

GAO

Report to the Chairman, Subcommittee on
Labor Standards, Committee on Education
and Labor, House of Representatives

July 1988

THE FAIR LABOR
STANDARDS ACT

Back Wage Case
Management



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Human Resources Division

B-201792

July 28, 1988

The Honorable Austin J. Murphy
Chairman, Subcommittee on
Labor Standards
Committee on Education and Labor
House of Representatives

Dear Mr. Chairman:

This report presents the results of our review of the Department of Labor's back wage collection and disbursement operations related to litigated Fair Labor Standards Act (FLSA) cases. FLSA prescribes minimum wage and overtime compensation for employees of state and local governments and of businesses engaged in interstate and foreign commerce. The Wage and Hour Division (WHD), in the Department's Employment Standards Administration (ESA), is responsible for FLSA enforcement, which is carried out by compliance officers (COs) throughout the country.

In discussions with your office, we agreed to review WHD's management of both back wage installment collections and disbursements in litigated FLSA cases. FLSA cases may be litigated if a CO determines that an employer has violated FLSA but refuses to (1) pay employees back wages illegally withheld or (2) agree to future compliance with the act. In litigated cases, the court order or settlement may require the employer to pay back wages to WHD either in a lump-sum or in installments. WHD then locates the affected employees and disburses the back wages they are due. Back wages owed to employees who cannot be located or who refuse to accept payment are transferred to the miscellaneous receipts account of the U.S. Treasury.

Results in Brief

According to ESA's back wage accountant, during fiscal year 1987, ESA disbursed about \$15.7 million in back wages from litigated cases to employees and deposited about \$1.2 million of undistributed back wages in the U.S. Treasury. As of January 31, 1988, ESA held about \$29.4 million in its back wage disbursement account, awaiting disbursement to employees or transfer to the Treasury.

In January 1988, we reviewed 148 randomly selected back wage cases in two regional offices—San Francisco and Philadelphia—to determine

whether WHD was complying with provisions of court orders or negotiated settlements related to the collection and disbursement of back wages.

About 85 percent of the 148 cases we reviewed did not comply with back wage management requirements, and in some cases these deficiencies delayed or prevented employees from receiving the back wages they were due. We found deficiencies in four areas:

- back wages were not collected from employers in a timely manner,
- efforts to locate employees due back wages were not adequate,
- employees were not paid promptly after back wages were collected, and
- cases were not closed promptly and wages for unlocated employees were not transferred to the Treasury as required.

In response to our review, WHD officials at headquarters and in the two regional offices we visited have acknowledged the need to improve back wage collection and disbursement operations and have initiated steps to make needed changes. In addition, WHD's national office plans to implement, by August 1988, an automated back wage collection and disbursement system designed to improve regional office back wage case management. As a result of the actions taken by WHD, we are not making recommendations.

Background

WHD's enforcement activities related to FLSA and the other acts for which it is responsible are carried out by about 930 COS assigned to 64 area offices in 10 ESA regions. About 77 percent of the WHD enforcement activities under FLSA are conducted in response to complaints by employees and others that an employer has violated the act's minimum wage or overtime provisions. The other 23 percent are initiated by WHD as a means of maintaining a balanced enforcement program in such areas as child labor, migrant labor, and workers with disabilities.

COS investigate complaints and allegations of FLSA violations to determine whether the employer is subject to the act and has violated its minimum wage or overtime provisions. Where an FLSA violation is found, WHD solicits voluntary compliance from the employer. This involves obtaining an agreement to comply with the act in the future and to pay any back wages due employees. If this is unsuccessful, the area office can refer the case to the Office of the Regional Solicitor, which can seek compliance with the law through litigation.

In cases where litigation is successful, the judgment will generally require the employer to pay a specified amount of back wages to ESA's regional office, which is responsible for making payments to each of the affected employees. Each ESA regional office maintains a back wage payment operation, which receives and accounts for back wage collections and processes payments to employees. If employees cannot be located, after a specified period of time, the back wages are deposited into the U.S. Treasury as miscellaneous receipts.

