

**STATEMENT OF
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U.S. DEPARTMENT OF LABOR
BEFORE THE
COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES**

“Is The Department of Labor Effectively Enforcing Our Wage and Hour Laws?”

July 15, 2008

Chairman Miller, Ranking Member McKeon, and distinguished members of the Committee:

Thank you for the opportunity to discuss the record of the Department of Labor’s Wage and Hour Division (WHD) in enforcing the nation’s wage and hour laws. For seventy years, WHD has had a strong record of enforcement on behalf of workers in this country. In the two and one-half years of my tenure with this agency, it has been my honor to serve with the dedicated and committed staff of professionals who all strive to carry out the agency’s mission “to promote and achieve compliance with labor standards to protect and enhance the welfare of the nation’s workforce.”

As you know, WHD is responsible for enforcing some of our nation’s most comprehensive federal labor laws including the minimum wage, overtime pay, recordkeeping, youth employment and special employment, family and medical leave, migrant worker protections, lie detector tests, worker protections in certain temporary worker programs, and the prevailing wages for government service and construction contracts. WHD is first and foremost an enforcement agency, and its record recoveries on behalf of the workers in this country are a testament to the importance that the agency places on its law enforcement responsibilities.

Like all regulatory enforcement agencies, WHD employs a variety of tools and activities to enforce the law and achieve compliance. For example, WHD responds to complaints, initiates directed (*i.e.*, targeted) cases, engages in educational and other outreach activities, and assesses penalties against violators. Each fiscal year, we review our results, and, based on, among other things, the extensive knowledge and expertise of our field personnel, undertake extensive operational planning for the coming year. Our annual planning process considers our available resources (current and anticipated), legislative and regulatory changes (recent and anticipated), demographic shifts, recent events (*e.g.*, Hurricanes Katrina and Rita), information from other government agencies and our non-government partners, studies and reports by outside consultants, and input from stakeholder groups.

Priorities are set on a national, regional, and district office level, with input from individuals at all levels of the organization. Indeed, district offices hold annual meetings for the specific purpose of preparing the following year's plan. This local planning is critical to the success of the agency—targeting strategies that may be successful in Des Moines, Iowa, for instance, are not necessarily effective in Brooklyn, New York. Once each plan is finalized and approved, it is carried out by the local management teams, support staff, and, of course, investigators.

Wage and Hour investigators are extensively trained, receiving both classroom and field training before being permitted to officially conduct an investigation on behalf of the agency. Many speak two or more languages. They are sworn law enforcement officers who carry badges and take seriously their responsibility to faithfully enforce the laws for which WHD has responsibility.

In addition to careful and rigorous annual planning, WHD has sought to become more efficient in enforcement. Field offices have emphasized complaint intake strategies that screen incoming calls and correspondence to ensure that the issue is properly within WHD's enforcement jurisdiction. In FY1997, some 36 percent of all cases handled by WHD resulted in a finding of no violation. By FY2007, WHD had reduced the percentage of no violation cases by nearly half—to 19 percent.

Over the last several years, WHD has generally devoted between 20 to 30 percent of its enforcement time—or approximately 35 percent of all investigations—to directed (or targeted) investigations in low-wage industries that employ large numbers of vulnerable low-skilled workers. Let me emphasize that these are investigations initiated by WHD and are not in response to complaints. Ten years ago, WHD concentrated its low-wage enforcement priorities in three industries—garment manufacturing, long-term health care, and agriculture. As we all know, the workplace has changed in the last ten years, and WHD has seen compliance problems grow in other low-wage industries even while the agency's resources were focused on the three national priorities. To combat this trend, WHD expanded its low-wage targeting to encompass a broader range of 33 industries, including eating and drinking, hotel and motel, construction, and day care. The 33 industries are those in which an external evaluation of data suggested there was a higher likelihood of minimum wage and overtime violations.

WHD's compliance efforts and successes in low-wage industries, such as garment manufacturing, health care, and poultry processing are well-documented and demonstrate the positive effect of the agency's strategies on employer behavior. In FY2005, WHD completed an investigation-based compliance survey of garment manufacturers in the two major garment areas of Los Angeles and New York City. The Los Angeles results demonstrated a 14 percentage point increase in compliance over the FY1994 baseline. In New York City, minimum wage and overtime compliance among garment contractors increased 17 percentage points between 2001 and 2004 and 32 percentage points over the baseline measure in 1997.

