



Human Resources

Committee

Las Vegas, NV

November 2010

U.S. Department of Labor

Wage and Hour Division
100 N. Barranca St. #850
626-966-0478 x239 (OFFICE)
626-966-5539 (FAX)



Date: _____ Review Period: 2 years from _____

Firm: _____ Notes: _____

Representative: _____

To conclude this Department's investigation of your firm, this office will need the following records available for inspection. Such records are necessary to determine your compliance with the Fair Labor Standards Act (FLSA) and other related Federal labor laws. You are advised that, where appropriate, records will be shared with the California Division of Labor Standards Enforcement. The records required at this time include:

- _____ Legal name of company/companies and Federal Tax ID number(s) for all locations.
- _____ Names of owners/officers of company, to include their home and cell phone numbers, home address, e-mail address and Social Security numbers for all locations.
- _____ Copy of a list of all branch locations- address, phone number(s) and all employee information as stated below. This would also include any locations outside the State of California.
- _____ Incorporated? (When and where and copies of the Articles of Incorporation).
- _____ Annual dollar volume or gross sales for the past three years- 2008, 2009 and 2010 YTD (provide the top copy of the applicable IRS tax form: F1120 corporation, F1065 partnership, or F1040 sole proprietor), for all locations.
- _____ Copy of a list of all hourly and salaried persons (current, former and contract labor) employed at each location of the establishment during the last two years. Include each person's name, address, telephone number, date of hire, and date of separation, title of position, rate(s) of pay and shift.
- _____ Copies of weekly time and weekly payroll records for all establishment employees (current, former and contract labor) during the last two years beginning. This includes individual time sheets or time cards; earnings such as bonuses, tips, commissions, cash payment, total payment for each week. Copies of all W-2 and 1099's for the period.
- _____ For current and former employees under 18 years of age (during employment), please provide a copy to include: name, date of birth, title of position, work hours, rate(s) of pay (including any work done by employees in two positions), date of hire, and date of separation, for all locations.
- _____ Copy of Employer Handbook.
- _____ Copy of cash and check register payments for the period of investigation.

The request for and inspection of records is authorized under Section 11 of the FLSA and Title 29 of the Code of Federal Regulations, Part 516 (29 CFR 516). Whenever such records are maintained at a facility distinct from the place of employment.

Please have the indicated records available for inspection at _____ a.m. on _____ at _____

Sincerely,
Calvin Carlyle

Investigator, WHD



What is this letter about?

To conclude this Department's investigation of your firm, this office will need the following records available for inspection. Such records are necessary to determine your compliance with the Fair Labor Standards Act (FLSA) and other related Federal labor laws. You are advised that, where appropriate, records will be shared with the California Division of Labor Standards Enforcement. The records required at this time include:

- **YOU ARE BEING AUDITED BY THE DOL!**
- Demand to Produce Records for Inspection
- “To Determine Your Compliance”
 - ◆ “With the FLSA...”
 - ◆ “And other related Federal labor laws”
- Records will be shared with State enforcement agencies!!!



What are my chances of receiving one of these letters?

- July 2010 – New Investigator Training
 - ◆ 500+ New DOL Investigators
 - ◆ Goals:
 - ◆ “Compliance”
 - ◆ Revenue Generation
 - ◆ Target “Traditionally Non-Compliant Industries and Positions”
 - ◆ Body Shop Estimators!!!!



Who are they after?

- Legal name of company/companies and Federal Tax ID number(s) for all locations.
- Names of owners/officers of company, to include their home and cell phone numbers, home address, e-mail address and Social Security numbers for all locations.
- Copy of a list of all branch locations- address, phone number(s) and all employee information as stated below. This would also include any locations outside the State of California.
- Incorporated? (When and where and copies of the Articles of Incorporation).
- Annual dollar volume or gross sales for the past three years- 2008, 2009 and 2010 YTD (provide the top copy of the applicable IRS tax form: F1120 corporation, F1065 partnership, or F1040 sole proprietor), for all locations.

