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OFFICE OF THE STATE COMPTROLLER

February 16, 2024

Roberta Reardon
Commissioner
Department of Labor
W.A. Harriman Campus, Building 12
Albany, NY 12240

Re: Selected Wage Investigation
Procedures
Report 2023-F-19

Dear Commissioner Reardon:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Department of Labor (DOL) to implement the recommendations contained in our audit report, *Selected Wage Investigation Procedures* (Report [2019-S-46](#)).

Background, Scope, and Objective

DOL's Division of Labor Standards (Division) seeks to vigorously enforce New York Labor Laws (Laws), such as those that cover minimum wage and overtime, illegal deductions, day-of-rest and meal period requirements, and child labor. Division investigators from 12 District Offices examine alleged complaints and any other labor violations that arise during the course of an investigation.

DOL can require employers found to be in violation of the Laws to pay restitution of wages and can also assess penalties (which are retained by DOL), liquidated damages, which are additional amounts assessed in an effort to compensate workers for the delay in receiving wages owed and which may serve as a deterrent to future violations, and interest.

When a wage investigation results in recovered wages (and – where applicable – liquidated damages and/or interest) owed to a claimant, and the employer agrees to comply with the determination, the claimants are paid either directly by the employer (Direct Pay) or by DOL after it receives the funds representing recovered wages from the employer.

Investigators' efforts are critical in promoting compliance and in recovering amounts for aggrieved workers. DOL reported collecting \$21 million, \$18 million, and \$21 million in penalties, wages, and interest as a result of its wage investigations during calendar years 2022, 2021, and 2020, respectively.

DOL's 2014 Labor Standards' Field Investigator's Manual and corresponding Labor Standards policy update memoranda provide instructions and guidance to investigators regarding wage-related investigations. The Worker Protection Management System (WPM) is

used by Division investigative staff to document and track wage investigation details, such as employer and employee information, and it includes a chronological record of activities during the life cycle of a case.

Our initial audit, issued on March 3, 2021, sought to determine if DOL was following its wage investigation procedures, including conducting outreach to claimants about case status and recovered wages. It covered the period from April 2016 through November 2019. The audit found that, for 69 of the 150 cases in our sample (46%), investigators did not make first contact with the employer within 60 days of the case being created in DOL's WPM system (i.e., docketing), as recommended in DOL procedures. The 69 cases included 13 cases for which more than 360 days passed before first contact occurred. We also identified 24 cases with no documented investigative activities in WPM for significant periods of time. Notably, we were also unable to determine whether claimants associated with nine of 56 cases that were indicated as closed and paid in WPM had received their recovered wages. Finally, we found that, for 23 of the 150 investigations we reviewed, there was no final report in WPM, although it was required.

The objective of our follow-up was to assess the extent of implementation, as of September 2023, of the four recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

DOL has made progress in addressing the issues we identified in the initial audit report and has implemented all four recommendations included in the report.

Follow-Up Observations

Recommendation 1

Pursue appropriate actions to ensure investigators make initial contact with employers within 60 days of case docketing and fully document their actions in WPM. If appropriate, establish additional benchmarks that align with the expected complexity and duration of the initial investigatory phase.

Status – Implemented

Agency Action – As a result of our audit, DOL instituted a Newly Docketed Cases Report in January 2021 to help Division supervisors ensure new cases are started according to timeliness goals; identify when there is a need to reassign a case; and review newly docketed cases for accuracy, completeness, and uploaded documents. These reports are sent to each district at the middle and end of each month and list all cases docketed in the 30-day period along with their statuses. In addition, DOL established paperless document storage procedures in June 2023 to reduce the use of paper documentation and streamline electronic document storage. Accordingly, Division personnel are required to save all completed electronic documents in WPM, while active in-process case documentation can be stored on a shared drive until the cases have been completed.

In February 2021, DOL revised its goal for first employer contact from 60 days to 90 days. According to officials, the 60-day goal was no longer realistic due to pandemic assignments, backlogs from reassignments, new enforcement responsibilities, and the loss of investigative staff.

Recommendation 2

Make efforts to identify the reasons for, and reduce, gaps in the investigation process.

