**

Do not place privileged legal advice in the ordinary production file. Counsel should determine whether a document is privileged and how privilege will be protected.

NON-NEGOTIABLES

6. Red Lines

Never:

- Destroy, alter, conceal, fabricate, or backdate a record;
- Ask an employee who complained or cooperated with DOL to identify themselves;
- Tell an employee what to say during an interview;
- Discourage an employee from speaking with an investigator;
- Retaliate against an employee for raising wage concerns or participating in an investigation;
- Make guesses or unsupported factual statements;
- Give the investigator unrestricted access to unrelated files or information systems without first addressing scope and confidentiality;
- Waive attorney-client privilege inadvertently;
- Reclassify employees or change records merely to make past practices appear compliant;
- Promise employees a particular outcome;
- Admit liability before the facts and applicable law have been reviewed; or
- Ignore a request, subpoena, deadline, or follow-up communication.

**RETALIATION
WARNING**

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

ESCALATION POINTS

7. When to Contact Counsel

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 exemption or contractor classifications;
- The investigator alleges willful, repeated, or widespread violations;
- The organization discovers potentially unpaid wages;
- Records are missing, inconsistent, or inaccurate;
- An employee complaint may have triggered the investigation;
- The investigator requests sensitive religious, donor, medical, or proprietary information;
- The investigation involves employee interviews or an extensive workplace tour;
- Multiple locations or states are involved;
- Federal-contract requirements may apply;
- The organization is asked to sign a settlement, waiver, tolling agreement, or back-wage calculation; or
- The investigator announces findings or demands payment.

A lawyer should also review any proposed settlement carefully. Payment of back wages, releases of claims, liquidated damages, future compliance obligations, and the enforceability of private settlements present separate legal questions.

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.

BEFORE THE KNOCK

8. Readiness Checklist

Employers should not wait for an investigation to examine wage-and-hour compliance.

At least annually:

- Review exempt classifications;
- Review independent-contractor relationships;
- Test overtime and regular-rate calculations;
- Examine automatic deductions and off-the-clock risks;
- Confirm timekeeping procedures for remote employees;
- Review bonus and commission practices;
- Confirm required federal and state postings;
- Review employment of minors;
- Confirm document-retention practices;
- Train managers not to discourage accurate time reporting;
- Confirm that employees can report payroll concerns without retaliation; and
- Correct identified problems with advice from qualified counsel.

Document the review, the information considered, and the corrective steps taken. A documented compliance process may help demonstrate responsible, good-faith conduct, but it does not automatically eliminate liability.

**PREPARED, NOT
PANICKED**

Verify. Preserve. Coordinate. Review.
Respond.

LEGAL & SOURCES

9. 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.

Primary References

1. U.S. Department of Labor, Wage and Hour Division, Fact Sheet #44: Visits to Employers.
dol.gov/agencies/whd/fact-sheets/44-flsa-visits-to-employers
2. U.S. Department of Labor, Wage and Hour Division, Fact Sheet #21: Recordkeeping Requirements under the FLSA.
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3. 29 U.S.C. Section 211: Collection of data; investigations, inspections, and records.
govinfo.gov/content/pkg/USCODE-2024-title29/html/USCODE-2024-title29-chap8-sec211.htm
4. 29 U.S.C. Section 255: Statute of limitations.
law.cornell.edu/uscode/text/29/255
5. U.S. Department of Labor, Civil Money Penalty Inflation Adjustments.
dol.gov/agencies/whd/resources/penalties
6. U.S. Department of Labor, Employee or Independent Contractor Classification Under the FLSA.
dol.gov/agencies/whd/flsa/misclassification/rulemaking

Publication Note

Prepared for the Christian Employers Alliance 2027 Curriculum. Legal standards and agency guidance may change. Review current federal and state requirements before publication or operational use.

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