Objectives, Scope, and Methodology

In January 1988, we reviewed 148 randomly selected back wage collection and disbursement cases of a total of 640 cases from two of WHD's 10 regional offices—San Francisco (81 cases) and Philadelphia (67 cases). In January 1988, these two offices had 340 and 300 current back wage cases, respectively, that had been litigated by WHD and the Office of the Regional Solicitor and that the court judgment or settlement allowed the employer to pay in installments to WHD.

These two regions were selected for review because our preliminary work indicated that their cases were not being kept current. In addition, they were among the regions making the fewest back wage transfers into the U.S. Treasury during fiscal years 1986 and 1987. Because regions are required to make quarterly back wage transfers to the Treasury, we believed that failure to make transfers could indicate problems with the back wage program.¹ As the scope of our review was limited to two judgmentally selected regions, the results cannot be projected to other regions.

We reviewed the back wage cases to determine if the two regional offices were taking appropriate steps to collect back wages from employers, locate all employees due the back wages, pay those employees promptly, and close the cases in a timely fashion. We also reviewed regional efforts to transfer balances owed to employees who could not be located to miscellaneous receipts of the U.S. Treasury.

Our review was performed from September 1987 to March 1988 in accordance with generally accepted government auditing standards.

¹Information on fiscal year 1986 and 1987 regional office back wage transfers is included in our earlier fact sheet, Fair Labor Standards Act: Selected Administrative Issues (GAO/HRD-88-48FS, Feb. 25, 1988).

Collection of Past Due Employers' Payments

WHD procedures do not state when follow-up action should be taken. Headquarters and regional officials told us that when payments are not made, action should be taken within 4 to 6 weeks after a payment is due. We allowed a 2-month period before questioning the status of employers' payments.

In 91 of the 148 back wage installment cases in our sample at the two regional offices, employers were past due in their payments by 2 months or more in January 1988. In about 30 percent (13) of the past due cases in Philadelphia and about 46 percent (22) of such cases in San Francisco, WHD waited an average of 15 months before contacting the employer about the past due account or referring the case to the regional solicitor for collection. These 91 cases represented about \$600,000 in back wages.

One example of this type of problem involved a July 1985 judgment ordering an employer to pay \$8,635.22 in past due overtime compensation. After making two installments, the employer discontinued payments. WHD waited about 22 months after the employer missed the third payment before sending a demand letter (in November 1987) for the \$5,181.10 balance. The demand letter was returned by the Postal Service, and at the time of our visit, WHD was attempting to obtain a current address for the employer. The regional office back wage clerk could not explain why almost 2 years passed before any follow-up action was taken. Regional WHD officials attributed the problem to the inexperience of the back wage clerks.

Location of Employees

WHD procedures require regional office personnel to make every reasonable effort to locate current or former employees who are owed \$250 or more in back wages and for whom WHD does not have a current address. WHD procedures state that, at the very least, telephone and city directories should be used to locate such employees and, if appropriate, state motor vehicle or utility company records should be checked.

According to San Francisco and Philadelphia regional office officials, the back wage clerks generally did not attempt to find employees who failed to respond to WHD's initial correspondence, or for whom correspondence was returned by the Postal Service as undeliverable. In 61 of the cases we reviewed, 375 unlocated employees who were due \$250 or more in back wages had not been found. These employees were owed a total of about \$282,000 in back wages. Regional back wage supervisors told us that, because of limited staff resources, they directed back wage

clerks not to spend time trying to find unlocated employees. While the average amount owed to these employees was about \$752, at least 78 were owed over \$1,000, and 10 were owed over \$3,000.