In the long-term health care industry, 2004 compliance surveys also documented marked improvements in compliance. The compliance rate for the nursing home industry increased by 16 percentage points between 2000 and 2004. Nearly 90 percent of employees were found to be paid in compliance. In the residential care industry, compliance increased by 13 percentage points between 2001 and 2004. Ninety-five percent of the employees were found to be paid in compliance with the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA).

Compliance surveys of the poultry processing industry in 1997 and 2000 found violations of overtime requirements affecting thousands of low wage workers. In an effort to promote compliance in this industry, in 2002, the Solicitor of Labor filed suit against Perdue, George's Processing, and Tyson for failing to pay their workers for all hours worked, including time spent donning and doffing protective gear and related walking time. In 2002, Perdue settled with the Department and agreed to pay over \$10 million to over 25,000 employees who worked at their plants between 2000 and 2002. Perdue also agreed to comply with the FLSA in the future by recording and paying workers for all hours worked.

Following the November 2005 Supreme Court decision in *IBP v. Alvarez*, WHD again advised poultry processors of their obligation to pay their employees who work in meat and poultry processing plants for the time they spend donning and doffing gear, as well as for the time they spend walking between the place where they put on and take off protective equipment and the place where they process the meat or poultry. In May 2006, George's Processing settled with the Department by agreeing to pay more than \$1.2 million to more than 5,000 employees for donning and doffing violations and agreed to future compliance. The Department's lawsuit against Tyson is ongoing. In August 2007, the Department filed a lawsuit against Pilgrim's Pride, the largest poultry processor, in district court in Dallas, Texas, seeking back wages for workers at the Dallas facility and a nationwide injunction.

It is clear that over the last seven years WHD has maintained its long-standing goal of increasing compliance in these initially targeted low-wage industries, while expanding its focus on other industries. WHD low-wage initiatives have resulted in back wage collections on behalf of gas station employees in the northeast, car wash workers in Los Angeles and New York, security guards in Puerto Rico, restaurant workers in Chicago and Indianapolis, construction workers in Las Vegas, day care workers in Mississippi and Alabama, and a host of other workers nationwide.

In addition to its enforcement in low-wage industries, WHD has been aggressive in outreach to worker populations who may be unfamiliar with labor standards laws and the remedies available to them. Local WHD offices have developed, or have been a catalyst in developing, compliance initiatives designed specifically to ensure that low-wage workers are employed in compliance with labor statutes. Initiatives involve collaborations with government agencies and advocacy organizations, including Mexican and other South and Central American Consulates to which immigrant workers often turn for assistance.

The first compliance partnership programs began in areas with large Hispanic and Asian populations—Houston, Dallas, Las Vegas, and Los Angeles. The *Justice and Equality in the Workplace Program*—established in Houston in 2001 to educate Spanish-speaking low-wage workers and their employers about the law—has been a model for other compliance initiatives with similar objectives, such as the EMPLEO (Employment Education Outreach) initiatives in Southern California and Las Vegas. Other programs, like the REACH (Rapid Employer Assistance Chinese Hotline) in New York City, COACH (Compliance Outreach to the Asian Community and Hispanics) in Northern New Jersey, and TIGAAR (The Information Group for Asian American Rights) in Houston, work to increase knowledge of WHD laws and services among workers in the Asian and Hispanic communities and among new and small business owners.

As a result of these and countless other efforts by the agency, WHD has recovered more than \$1.25 billion for nearly two million workers since 2001. In FY 2007, over 341,000 workers received recovered back wages—the second largest number of workers since 1993, and the amount of wages recovered for workers—\$220,613,703—is the highest total the agency has ever recorded. This represents a 67 percent increase over back wages recovered in 2001, and is more than twice the amount collected in fiscal year 1997.

In fact, WHD total back wage collections for the last seven fiscal years represent a 28 percent increase over the back wage collections for the seven fiscal years beginning in 1994 and ending in 2000. During this same time period, WHD also increased by 10 percent the number of workers for whom it collected back wages. WHD achieved these important successes despite limited staff levels.

There is no question that WHD's staff levels have been declining. As with all federal agencies, experienced personnel have retired and others have left federal service to pursue private employment. WHD's authorized full time equivalent (FTE) levels have declined from 1,528 in fiscal year 2001 to 1,208 in fiscal year 2008. On-board investigator levels have declined from 945 in 2001 to 725 today. This decline is similar to the period from 1990 to 1996, when investigator levels decreased from 938 to 781. Today, WHD finds itself in that situation again.

We believe we have achieved significant results for workers, and we will continue toward this end.

Mister Chairman, this concludes my prepared remarks. I will be happy to answer any questions that you or the Members of the Committee may have.