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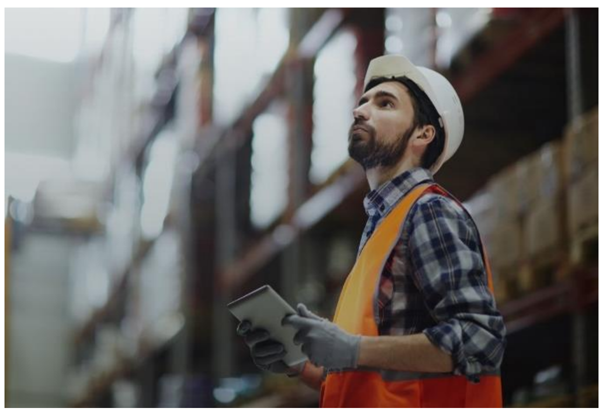
DOL Targets Warehouse Wages

If you are an employer in the private and third-party logistics warehouse industry, you now have a target on your back that was pinned there by a new Department of Labor wage enforcement initiative.

What you also need to know is this initiative conveniently coincides with a renewed union organizing campaign directly aimed at unionizing Amazon.com distribution facilities and which has chalked up at least one victory in New York so far.



The DOL Wage and Hour Division (WHD) recently announced the hiring of 100 additional investigators it intends to deploy for the purpose of mounting a "vigorous" enforcement campaign regrading adherence to federal wage and hour laws in the warehouse and logistics industries.

Companies employing warehouse workers, delivery drivers or truck drivers should prepare for more WHD investigations, says Mitchell J. Rhein, an attorney with the law firm of Spilman Thomas & Battle, "The resulting equation is simple: More WHD investigators + "Vigorous" enforcement = More WHD investigations.".

DOL is leading the administration's government-wide campaign to use federal agencies both separately and working together to promote the interests of the nation's unions as well as their continuing organizing efforts.

This has resulted in formal working agreements signed by DOL, the National Labor Relations Board, the Occupational Safety and Health Administration and even the Department of Homeland Security when dealing with employers of illegal immigrant workers (but not enforcing laws against the workers for illegally entering the country).

However, the U.S. Senate made it clear recently that the DOL division responsible for mounting the warehouse industry wage and hour inspection campaign will have to proceed without a leader for the foreseeable future.

The nomination of David Weil, a dean and economics professor at Brandeis University, who previously served as head of WHD in the Obama administration and was re-nominated to that post by President Biden, saw his prospects wither after Senators Joe Manchin (D-W.Va.), Mark Kelly and Kyrsten Sinema (both D-Ariz.) joined their Republican colleagues in voting against advancing his nomination for a final vote.

Weil had become notorious during his earlier reign as head of the WHD for declaring that there are no real independent contractors, only misclassified employees (a position that was later repeated publicly by Hillary Clinton during her 2016 presidential campaign.)

Chris Meagher, President Biden's deputy press secretary reportedly declared, "We'll continue to evaluate this nomination and how we move

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forward, but remain proud of the administration's pro-worker policies and work being done."

Under the Biden administration, all employers should expect more WHD enforcement of the Fair Labor Standards Act (FLSA), especially when it comes to possible minimum wage violations, Rhein warns, noting that these investigations are often costly, even when no violations are found.

In 2021, the vast majority of these investigations – about 80% -- resulted in the WHD finding the employer violated the FLSA, and employees who were involved received back wages that amounted to, on average, nearly $1,000.

"You cannot avoid a WHD investigation, but you can mitigate the chances and burden of an investigation," Rhem says.

Keep in mind that the WHD also has pointed out that all of the employees of wholesale or warehouse employers with gross annual dollar volume of sales made or business done is not less than $500,000 are covered by the FLSA as well and they also could turn out to be the subjects of the new national inspection campaign..

However, the division also notes that even if a wholesale or warehouse business is not a covered enterprise, most of its employees will be covered by the FLSA on an individual basis

"It has been the experience of the Wage and Hour Division that virtually all employees of wholesale and warehouse businesses are covered by the [FLSA's] provisions," the WHD stated. The federal pay requirements it refers to include both minimum wage and overtime standards.

How to Protect Yourself

Rhein describes several ways that a warehouse employer can help mitigate the risk and burden of a WHD investigation.

Keep required payroll records. He is unequivocal on this point: "You will not fare well if you tell a WHD investigator that you do not have records that employers are required by law to maintain."

The most frequent – and problematic – kinds of records that are discovered to be missing involve accurate records that account for the hours worked by employees.

"While the WHD will not impose civil money penalties for this violation, it will presume that the records would support violations of the minimum wage and overtime pay requirements of the FLSA, and the cost of the investigation will increase as will the likely amount of back pay owed to employees," he stresses.

