

DOL To Refrain From Seeking Liquidated Damages in Most Pre-Litigation Settlements

Article By:

Allan S Bloom

Samantha Shear

Effective July 1, 2020, the U.S. Department of Labor (DOL) will pull back on seeking liquidated damages in pre-litigation settlements of wage claims and investigations. The change in policy, announced in [Field Assistance Bulletin 2020-2](#), is significant, as liquidated damages can equal 100% of the back pay deemed to be owing, potentially resulting in “double damages” for wage violations.

The policy change comes on the heels of an [executive order](#) President Trump signed in May 2020, directing federal agencies to use deregulatory actions to spur economic activity in light of COVID-19 shutdowns. In line with that order, the DOL’s Wage and Hour Division (WHD) will stop seeking liquidated damages in most pre-litigation disputes, finding that resolutions involving liquidated damages take 28% longer to conclude than those that seek only back wages. WHD may still assess and seek liquidated damages in cases involving bad faith and willfulness on the part of the employer, but seeking such a remedy will now be the exception, not the rule.

Per the new guidance, WHD will not assess pre-litigation liquidated damages if any of the following circumstances exist:

- there is no evidence of bad faith or willfulness;
- the employer’s explanation for the violation shows that it was the result of a bona fide dispute of unsettled law under the [Fair Labor Standards Act](#) (FLSA);
- the employer has no previous history of violations;
- the matter involves individual coverage only;
- the matter involves state and local government agencies or other non-profits;
- the matter involves “complex” FLSA § 13(a)(1) or § 13(b)(1) exemptions.

FLSA § 13(a)(1) exempts from both minimum and overtime pay protections bona fide executive, professional, and administrative employees, as well as outside sales employees. The § 13(a)(1) exemptions, often referred to as the “white collar” exemptions, have been the subject of considerable litigation since 2004, when the federal regulations interpreting those exemptions were [revised significantly](#). FLSA § 13(b)(1) provides an overtime exemption for certain employees who are subject to Department of Transportation regulations.

The guidance requires that requests for pre-litigation liquidated damages be submitted to both the WHD Administrator and the Solicitor of Labor for approval.

Liquidated damages are costly, and as the DOL acknowledges, can often be a barrier to a pre-litigation solution to a wage dispute. The DOL’s change in enforcement position should be a welcome development for employers facing federal wage investigations.

© 2025 Proskauer Rose LLP.

National Law Review, Volume X, Number 179

Source URL: <https://natlawreview.com/article/dol-to-refrain-seeking-liquidated-damages-most-pre-litigation-settlements>