- All locations nationwide
- All Owners / Officers – Potential personal liability?
- Three years gross sales & tax forms!

What are they after?



— Copy of a list of all hourly and salaried persons (**current, former and contract labor**) employed at each location of the establishment during the last two years. Include each person's name, address, telephone number, date of hire, and date of separation, title of position, rate(s) of pay and shift.

— Copies of weekly time and weekly payroll records for all establishment employees (**current, former and contract labor**) during the last two years beginning. This includes individual time sheets or time cards; earnings such as bonuses, tips, commissions, cash payment, total payment for each week. Copies of all W-2 and 1099's for the period.

— For current and former employees **under 18 years of age (during employment)**, please provide a copy to include: name, date of birth, title of position, work hours, rate(s) of pay (including any work done by employees in two positions), date of hire, and date of separation, for all locations.

- List of EVERY employee for last two years!
- Payroll and Timesheet Records for every employee for last two years!
- Special list of “under 18” employees.

What are they after?



— Copy of Employee Handbook.

— Copy of cash and check register payments for the period of investigation.

- Employee Handbook!
 - ◆ How many times have you been warned?!
 - ◆ Do YOU have an up to date Employee Handbook?

- Cash and Check Register for two years!

Can they really do this? How long do I have?



The request for and inspection of records is authorized under Section 11 of the FLSA and Title 29 of the Code of Federal Regulations, Part 516 (29 CFR 516). Whenever such records are maintained at a facility distinct from the place of employment.

- They knew you would ask that question...
 - ◆ Such audits are authorized by Fed. Law
 - ◆ Under orders to complete each audit within 2-3 weeks of the date of the letter!



What are your
options when
you get a letter
like this?

Options?



■ Ignore it.

- ◆ They will show up on the appointed date and time...
- ◆ They likely will shut you down while they confiscate all your records and haul them back to their office to audit when they get around to it...
- ◆ They will call the tailor to have you fit for a nice gov't issue orange jump suit...
- ◆ They will start planning the party to celebrate the promotion they will receive when they report that they cited you for \$\$\$\$ in fines & penalties and recovered unpaid wages for your employees...

Options?



■ Just give them what they are after...

- ◆ They will hate and love you at the same time
 - ◆ *Hate you* – because they will actually have to try and figure out what all the documents you gave them mean...see *Ignore it* option above...
 - ◆ *Love you* – because it is a virtual guarantee that they will find more than enough violations (including things they didn't even know they should be looking for) in what you have given them to ensure that promotion...see *Ignore it* option above...

Options?



- Get *Experienced Employment Counsel* Involved
 - ◆ They will find out what the DOL is *really* after?
 - ◆ Attempt to limit the scope of the records requested.
 - ◆ Head off the “Fishing Expedition”.
 - ◆ Assess extent of liability and exposure through a self-audit.
 - ◆ Develop game plan for getting into compliance.



Executive Exemption

- Must be paid **\$455 per week on a salary basis**
- **Primary duty** must be **management**
- Must **customarily and regularly direct 2 or more other workers**
- Must have the **authority to hire or fire** other employees, **or make suggestions on employee status that are given particular weight**



Administrative Exemption

- Must be paid **\$455 per week on a salary basis**
- **Primary duty** must be non-manual work directly related to the management or general business operations of the employer or the employer's customers
- Must exercise **discretion and independent judgment** with respect to matters of significance
- An employee who leads a team of other employees assigned to a major project generally meets this requirement



“Commission Paid” 7(i) Exemption

- ◆ Employed at a “retail” shop, and
- ◆ Receives the majority of his or her compensation from commissions rather than salary, and
- ◆ Receives at least one and one-half times the minimum wage for all hours worked in an overtime week.



If Not Exempt – Pay Overtime!

- Use correct OT Calculation formula!
 - ◆ Different formulae for:
 - ◆ Salary
 - ◆ Hourly
 - ◆ Commissioned/Flat Rate



Thank You!
Human Resources Committee

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