

AGENCY RESPONSE

U.S. Department of Labor

Assistant Secretary for
Employment Standards
Washington, D.C. 20210



March 27, 2008

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General
For Audits

FROM:


VICTORIA A. LIPNIC

SUBJECT:

Audit Of The Wage And Hour Division New Orleans
District Office's Processing Of Workers' Complaints
Received In The Aftermath Of Hurricane Katrina
Report No. 04-08-002-04-420

Thank you for the opportunity to comment on the Office of Inspector General's (OIG) audit report regarding the Wage and Hour Division's (WHD) response to allegations of labor law violations in the aftermath of Hurricane Katrina.

Audit Question No. 1: Was the New Orleans Office adequately staffed, including Spanish and Portuguese-speaking investigators, to serve the needs of the workforce after Hurricane Katrina?

Recommendation: Ensure that the Wage and Hour Continuity of Operations Plan (COOP) specifically addresses how Wage and Hour will serve a workforce such as that which migrated to New Orleans after Hurricane Katrina in the event of a disaster that forces Wage and Hour employees to evacuate an affected area.

Response: We are pleased with your conclusion that WHD adequately staffed the New Orleans District Office "to serve the needs of the New Orleans workforce after Hurricane Katrina." As you discuss in the report, WHD achieved that staffing by detailing Spanish-speaking and Portuguese-speaking investigators and managers to the region and by hiring additional investigators and team leaders in the New Orleans District Office.

WHD responded to the situation in the Gulf Coast region as soon as the area was secure and as soon as housing and office facilities for our investigators and other staff could be arranged. Because WHD has long recognized the value of retaining staff with multiple language skills, it was able to move the appropriate resources into the region. Dozens of detailed employees, including a number of Spanish and Portuguese language investigators, made significant contributions to the agency's enforcement efforts in the region. We appreciate your acknowledgement of the hard work that these investigators

completed under difficult circumstances, and we thank you for recognizing that WHD acted appropriately in its staffing of the New Orleans District Office.

With respect to your recommendation that WHD revise its Continuity of Operations Plan (COOP) to specifically address how the agency will “serve a workforce such as that which migrated to New Orleans after Hurricane Katrina,” we agree with your suggestion that the agency’s COOP plan may be improved by adding processes to continue operations if the agency experiences a disaster on the scale of the 2005 Gulf Coast hurricanes. We believe, however, that it is important to weigh the dangers associated with a premature return to a disaster area against the fact that the laws enforced by WHD provide remedies that allow the agency to reach back for a period of two to three years to protect the rights of workers and to secure back wage payments.

WHD learned a great deal from the challenges the agency faced following the hurricanes. The lessons learned regarding the safety and well-being of the agency’s staff, the sudden demographic shift of the workforce, and infusion of federal assistance have heightened WHD awareness of the importance of communication and teamwork in responding to similar circumstances. In light of these experiences, WHD will examine its COOP plan to ensure that it adequately addresses the issue raised in the OIG report.

Audit Question No. 2: Did the New Orleans Office’s intake procedures impede workers ability to file complaints?

Recommendation: Direct Wage and Hour district offices to maintain a record of all inquiries received. The record should include the date of the inquiry, the name of the individual making the inquiry, the nature of the inquiry, and the disposition of the inquiry.

Response: We are pleased that the report finds no evidence indicating that any worker’s ability to file a complaint was in any way impeded. We are, however, concerned that adopting your recommendation will actually create needless impediments for those who seek to contact WHD. First, the recommendation ignores WHD’s successful history of and experience in managing its complaint program. The agency’s assistants, technicians, and investigators receive training to ensure appropriate disposition of calls, and maintain a record of all complaints for which there is sufficient information to indicate that a wage and hour violation has occurred or may be occurring. Second, complying with the recommendation would create unnecessary privacy issues for certain individuals who contact WHD by requiring WHD to keep records of some of the most personal information a worker can divulge, *e.g.*, the worker’s or the worker’s family’s medical needs and/or conditions, despite the fact that the agency might not be able to take action on the worker’s behalf. Third, requiring and maintaining a record of every allegation or every inquiry ultimately would prove detrimental to WHD’s ability to provide assistance to employees who may be reluctant to complain, fearful of providing their name to a government authority, and uncertain that their concerns have merit. If such workers believe that their name, the date of their call, the nature of their inquiry, and the disposition of their situation is being recorded and may be released—even

inadvertently—then they may not seek assistance from WHD. Fourth, the recommendation may discourage employers who want or need to call WHD offices for compliance assistance. The Department's compliance assistance protocols grant anonymity to callers requesting assistance from its sub-agencies in order to encourage employers to seek information on how to comply with the law. Fifth, WHD has serious concerns about diverting enforcement resources to the costs of implementing and maintaining a tracking system of every inquiry received. WHD's call center receives over 450,000 calls a year. Approximately 250,000 are referred directly to WHD district offices—roughly 5,300 per district office. This figure does not even include the thousands of inquiries that are received directly by district offices.