Create or save electronic versions of your payroll records. Even if you keep all the required payroll records, they are not useful if the records exist only in unorganized boxes in a remote storage unit.

Employers must be able to produce the records required by the FLSA within 72 hours. Because of the pandemic fallout, WHD investigators are not allowed to review records in person. As a result, employers must send records electronically to the investigator to review and transcribe.

Many employers may find it difficult to organize and scan two years of paper records within 72 hours, which is the standard request from the WHD at the beginning of every investigation.

"Employers also incorrectly assume these records will be easy to obtain from a third-party payroll company," Rhem observes. "If you do not maintain the required records in an electronic format, then you should start doing so now."

Know what you don't know. Many of the WHD investigations begin with seemingly small issues.

"These issues are usually easy to identify in payroll records and can be corrected in a couple days. But when an investigation begins, the same small issues and the investigation's geographic reach can grow into larger, expensive issues," Rhem explains.

Once a violation is found, he says "the investigator will exhaustively scrutinize the employer's compliance with the FLSA and may expand the investigation to other locations based on the assumption that the violation exists at all locations."

Rhem points out that another good reason to prepare ahead of time is that the average WHD investigation lasts more than two months.

"Employers can avoid or mitigate the burden of an investigation by regularly auditing their compliance with the FLSA to identify problems and, if necessary, resolve them before the WHD begins an investigation."

Heat Is OSHA's Program Target

The Occupational Safety and Health Administration is implementing a National Emphasis Program (NEP) intended to protect workers from heat-related injuries and illnesses in both outdoor and indoor workplaces.

NEPs are temporary programs that focus OSHA's resources intensely on particular hazards in high-hazard industries. Considerable enforcement resources are dedicated to these efforts.

A measure of the administration's commitment to this particular NEP can be seen by the fact that it was announced by Secretary of Labor Marty Walsh and Vice President Kamala Harris in April at a union training center in Philadelphia.

Employers in the warehousing and storage industry are among those targeted., along with construction and a long list of manufacturing industries. Others include couriers and express delivery services, and rail and truck freight transportation

OSHA says the NEP is designed to encourage early interventions by employers to prevent illnesses and deaths among workers during high heat conditions. It adds that early interventions can include implementing water, rest, shade, training, and acclimatization procedures for all employees.

The program also will require inspectors to ask during non-heat inspections whether the employer has a heat-related hazard prevention program that applies when the heat index for the day is expected to be 80° F or more, explains attorney Arthur G. Sapper of the Ogletree Deakins law firm.

The agency's inspectors will rely on heat index ranges in the National Weather Services's heat index chart – "Caution" (80° F – 90° F), "Extreme Caution" (91° F – 103° F), "Danger" (103° F – 124° F), and "Extreme Danger" (126° F or higher).

However, as Sapper notes, in a case that was handled previously by an Occupational Safety and Health Review Commission administrative law judge these temperature ranges were found to lack any real scientific basis.

Trucking Group Backs Training

The Trucking Alliance, a safety coalition of freight transportation and logistics companies, has joined with the Department of Labor in support of its truck driver apprenticeship training program.

"The efforts by the Biden administration and by DOL to expand registered apprenticeship programs could not be timelier and more important.," said Alliance President Steve Williams, who also heads of Maverick USA, a major truckload hauler.

DOL earlier launched the 90-Day Trucking Apprenticeship Challenge with the goal of increasing the supply of truck drivers by creating new pathways into the profession.

DOL says that at least 102 new apprenticeship programs have been developed and approved, surpassing the goal of 90 employers in 90 days. It also reported that 574 new truck driver apprentices were hired as a direct result of the challenge

The program promotes the registered apprenticeship model as a solution to get more well-trained drivers on the road. Companies are expected to meet certain training and compensation standards as they bring in new drivers for a two-year apprenticeship program which provides for a graduated wage scale as the drivers develop and expand their skills.

Secretary of Labor Marty Walsh pointed out that over 250 organizations have joined the initiative and more than 70 employers have made commitments to developing and joining existing programs or have already launched new registered apprenticeship programs.

"This apprenticeship challenge has been so successful in part because of partners like Maverick USA and the Trucking Alliance," Walsh added. Among those who have signed on are American Trucking Associations and many of its members.

OSHA Making Reports Public

The Occupational Safety and Health Administration want employers s to file their mandatory injury and illness reports electronically, which will be made public on the Internet – and easily sifted through by tort lawyers and union organizers.

A similar proposal during the Obama era ended when Trump became President. OSHA's justification for the change reveals its motive.

It said the expanded public access will allow employers, employees, employee representatives (i.e., unions), and the general public to be better informed, ultimately resulting in the reduction of occupational injuries and illnesses.

"OSHA's intent to make the data available in a searchable online database presents a significant transformation in how the general public, competitors and employees can access the data," says Andrew C. Brought, an attorney with the law firm of Spencer Fane.

