

# PUBLICATION

---

## Department of Labor Readies to Target Hospitality Industry Beginning in October

August 19, 2010

It is no secret that the federal government has undergone a massive expansion and that the Obama Administration increased funding substantially for agencies such as the Equal Employment Opportunity Commission (EEOC) and the Department of Labor (DOL). The DOL's Wage and Hour Division's funding was increased by approximately 30 percent, and it was directed to "reinvigorate" its enforcement activities. As a result, the DOL has added hundreds of investigators and is gearing up for a new round of compliance audits and enforcement actions.

The DOL has now targeted the hospitality industry and suggested that it will target hotels, motels and resorts throughout the United States for compliance audits. The DOL's justification: it considers the hospitality industry a "high risk industry" for violations of the Fair Labor Standards Act (FLSA). The FLSA regulates overtime pay, minimum wage and classification of employees, among other things. The DOL will also review immigration compliance, including reviewing workers who have H-2B visas. Even though the DOL justifies its actions by asserting that the hospitality industry is a "high risk industry," it has not pointed to any statistical data or evidence to support its assertion. The DOL's actions caught many in the industry off guard, and the American Hotel & Lodging Association responded by urging its members to contact their Congressional Representatives so that the legislators will stop the DOL's plans, which are set to begin on October 1, 2010.

What should employers in the lodging industry do to prepare? First, employers should conduct self-audits to review their employment policies with respect to classification of employees, payment of overtime and minimum wage, hiring practices, immigration documentation and record keeping procedures to verify or determine if they are in compliance. By conducting a self-audit, the employers can assess potential issues and take steps in advance to correct any violations. Employers might also consider having the audit conducted by their employment counsel so that it is attorney work product and privileged.

If the DOL comes knocking, what can employers expect? The DOL will likely review all personnel time and payroll records to determine whether the employer has complied with the FLSA and immigration laws. Typically, the DOL will review records over the past two to three years. Investigators will also likely review immigration records, especially for any workers with special immigration status.

What happens if the DOL asserts that an employer has violated the law? The DOL will require the employer to take action to correct the violations, which can include payments of back wages to employees. These payments may go back two or three years. The DOL has other tools at its disposal as well. It may seek an injunction to prevent the employer from committing future violations. This can be an especially dangerous tactic because, if the employer commits future violations, it could be found in contempt of the court's order and be subjected to additional penalties and/or sanctions. The DOL can also impose fines of up to \$1,000 per employee for willful violations. In rare cases, it can seek criminal prosecution. It may also refer any violation of immigration laws to the Department of Homeland Security.

Employers also should review [Fact Sheet #45](#) which can be found at <http://www.dol.gov/whd/regs/compliance/whdfs45.htm> for more information and guidance.

The most important point is for those in the hospitality industry to be prepared, because it may be just a matter of time before the DOL comes calling. For guidance, reach out to any of our nearly 70 Labor & Employment attorneys, located in *Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee*. They routinely partner with our *Hospitality* attorneys and our *Government Investigation* attorneys when needed to give you the assistance you need.

This kind of partnering across practice areas is what Baker Donelson is known for. Our labor and employment attorneys are not only dedicated to the practice of labor and employment issues, but can also reach into an integrated and experienced team of professionals to assist you in every other aspect of your legal business needs. We set ourselves apart by valuing your entire company. And when it comes to your company's most valuable asset – your employees – we're committed to counseling with and advocating for you every step of the way.