



AMERICAN **BUSINESS** LEAGUE

Presents:

Firefighting Regulations and Guidelines



Wage and Hour Agenda

The U.S. Department of Labor's Wage and Hour Division has a new enforcement initiative **targeting** the firefighting and reforestation industries.

Wage and Hour will pursue corrective action when violations are found, including the collection and payment of back wages, the assessment of civil money penalties, liquidated damages, debarment, liens, and possible litigation.



The Investigation Process

Wage and Hour Investigation Process

- Complaint versus Directed
- Review Contract and Regulations Prior to Visit
- Site Visit (Pictures, Interviews, Vehicle checks)
- Initial Conference (Company review, Records checks)
- Final Conference (BW's)(Attempt to sign away rights)
- Potential Legal Process (CMP's, LD's, etc)

SCA: interviews (Allowed at the site during working hours)

All investigations are controlled by the CFR or the FOH



Coverage

Who Is Covered By The Laws That Might Apply:

FLSA: Enterprise or Individual Coverage
(MW, OT, Child Labor, RK)

MSPA: FRESH-T (MSPA applies to predominantly manual forestry work..ie..forest fire-fighting)
(30 violations + housing & transportation)(Highest applicable rate must be paid)

SCA: Contracts of \$2500 or greater, Stipulations in contract
(PW, FB, Holiday & Vacation pay, RK)



Coverage

Who Is Covered By The Laws That Might Apply:

CWHSSA: Contracts of \$100,000 or greater (OT)

Field Sanitation Standards OSHA: 11 employee's +
(Drinking water, toilet facilities, handwashing)

H-2A: Temporary Labor
(Attestations agreed to)

H-2B: Temporary Labor
(Attestations agreed to)



Wage and Hour Agenda

The Top Violations Found Include:

- Employers paying cash wages "off the books"
- Not paying proper minimum wage (Paying daily rates)
- Misclassification
- Record Keeping (Not separating FB from PW, daily rates)
- Not paying proper fringe benefits
- Not paying proper OT (Paying daily rates)
- Illegal deductions (Deducting tools..ie boots)
- Failing to record all hours worked correctly
- Not notifying EE's of MW & FB due on day one



Hours Worked

Things Wage and Hour Are Looking Closer At:

- Training time prior to being hired can be considered
 - Waiting time
 - Travel time
 - Travel from point of hire to designated assembly area
 - Travel from designated assembly area to fire camp
 - Travel from one fire camp location to another
- (Travel is covered by the FLSA and the SCA if included in contract)



Deductions

Deductions that are primarily for the benefit of the **employer** are allowed under the FLSA to the extent that they do not reduce the hourly wage below the minimum wage required by the FLSA/SCA, and **do not reduce the time and one-half premium for all hours worked over 40 in an overtime workweek.**

If MSPA applies deductions can be made only if advised on disclosure form!!



Deductions

Section 3m of FLSA: Meals, Lodging, and Other Facilities

Under restricted circumstances, the employer **may deduct** the reasonable cost of meals, lodging, and other facilities furnished to the employee in connection with the employment, provided, among other things, that the employer does not profit.



Deductions

“Other facilities,” as used in this section, must be something like board or lodging.

Meals furnished at company restaurants to their employees;

Housing furnished for dwelling purposes;

General products furnished @ company stores & commissaries (including articles of food, clothing, & household effects);

Fuel (including coal, kerosene, firewood, and lumber slabs), electricity, water, and gas furnished for the noncommercial personal use of the employee



Deductions

Tools required to perform the employee's job (e.g., rain suits, chaps, leathers, other protective gear, chain-saws, and OSHA-required safety equipment) are primarily for the benefit of the employer and cannot take an employee's wages below MW.

BOOTS?



Deductions

Traditional Wildland Firefighter Boots

Because OSHA does not have specific standards for wildland firefighting, they rely on the industry to determine **employer responsibilities** pertaining to firefighter PPE and footwear.





Deductions

Industry standards **ALL** state that “it is incumbent upon each supervisor to insure the footwear being worn by their subordinates meet (sic) their specific agency standard.”

Firefighters hired are told that they shall be equipped with personal protective clothing that meets the performance characteristics of NFPA 1977. **This includes a fire resistant shirt and pants or coveralls, helmet, eye protection, heavy-duty leather gloves, 8" tall lace-up leather boots, and a fire shelter for each person.**



Deductions

Deductions, other than those required by law, are only permissible under MSPA **if properly disclosed to the worker in advance.**

In addition, deductions for housing are only permissible under MSPA **if the housing complies** with the applicable substantive safety and health standards.

Employers shall provide field sanitation facilities and water required under the OSHA Act **at no cost** to the employees.



Record Keeping

The FLSA and SCA require the employer to record daily and weekly hours worked, rates of pay, additions to or deductions from wages, and total wages paid.

Additionally, the SCA requires that the prevailing wage rate and the fringe benefits be separately stated!!!!

FLCs **must provide** each person to whom they furnish workers a copy of the payroll records covering the period for which they furnished the workers.



Record Keeping

You must segregate covered and non-covered work as well as employee's working in more than one classification.

If you do not the WHI should try to make every effort to try to determine the time spent in each area, however they can assess the highest classification rate, especially if it there was a previous investigation.



Child Labor

The FLSA **prohibits employment** of workers under the age of 18 in forestry or reforestation activities deemed “hazardous” by the Department of Labor which includes **fire fighting** and **forest fire prevention**



Housing

Housing subject to MSPA must comply with all applicable substantive Federal and state safety and health requirements prior to and throughout occupancy by covered workers.

The cost of providing housing may be creditable towards meeting the employer's minimum or prevailing wage payment obligation.



