



Employers' Wage & Hour Practices in the Crosshairs

*Proposed 2015 Budget Includes an Increase Of \$41
Million to the DOL's Wage & Hour Division*

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Based on the Obama Administration's recently announced proposed budget for 2015, employers in all industries should take note and make time to audit their classification of independent contractors, their exempt employees and their overtime pay practices to ensure compliance with all Department of Labor regulations. On March 4, 2014, U.S. Secretary of Labor Thomas Perez released the proposed 2015 budget seeking \$11.8 billion in discretionary funding for the Department of Labor, including \$269 million (an increase of \$41 million, or 19 percent) to the Department's Wage & Hour Division (WHD). This proposed budget increase is intended to allow WHD to hire 300 new investigators "to increase enforcement of the laws that ensure workers receive appropriate wages and overtime pay, as well as the right to take job-protected leave," as stated in the proposed budget.

The proposed budget also includes a requested \$14 million to combat misclassification of workers as independent contractors, "including \$10 million for grants to States to identify misclassification and recover unpaid taxes and \$4 million for personnel at WHD to investigate misclassification."

The WHD, which enforces the minimum wage, overtime, and child labor laws, would use the additional funds to focus on "industries and employers most likely to break the law," according to a White House statement. Industries that have typically been the target of WHD on these initiatives are hotels, restaurants, construction, janitorial services and energy/oil and gas.

Employers in the "usual suspect" industries employ a large number of independent contractors, and/or those employers who have concerns regarding the classification of their employees as exempt or non-exempt under the Fair Labor Standards Act should be aware of this increased scrutiny and be even more vigilant to ensure their current pay and classification practices are compliant with state and federal laws.

The Obama Administration has consistently increased funding for WHD since taking office in 2008. The Department of Labor used an enhanced budget from the Administration to hire 250 additional Wage and Hour investigators in 2009, an increase of 33 percent. The Administration requested



an additional \$17 million in funding for WHD for the 2011 fiscal year, primarily for its multi-agency “Misclassification Initiative,” and an additional \$11 million for the 2013 fiscal year.

Congress may not grant this full \$11.8 billion slotted for the Department of Labor. However, the request alone should demonstrate to employers that the enforcement of wage and hours laws, particularly the payment of minimum wage and overtime and the incorrect classification of employees as independent contractors, is a major point of attack for this Administration.

Other notable quotations from the proposed budget include the Administration’s goal of creating a State Paid Leave Fund to “provide additional funding to help more States launch paid leave programs like those in California, New Jersey, and Rhode Island that have helped more than a million workers care for a new child or cope with a family member’s illness.” Further, President Obama notes in his “Budget Message From the President” that “I have already acted by Executive Order to require federal contractors to pay their federally funded employees a fair wage of at least \$10.10 an hour” and that “Congress needs to go further and raise the minimum wage for all workers to that same amount.” To further this agenda, the President has issued a mandate to Congress to attempt to raise the federal minimum wage from the current \$7.25 per hour to \$10.10 per hour.

The Administration’s proposed 2015 budget would also provide an additional \$4 million in funds to the Occupational Safety and Health Administration (OSHA) to, as the proposed budget states, “bolster OSHA’s enforcement of the 21 whistleblower laws that protect workers and others who are retaliated against for reporting unsafe and unscrupulous practices.” The proposed budget also includes \$1.1 million to the Office of Federal Contract Compliance Programs’ budget to strengthen efforts to eliminate pay discrimination between women and men.

With these indicators in mind, employers would be wise to take a second look at their independent contractor classifications, their exemptions and their overtime pay practices in general. One never knows when WHD might come knocking.

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