The proposed rule would require establishments with 100 or more employees in high-hazard industries to electronically submit their OSHA Forms 300, 301 and 300A to the agency once a year. Employers must include their company name with these electronic submissions.

Also, the agency will update the classification system used to determine the list of industries covered by the electronic submission requirement.

It says it will remove the current requirement for establishments with 250 or more employees not in a designated industry to electronically submit information from their Form 300A to OSHA annually because they already keep these records.

Employers with 20 or more employees in designated high-hazard industries would still be required to electronically submit information from their OSHA Form 300A annual summary to OSHA.

Worker Mental Health Said Vital

We are facing a workplace mental health crisis, with burnout, exhaustion and hopelessness more common among workers than ever before, argues the Society for Human Resource Management.

A new survey conducted by SHRM found that 94% of human resources professionals believe that by offering mental health resources, organizations can improve the overall health of employees.

About one in five (21%) of respondents working for organizations that don't offer mental health benefits say their organizations don't have the resources to address mental health, while another 21% of them believe it's too expensive to enact.

Other key findings reported include 86% of the HR professionals surveyed stating that by offering mental health resources employers can increase employee retention, and 72% also believe that such resources help attract new talent.

HR professionals in the healthcare sector (61%) were most likely to indicate that their staff experience more mental health struggles than other industries, in large part because of Coronavius pandemic-induced stress at work.

Other industries, such as the nonprofit sector (47%); government/public administration/military (41%); and education (39%) claim their employees are more likely to experience mental health issues than other industries.

The survey also found that a focus on mental health is good for business. Nearly 9 in 10 of the HR professionals polled -- 88% -- believe offering mental health resources can increase productivity, while 78% say offering such resources can boost organizational return on investment.

"It is clear that the need to establish mental health as a top priority within our organizations is essential," said SHRM Foundation President Wendi Safstrom. "We must act now if we wish to create a world of work that that allows both employers and employees to thrive and lead healthy, productive organizations."

SC Crisis Fuels Tech Spending

The Coronavirus pandemic and supply chain crisis have spurred greater investments in high tech solutions, finds a recent survey of logistics leaders by MHI, the material handling, logistics and supply chain association.

Because of this, investment in supply innovation over the next two years also is predicted to rise dramatically, according to the 2022 MHI Annual Industry Report, which was unveiled at the MODEX trade show held at the end of March.

Of the 64% of respondents increasing investments, two out of three say they will spend more than $1 million over the next two years, found the survey, which was conducted by MHI and the Deloitte research and consulting company.

In particular, investments are growing in the middle ranges from $5 million up to $100 million – where 41% say they spend more than $5 million and 18% say they will spend more than $10 million.

"Supply chain leaders have never been in a better position to drive impactful and lasting change for the industry," said John Paxton, chief executive officer of MHI. "With the white-hot media spotlight chronicling the after-effects of the pandemic, the importance of supply chain is finally coming into focus in boardrooms across the world."

The survey respondents say all technologies covered by the questionnaire are expected to achieve an adoption rate of 66% or higher over the next five years.

Cloud computing, which is now the standard platform for most supply chain software, continues to enjoy the highest current adoption rate at 40%, MHI reported.

Inventory and network optimization are seen rising to the top over the next five years, with an expected adoption rate of 87% (in a statistical tie with cloud computing at 86%). However, artificial intelligence is predicted by respondents to see the most accelerated growth – rising from 15% to 73% over the next five years, a nearly five-fold increase.

Also, Predictive Analytics, currently at 22%, is expected to grow to 82% over the next five years. In addition, industrial Internet of Things, now measured at 21%, is seen growing to 80%. and robotics and automation, now at 28%, is expected to reach 79%.

Robotics and automation continue to top the list of innovations that survey respondents believe have either the potential to disrupt the industry (17%) or to create competitive advantage (39%).

However, MHI found that a handful of other technologies are very close behind, including predictive and prescriptive analytics; sensors and automatic identification; autonomous vehicles and drones; and AI technologies.

"Supply chains are becoming more and more a technology-driven industry," observes Thomas Boykin, Deloitte's supply chain specialist leader,

"While firms have not adopted some technologies as quickly as they thought they would back in 2014 or 2015, what we are seeing now is a big jump in these investments. Where we used to say evolve or die, what we now say is transform or die."

Disruption now tops list of supply chain challenges, with the talent shortage a close second "For the past nine years of the survey, hiring and retaining qualified workers was consistently the top supply chain challenge," MHI reports.

Supply chain disruptions and shortages rose to the top of the list at 57%. and this spurs companies to invest in technologies that not only improve agility and efficiency but also reduce the need for repetitive, manual labor, the researchers contend.

"These investments create the kind of advanced technology environment that results in more rewarding supply chain jobs that appeal to today's top talent," MHI concluded.