

DOL Ends PAID Program

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On January 29, the U.S. Department of Labor [announced](#) that it was discontinuing the Payroll Audit Independent Determination (“PAID”) program, effective immediately. Under the program, which began in 2018, employers could self-report wage and hour violations to the DOL with the promise that the agency would supervise a settlement of the violations without seeking liquidated damages or imposing penalties.

Despite its surface appeal, we always thought the program had [questionable value for many employers](#), including because it only resolved Fair Labor Standards Act claims—and not state law claims. So even after participating in the PAID program, an employer could still be faced with a state law investigation or class action for unpaid wages, liquidated damages, and penalties in one of the many states with their own wage and hour laws and enforcement mechanisms. Indeed, the month after the program was announced, a coalition of state Attorneys General [threw shade on the program](#), noting that “it would be an improper federal overreach for the [DOL] to attempt to permit employers, under the auspices of the PAID Program, to require employees to waive state law protections in exchange for the employer’s payment of overdue wages.”

Employers that desire a DOL-supervised settlement of FLSA claims—perhaps to avoid the alternative pain of a class action lawsuit seeking outsized attorneys’ fees—needn’t fret. PAID program or not, the DOL has been supervising settlements since the 1950s. Section 16(c) of the [Fair Labor Standards Act](#) (29 U.S.C. § 216(c)), added to the statute in the 1949 amendments, provides that “the [DOL] is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee ... and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under [the FLSA] to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages.” And the DOL has the authority *not* to seek liquidated damages or penalties, particularly for good faith violations. See 29 U.S.C. § 260.

In June 2020, then Wage and Hour Division Administrator Cheryl Stanton issued a [Field Assistance Bulletin](#) announcing that the DOL would not assess pre-litigation liquidated damages if any one of the following circumstances exist:

- there is not clear evidence of bad faith and willfulness;
- the employer's explanation for the violation(s) show that the violation(s) were the result of a bona fide dispute of unsettled law under the FLSA;
- the employer has no previous history of violations;
- the matter involves individual coverage only;
- the matter involves complex section 13(a)(1) and 13(b)(1) exemptions; or
- the matter involves State and local government agencies or other non-profits.

It's only a matter of time before the Biden DOL withdraws that bulletin.

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