



# Volunteer & Combination Officers Section of the International Association of Fire Chiefs

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## **Checklist for Department of Labor Wage and Hour Division Investigation**

*This checklist contains “best practices” in the event of an audit by the U.S. Department of Labor’s (“DOL”) Wage and Hour Division. It is a suggested course of action—not a substitute for individualized legal advice. We cannot guarantee that following the steps listed below will result in the avoidance of any fines or penalties issued by the DOL.*

### **Preparing for an Investigation**

1. To minimize exposure prior to a DOL investigation, the following steps should be taken:
  - a. Conduct routine self-audits to ensure compliance with laws enforced by DOL, including recordkeeping requirements. To the extent that volunteers receive compensation and/or benefits for their service, ensure that these payments comply with DOL regulations.
  - b. Create a system that allows employees to properly log their hours—including signing out for lunch—and sign-off on the accuracy of their time sheets.
  - c. Train employees (including managers) on proper timekeeping procedures.
  - d. Adopt a system that allows employees and volunteers to report potential wage issues and violations.
  - e. Establish a response team ready to handle a DOL investigation, should one arise.
    - i. Designate an individual who is qualified to meet with the DOL investigator and manage the audit. You may also wish to designate a back-up in case this individual is unavailable.
    - ii. Inform staff who they should notify if a DOL investigator arrives at the fire station.
    - iii. Prepare a list of other individuals who should be contacted in the event of an investigation.

### **The Investigation**

1. **Preliminary Matters**
  - a. Keep in mind that the investigator may not provide advance notice of his/her visit.



- i. If the investigator arrives without notice, ensure that the key contact for the investigation is notified right away. (Investigators will typically wait up to an hour for this individual to arrive.)
- b. When the investigator arrives, remain calm, let him or her in and appear welcoming. Throughout the investigation, be polite and treat the investigator respectfully.
- c. Verify the investigator's credentials.
- d. Give the investigator a quiet and private room to work in that is away from any high-traffic areas. Make sure the room is free from any loose documents and that the file cabinets are locked.
- e. Ensure that the investigator is accompanied throughout the fire station by the fire chief or his/her designee at all times.
- f. Depending on the circumstances, you may be able to ask the investigator to return on another day to begin the investigation.

## 2. **Opening Conference**

- a. Introduce the fire department's audit team—that is, those individuals who are responsible for assisting the investigator during the investigation.
- b. Determine the scope of the investigation, the requested records, and the anticipated duration.
  - i. Be respectful but persuasive in compromising with an investigator on the scope of the investigation.
  - ii. You can respectfully object when a request seems unrelated to the scope of the investigation.
  - iii. Consider discussing with counsel regarding whether it would be advisable to refuse consent to the investigation and demand a subpoena (for example, if the investigator will not agree to a reasonable scope of the investigation or additional time is needed). Typically, cooperation is the best practice, but there may be extenuating circumstances under which requesting a subpoena may be the better course of action.
- c. Consider notifying outside counsel so that they may provide guidance and/or be present for the investigation.



- d. Take good notes. You might need them to fight an unjust enforcement action or to contest a citation if the investigator improperly documented what occurred during the investigation.
- e. Ask the investigator what prompted the audit (note, however, that the investigator may not reveal this information).
- f. Find out whether the investigator intends to conduct interviews with employees and volunteers and if so, discuss parameters.
- g. Ask the investigator to schedule daily status meetings with the audit team to discuss the investigator's progress and any issues or potential violations that the investigator has discovered.

### 3. **Responding to the DOL's Request for Records**

- a. Ask the investigator to provide you with his/her document requests in writing.
- b. In response to the document requests, do not provide more than requested. For example, do not give the investigator copies of all personnel files; rather, make copies of the specific documents requested.
- c. Do not provide the investigator with original documents. Make copies for him/her, as well as a copy for yourself. Keep a record of everything produced.
- d. To the extent that there is any confidential information that needs to be protected, consider whether documents need to be redacted and/or marked as confidential.
- e. Do not generate any documents during an investigation. The investigator is only entitled to documents that are kept in the ordinary course of business.

### 4. **Interviews with Employees and Volunteers**

- a. Non-Management Employees/Volunteers
  - i. Determine a reasonable, mutually-agreed upon time for the investigator to conduct his/her interviews. You have a right to object to any interference with normal operations.
  - ii. If non-management employees or volunteers ask what to expect during their interviews, you may wish to provide the following guidance: (1)  
Participation in the interview is completely voluntary;  
(2) They will not be retaliated against for their participation in the interview;

- (3) They have a right to a representative in the interview;
  - (a) We would, however, advise against informing employees and volunteers that they should request that a manager attend his/her interview.
- (4) They have a right to request a copy of any statement that they sign;
- (5) They have a right to refuse to sign any statement prepared by the investigator; and
- (6) They should be truthful in their responses and should not speculate on any questions that they do not know the answer to.

iii. In addition to the formal employee interviews, the investigator is permitted to have brief informal conversations with employees and volunteers while walking through the workplace (which is why the investigator should not be permitted to walk around the fire station unaccompanied). You can object if these conversations become disruptive to normal operations.

b. **Management Employees**

- i. Prepare managers for the interview.
  - (1) Stress importance of telling the truth, answering only the question asked and providing succinct responses, seeking clarification for any ambiguous questions, and only answering questions that they know the answer to (no guessing).
  - (2) Prepare substantively by reviewing relevant documents and records and conducting a mock interview.
- ii. Designate a high-level management employee or counsel to attend all interviews with management employees. This individual should take detailed notes and intervene if necessary (e.g., the scope of the interview exceeds the scope of the audit, if investigator is asking harassing questions, etc.).
- iii. Object to the proposed timing of the interviews if they will be disruptive to normal operations.

5. **Closing Conference**

- a. The investigator will meet with you to discuss any violations and will suggest corrective actions. If you owe back wages because of minimum wage or overtime



violations, the investigator will request payment and may ask you to compute the amounts due.

- b. Be sure to take detailed notes regarding the alleged violations.
- c. Take immediate action to correct simple violations whenever possible.
- d. Avoid making any admissions about alleged violations.
- e. Determine whether you want to challenge the findings and request a hearing before the DOL.
- f. If necessary, request additional time to provide supplemental information that may change the investigator's mind on some of the alleged violations.
- g. Request a copy of the final investigation report.

#### 6. **Final Thoughts**

- a. Think before you speak and answer all of the investigator's questions honestly.
- b. Consider whether to disclose any known problems to the investigator.
- c. Things to Avoid:
  - i. Do not volunteer information unrelated to the visit.
  - ii. Do not ask a question about a regulation unrelated to the visit.
  - iii. Do not lie, deceive, cover up, or alter documentation.