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Industry Insight

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Apparel Companies - Are You Prepared for a Department of Labor Audit in 2016?



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The United States Department of Labor, Wage and Hour Division (“DOL”) has announced it will be conducting random audits in 2016 within the apparel industry to determine compliance with the Fair Labor Standards Act (“FLSA”), which includes, among other things, provisions on minimum wage, overtime, equal pay, child labor and record keeping requirements. In the past, these audits have resulted in companies paying substantial dollars in back wages arising from noncompliance for infringements by contractors used to manufacture goods.

The DOL audits affect businesses operating within the garment industry at every level. Under current law, a wholesale manufacturer (and in some instances the retailer) is not only liable for its own compliance with the FLSA, but the compliance of its contractors as well. Consequently, if a wholesale manufacturer engages an outside contractor to, for example, produce or screen print garments, the manufacturer is jointly and severally liable for any underpayment of the contractor’s workers discovered as a result of a DOL audit. Further, any goods manufactured by underpaid workers are deemed “hot goods” and among other consequences, susceptible to forfeiture.

A company’s liability for the acts of related third parties such as the above exists regardless of whether the contract between the parties states otherwise; the offending party has been paid full value for the goods or services or the innocent party was aware of the transgression.

As a general rule, the best defense to a DOL audit is preparation. Preparation for an audit may include (i) confirming your company and its contractors/service providers maintain organized and accurate records concerning employee hours, breaks and wages; (ii) confirming your company and its contractors/service providers maintain written policies and procedures concerning employee conduct and company requirements and (iii) engaging consultants to conduct internal and third party audits.

You should consult with counsel immediately upon receiving notice of a DOL audit or an infringement. Remember prevention is better (and less expensive) than cure.

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