Payment of Employees

ESA procedures state that when back wages are received on an installment basis, the regional office must determine an appropriate schedule for paying employees, and that the amount and frequency of payments by the employer should be considered when establishing the schedule. Employees can be paid only after back wages are received from the employer. ESA's administrative manual states that the accumulation of back wages must be reasonable and not cause undue delay in paying the employees. The ESA back wage fiscal procedures state that an employee's back wages may be paid if at least 50 percent of the total judgment amount has been received from the employer and the employee's address has been confirmed.

The San Francisco region was not paying employees promptly after receiving back wages from employers. This region established a practice that payments to employees will be made only after all of the back wages due on a case have been collected from the employer. In 33 of the 81 San Francisco cases in our sample (41 percent), the region had collected 50 percent or more of the back wages without paying any employees.

For example, during the period from May 1986 to October 1987, ESA in San Francisco collected \$20,000 of a \$25,000 judgment. Using ESA's criteria, the region could have begun disbursing back wages in February 1987, about 11 months before we visited the region. Yet ESA had made no plans to disburse back wages to employees until all of the wages were collected.

The Philadelphia region had a practice of initiating payments to employees after 25 percent of the back wages were collected. We found that the region was generally following this practice.

Transfer of Back Wages Owed to Unlocated Employees

ESA procedures require that back wages collected under FLSA be held in a special account in the U.S. Treasury from which payments are to be made to employees due that money. Unless otherwise directed in the court judgment or settlement, the funds due unlocated employees are to be transferred to the miscellaneous receipts account of the Treasury 3 years after deposit of the employer's last installment payment.

Both Philadelphia and San Francisco were slow in transferring cash balances. In 15 of the 81 cases (19 percent) we reviewed in San Francisco and 42 of the 67 cases (63 percent) we reviewed in Philadelphia, more than 3 years had passed since the employer's last installment was paid. The 57 cases in the two regions averaged about 7 years since the employer's last installment, or about 4 years since the cash balances should have been transferred to the Treasury. These cases had cash balances totaling about \$184,000.

Actions by Wage and Hour to Correct Back Wage Problems

In January 1988, after completion of our back wage case reviews, we briefed ESA and WHD headquarters officials on the preliminary results of our audit work. As a result, officials told us that in February 1988, WHD had expanded a scheduled accountability review of the San Francisco regional office to include compliance with back wage handling procedures. This review identified deficiencies in back wage case management similar to those we had found.

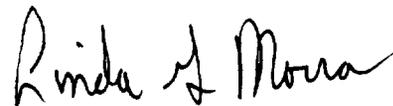
Since our review, officials in both the Philadelphia and San Francisco regional offices have taken actions to review, and make current, the status of their back wage cases. For example, in March and June 1988 the San Francisco region closed about 200 FLSA cases and transferred \$546,000 in wages owed to unlocated employees to the miscellaneous receipts of the Treasury.

In the Philadelphia regional office, the back wage supervisor initiated a complete review of every case in the file and identified 303 FLSA cases (including both installment and lump sum payment cases) totaling \$613,000 in which (1) employers were past due in paying back wages or (2) back wage balances needed to be transferred to the Treasury. Actions are being taken to correct these problems.

WHD plans to implement an automated back wage collection and disbursement system by August 1988. The microcomputer-based system is designed to allow regional offices to track the receipt of back wages from employers, determine when installment payments should be made, calculate amounts due each employee, generate correspondence to employers and employees, and generate various administrative and management reports. Headquarters and Philadelphia regional officials told us that the new automated system will perform some of these functions and give managers information that will allow them to assure that necessary tasks are being performed. Consequently, they believe that the new system will correct many of the problems we identified.

As requested by your office, we did not obtain agency comments on a draft of this report. We did, however, discuss its contents with Labor officials, and their comments have been included where appropriate. Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its issue date. At that time, we will send copies to the Secretary of Labor and other interested parties and will make copies available to others as requested.

Sincerely yours,



Linda G. Morra
Associate Director

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