We would also like to point out that the report notes concerns from the Southern Poverty Law Center (SPLC) relating to the handling of five complaints. The report documents the successful resolution of two cases that resulted from the SPLC complaints and noted that one case was pending litigation. After the SPLC resubmitted the fourth complaint at your suggestion, we learned that the complaint already had been investigated and concluded in July 2006 under the employer's trade name. The New Orleans District Office had no record of receiving the fifth complaint, but it appears the SPLC may have been using the wrong facsimile number.

Audit Question No. 3: Did the New Orleans Office adequately communicate with complainants?

Recommendation: Ensure that Wage and Hour investigators comply with Wage and Hour's policy of maintaining regular communication with complainants and document those communications in the case file.

Response: The report concludes that the New Orleans District Office did not adequately communicate with its complainants in a number of the cases that were reviewed. We would like to note that all of the files reviewed by OIG staff contain evidence of communication with the complainants. We acknowledge, however, that there were instances in which the Field Operations Handbook guidance relating to communications with complainants was not precisely followed. In several cases, the failure to follow procedures was directly related to the unique circumstance of having multiple investigators assigned to a single investigation. The use of short-term detailed staff sometimes resulted in situations in which cases had to be reassigned to other investigators when the detail assignments ended before the investigation was concluded. In other cases, the complainant failed to provide timely or updated contact information or failed to respond to a request for additional information. WHD relies on complainants to advise the agency of any change in their addresses or other contact information.

Despite the apparent lapses in communication in several cases, there is no indication that the lack of regular contact with complainants resulted in any deprivation of services or failure to adequately protect the rights of these workers. Notwithstanding the unique circumstances in the Gulf Coast cases, WHD will reaffirm its procedures for regular

communication with complainants and the subsequent documentation of such communications.

We would also like to comment on the draft report's discussion that WHD's longstanding policy of not revealing the existence of a complaint or not maintaining routine contact with employees other than the complainant may increase the likelihood that WHD will not obtain current contact information for those employees. WHD strongly believes that the potential risk of retaliation to complainants and the chilling effect on other workers far outweighs the possibility that the agency will have outdated employee contact information.

Audit Question No. 4: How did the New Orleans Office perform outreach and establish relationships within the community in order to gather and investigate complaints made by migrant workers?

Response: We appreciate your conclusion that WHD performed extensive community outreach and that the lack of employee complaints did not in any way diminish the agency's enforcement efforts in the Gulf Coast. The OIG report notes that WHD staff participated in community outreach events and reached out to worker advocacy groups to encourage workers and others to report allegations of violations. These extensive outreach and community relations activities may not have produced the volume of complaints anticipated by some advocacy groups. Regardless of expectations about what the volume of complaints should have been, as the report points out, the New Orleans District Office initiated a greater number of directed, *i.e.*, non-complaint-based, investigations in the period following the hurricane than it had in previous years.

Finally, we appreciate the report's recognition of the various outreach and community organization activities of the New Orleans District Office staff. The New Orleans District Office pursued many avenues to educate workers about their rights and the remedies available to them. The staff's twice weekly attendance at the Good News Camp—a faith-based encampment in City Park—was among the more direct approaches that that office used to reach workers. Investigators visited the camp, talked to workers who had wage-related complaints, and provided information on the laws that WHD enforces for a period of six months in 2006. WHD staff also distributed thousands of timekeeper booklets, fact sheets, Handy Reference guides, and other compliance materials at venues throughout the region. The same materials—in both English and Spanish—were also provided to scores of organizations that interact directly with workers in an effort to expand the impact of the compliance assistance activities.

Thank you, again, for the opportunity to comment on the content and recommendations of the draft report.

cc: Alexander J. Passantino, Acting Administrator, Wage and Hour Division
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