Sanitation

The OSH Act Field Sanitation Standards require employers to provide at **no cost to the workers**



Transportation

The MSPA requires any vehicle used to transport migrant or seasonal agricultural workers to comply with applicable Federal and state vehicle safety and operator requirements.

MSPA requires specific insurance levels for each vehicle used to transport workers.

FLCs must obtain specific authorization from the U.S.D.O.L. for each vehicle they use or cause to be used to transport workers.



Posters

The FLSA (Form WH-1088), SCA poster (Form WH-1313), the Wage Determination, the MSPA poster (Form WH-1376), must be posted where they are viewable by the workers.



Local & State Laws

Individual state or local laws may vary from Federal law. When Federal, state, and local laws apply to the same circumstances, employers must comply with the law that provides the greatest benefit to the worker. Check with the appropriate state agency as to what each State requires.



Wage and Hour Rights

Wage and Hour has the right to legally enter the worksite or premise, do a records check, **interview workers**, and to conduct housing and vehicle inspections.

Wage and hour officials **must request permission from someone with authority prior to** entering the property or interviewing any of the workers



Employer Rights

Employers may be represented by their attorneys or accountants during the investigative process

If records are not located or maintained on site you may request an extension and the DOL **could** grant anywhere from 72 hours or longer to make them available for review

Simple refusal to produce records for the investigator or refusal to allow them on property does not constitute interfering with or inhibiting with a federal investigation

MSPA Only



Employee Rights

- Have the right to say yes or not to be interviewed
- Have the right to request a copy of the signed interview **prior** to being interviewed
- Have the right to seek and have their own counsel represent them rather than the Wage and Hour

It is a violation of the FLSA to fire, or in any other manner, discriminate against an employee for filing a complaint or for participating in a legal proceeding under this law



Protecting Your Business

Actions you can take prior to and when Wage and Hour visits

- Prepare your employees on visitor policies
- Emphasize to workers.....Company policies
- Immediately count workers on site (Avoid ghost workers)
- Ensure that work **continues** in compliance!!!!
- It's OK to record the audit....Must advise the investigator
- Make sure workers eat away from work area
- Make sure driver selected drives!!!!!!
- Make sure sanitation facilities are on site



Protecting Your Business

Actions to Take During the Final Conference

When the investigator has advised the you of his/her findings, you may present additional facts for consideration if any violations were disclosed.

Don't sign ANYTHING until you have **agreed** to the findings

(The WHI will tell you to sign if you understand what they have explained to you!!!)



Statute of Limitations

USDOL ELAWS:

A **2-year** statute of limitations applies to the recovery of back pay, except in the case of a **willful** violation, in which case a 3-year statute applies.

The statute will stop only when the case is filed in a federal court or you sign a waiver of the statute of limitations.

MSPA and SCA do not have a statute of limitations!!



Statute of Limitations

A willful violation is found when an employer either knew or showed reckless disregard for whether his pay policy violated the FLSA

A willful violation is deliberate, voluntary or intentional and may be subject to a criminal penalty, including fines up to \$10,000 and imprisonment for up to six months for a second violation



Liquidated Damages

The FLSA provides that a **successful employee** is usually entitled to double the amount of unpaid BW's, called liquidated damages, which essentially, are in lieu of interest.



Civil Money Penalties

The FLSA authorizes the WH to assess employers CMPs of up to \$1,100 for each violation for repeated or willful violations of the MW and OT requirements of the Act.

Violations of the MSPA may result in civil money penalties, back wage assessments, and revocations of certificates of registration.



Civil Money Penalties

The SCA provides authority to withhold contract funds to reimburse underpaid employees, terminate the contract, hold the contractor liable for associated costs to the government, and debar from future government contracts for a period of three years any persons or firms who have violated the SCA.



Debarment

Debarment excludes persons or entities from government business for up to 3 years for prescribed violations.

In 2011, The OIG conducted a review of the debarment process and recommended that ETA and WHD take steps to assure that more debarments are considered, and decisions documented, for anyone convicted of FLC violations.



Good Faith Defense

An employer can avoid paying CMP's and LD's if it shows that it acted in good faith even though the violation occurred.

"Good faith" has a special meaning under the FLSA, and requires that employers have **made specific investigation** of the application of the FLSA to particular types of EE's and have put forth an effort to train employee's and staff, correct problems, take actions to remain in compliance.



Things To Do Prior To WH Visit

- Have a 3rd party perform WH audit (I recommend ABL)
 - Verify regulations that apply to your company
 - Verify coverage and exemptions that apply
 - Review record keeping procedures meet WH criteria
 - Verify disclosure form provided to workers is complete
 - Know how to compute holiday pay, vacation pay, & FB
 - Know how to properly compute OT
 - Verify correct classifications are being used
 - Verify FLC paperwork is correctly in place
 - Inspect any vehicles used subject to MSPA criteria

H-2A and H-2B review is a little more specialized and take more time to complete



Things To Do Prior To WH Visit

- Visit & prepare worksites so that they are in compliance
- Verify state standards to ensure compliance
- Require employees to “clock in” and “clock out” at the beginning and end of the workday and before and after unpaid lunch periods or pay for all hours of the duty day
- Prevent employees from taking breaks in work areas.
- Create a plan of action and contact legal counsel in the event of a DOL wage and hour investigation.



Good Faith Efforts

It is better to have **ABL** on your side to conduct an audit & discuss and correct the violations rather than have W&H conduct one that reveals those same violations and then request payment of back wages with the threat of liquidated damages, civil money penalties, interest, and debarment.
(Minimizes your exposure if litigation occurs)



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Your best return on investment you can have is allowing **ABL** the chance to work service your company.

- Specific company audit and employee training
- Litigation support
- WH based “Field Site” supervisor/foreman training (8 hrs)
- WH based “Complete Audit” Management training (14 hrs)

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