

Government Audits on the Rise



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Is your business prepared?



In 2010, a compliance audit by a government agency seemed improbable. But fast-forward to 2011, and the improbable has become commonplace in the construction industry. Now, the Department of Homeland Security (DHS), the Department of Labor (DOL) and the Internal Revenue Service (IRS) are reportedly working together to find violations.

Through the end of 2011, these agencies will be executing an increased number of audits primarily within industries that have historically higher noncompliance rates. And, unfortunately, this includes construction companies.

For instance, if DHS discovers you have noncompliant I-9 records, they assume you will also have mistakes in your workers' compensation coverage and pay practices (i.e., you owe overtime because you thought your employee was exempt or you did not withhold employment taxes because you thought the worker could be classified as an independent contractor). State agencies have also increased their efforts.

Factors That Prompt Audits

To make matters worse, hungry lawyers and special-interest groups are urging your competitors to report violations to hotlines such as the DHS Office of Inspector General hotline. The mere suspicion of fraud, waste, abuse or mismanagement can be enough to trigger an audit.

Other factors that can prompt an audit include unemployment insurance claims by misclassified workers or a single dispute about unpaid overtime. Even if an individual is not justified in his or her claim, simply having a claim can make your business a target for an audit.

Agency Audit Initiatives

In 2010, the IRS began an employment tax initiative to audit 6,000 randomly-selected businesses. Targeted areas include under-reporting executive compensation, fringe benefits, reimbursed expenses

and employee misclassifications resulting in unpaid employment taxes. IRS officials have said these audits will be more invasive than previous employment tax initiatives.

By the end of 2011, the number of inspections will have nearly tripled compared to 2009. ICE provides a Notice of Inspection letter, which typically gives about three days advanced notice. And a DOL wage and hour audit letter usually gives one- to two-weeks warning, which is an extremely short window. Your attorney may be able to obtain a two- or three-week extension.

Federal agencies may relay any adverse audit findings to related state agencies, triggering additional ramifications. The business community cannot afford to be complacent. Business owners must be mindful of inadvertent violations that could be lurking in their file cabinets or among their employees.

Best Practices

If you receive notice of an upcoming inspection or audit, immediately contact your legal counsel (preferably an employment attorney) before responding to ICE or the DOL, and designate (under your counsel's advice) one spokesperson to represent your company.

Do not wait until the agencies find you. Many legal firms across the nation recommend frequent proactive HR audits to ensure compliance.

Follow these proactive auditing tips:

- Make sure I-9 forms are correct and complete. Look for mistakes, omissions, missing documents, expired documents and missing signatures. Update verifications, and correct forms as necessary. (Obtain the USCIS Handbook for Employers at www.uscis.gov.) If you make changes, attach a note to the document indicating it was revised due to audit findings. If you do not have I-9s for active employees, prepare them now, and do not back-date. Verify that you meet proper electronic or paper storage requirements for I-9 forms, and retain them for the required period.
- If an employee's verified documents are in question, consult an expert to decide if the employee should be terminated.
- If you have independent contractors on your payroll, make sure they meet this qualification, and reclassify them as necessary. Refer to the IRS website for classification guidelines.
- Most of your employees should be eligible for overtime. But if you think any of your employees should be exempt, visit the DOL's website to be sure.
- Once you confirm all of your overtime-exempt positions, create a written job description detailing duties and work hours. Review this with a seasoned HR professional to ensure it provides robust documentation that will illustrate the job's exempt nature.
- Review any written job descriptions against actual duties performed, and make any needed updates.
- Be sure you comply with your state's minimum wage requirements.

Reach out for help immediately if you receive notice of an impending audit or inspection. When you audit your company proactively, first invest in an HR consultant or employment attorney to ensure you receive the right direction. If you proactively correct any discrepancies found, you will incur fewer ramifications.

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