Status – Implemented

Agency Action – DOL has taken steps to identify and address gaps in the investigation process. Following our audit, DOL established a Case Inventory Review process in August 2021. The goal of this process is to reduce time gaps in field investigations, establish minimum standards for the frequency of Case Inventory Reviews (for active, not yet started, and pending cases), and offer guidance on organizing case inventory. Specific guidance covers reassigning cases to another investigator, assisting or directing an investigator, and addressing complicated or unusual issues. The objective of Case Inventory Reviews is to determine next steps for each case, set reasonable follow-up dates for those steps, and document all decisions in WPM.

Effective December 2022, the Monthly Case Management Report (formerly the Director’s Report) has been updated to include information related to Case Inventory Review meetings. This report, which allows each District Office to see its 10 oldest cases, is another tool used in Case Inventory Review. Division supervisors are required to complete this report and indicate dates of the Case Inventory Review meetings held with their investigation staff.

Beginning with the 2021 calendar year, DOL designated one statewide training and one statewide non-field day each month for all Division staff. The non-field days are used for additional training, Case Inventory Reviews, staff meetings, and administrative tasks. According to DOL, they are designated as in-office, non-field days for field investigators and as no-telecommuting office days for all other staff.

Recommendation 3

Identify and implement methods to better document and verify payments to claimants, especially in Direct Pay cases.

Status – Implemented

Agency Action – In April 2021, DOL issued a policy memo to all Division staff outlining the criteria for allowing Direct Pay, including the evidence that must be obtained from employers and claimants and how to document supporting evidence for Direct Pay in WPM. Evidence obtained from employers may consist of payroll registers, copies of canceled checks issued to claimants, or written notification from an employer specifying the amount and date paid, confirmed by the claimant. The policy memo stated that Direct Pay evidence must also be obtained from claimants and that, for a case with a large number of claimants, an adequate sampling of the claimant pool would be acceptable. Evidence obtained from claimants may consist of written confirmation from a claimant representative specifying the amount and date of payment, a phone conversation with a claimant confirming the amount and date of payment and then documented in the WPM Contact Log, or copies of payments received from the employer and provided by a claimant.

DOL also implemented an automated report on Direct Pay cases that generates directly from data in WPM once a case status is changed to “closed-paid.” This report is another

tool for Case Inventory Review, and, according to DOL officials, it allows management to ensure compliance with procedures for obtaining payment evidence and documentation prior to case status changes in WPM.

Recommendation 4

Take steps to identify differences among District Office personnel's understanding of required wage investigation actions and related documentation – including final reports – and communicate clarifying information as needed.

Status – Implemented

Agency Action – Since the initial audit, DOL has made changes to improve the consistency of District Office personnel's understanding of required wage investigation actions and documentation requirements. DOL extended its New Investigator Training Assessment in June 2023 from 3 months to 6 months, after meeting with District Office supervisors to obtain their input regarding differences among personnel's understanding of requirements. DOL also developed a new checklist to guide the training assessment for new investigators during their first 6 months of service to ensure consistent development and performance improvement.

DOL has also provided training courses in wage theft and criminal law, Fair Labor Standards Act exemptions, illegal deduction regulations, and child labor, among others topics, to investigative staff to help ensure consistency in District Office personnel's understanding of requirements. During the 2021 calendar year, DOL instituted a new policy that designated one statewide training day per month for all Division staff.

DOL officials stated that, in late 2022 and early 2023, Division officials met to determine the essential and relevant information that field investigators should include in interim and final narrative reports. As a result, DOL created a template for investigators to use when compiling these reports. The template was finalized in June 2023 and shared with all Division staff.

The Division is also transitioning to a paperless office. Previously, in addition to paper documentation, electronic documentation for active cases was stored in several locations. New guidance issued in June 2023 requires that, going forward, electronic documents must be saved in one of two locations: WPM or a shared drive.

Major contributors to this report were Peter Carroll, Charles Lansburg, Logan Frese, and Alma Pleasant.

We thank DOL management and staff for the courtesies and cooperation extended to our auditors during this follow-up.

Very truly yours,

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Audit Manager

cc: Donald Temple, DOL