

What to Expect in a DOL Audit - White Paper

As a business owner, there is not a more uncomfortable feeling than receiving a notice from the United States Department of Labor (DOL) notifying you that you and your business are being subject to an audit. While many people fear audits from the Internal Revenue Service (IRS), those audits are usually mild compared to what the DOL drags business owners through. According to statistics provided by the DOL, since 2012 DOL audits have resulted in over \$6 Billion in fines.

Although there are more than 20 reasons a business may be subject to a DOL audit, a few of the most common are complaints about violations related to the Employment Retirement Income Security Act (ERISA), the Consolidated Omnibus Budget Reconciliation Act (COBRA), the Health Insurance Portability and Accountability Act (HIPAA) or the Affordable Care Act (ACA – Obamacare). Sometimes, the IRS may refer a case to the DOL based on information in the tax return filings of an organization. The DOL also chooses random audits on businesses that they may have “red-flagged” as being out of compliance with DOL policies. This includes businesses that have done absolutely nothing wrong. The size of the business does not matter either. Unfortunately, the audit conducted by the DOL is not limited in scope to the complaint. They will go after anything and everything they can get their hands on from you.

A DOL audit takes a look at past events with a view toward improving future performance. However, unlike our legal system, DOL auditors operate more along the lines of your business is guilty and you must prove your innocence. Findings from a DOL audit can be used for adjusting existing policies a business may have, adjusting priorities in how a business operates, or restructuring a business’s operations or procedures in order to align them into DOL compliance. DOL audits cover three main areas. Reviewing compliance with applicable laws and regulations. Evaluating economy and efficiency of operations. And, evaluating effectiveness in achieving program results. Ultimately, they want to see that employers are following the rules and regulations for how they deal with their workforce and that they have documentary evidence of compliance at every step of the process.

The DOL will usually notify a business of an audit via US Mail. It is important to not ignore this letter. Like any other problem, it is best to deal with it “head on”. However, there are instances where a business may not receive notice of an audit prior to a group of auditors arriving onsite at the business. The DOL, being a federal agency, has the ability to pursue both civil and criminal penalties against a business whether it complies or not. Therefore, engaging your legal and accounting teams early is important in preparing to fight any allegations or charges the DOL may investigate and bring against your business. If you are using an outsourced accounting, payroll or Human Resources firm, they need to be engaged as well. It is also important to get as much time as possible to prepare for the audit. Depending on the size of your organization you may need a few weeks to get ready. Get your supporting documentation together and put in a binder for easy reference. Do not give the auditor the binder, only the documentation which they are requesting that is specific to the item(s) they are investigating.

The auditor will probably want to meet with just about any employee they can get in front of. It is important to meet with your employees and let them know what to expect. A reminder, the auditor already thinks you are guilty and is looking to support that through statements made by your employees. While you do not want to give your employees specific answers or scripts to follow, they do need to cooperate with the auditor. If you have the time and ability, holding mock interviews is one way to prepare your staff for their meeting with the auditor. A reminder of policies and procedures is also helpful. If the staff person does not understand a question, they need to let the auditor know. An auditor may target an employee that does not have true knowledge of a process and use their statements to gain access to additional information that may support their investigation.

Unlike the stereotypical response to an IRS audit, being prepared for a DOL audit goes a long way. Do not hand the auditor a box of documents in a conference room with the temperature cranked up as high as it will go and tell them “good luck, what you are looking for is in the box”. The quicker you get the auditor out of your business, the better. You and your employees can go back to work without having to deal with the interruption an audit is going to cause. While some businesses prefer to leave the auditor alone in a back conference room, it is recommended that a staff person stay with the auditor during their entire visit on premises. This shows cooperation with the auditor and does not allow them free access throughout your business to investigate that open filing cabinet in the hallway. The staff person can answer questions or produce additional supporting documentation if needed. The longer the process goes on, the more likely the auditor is going to dig and find something that they feel proves your business is guilty.

The DOL audit will be concluded once you receive a closure letter from them. The closure letter provides recommendations from the DOL to resolve the complaint or prevent one from happening in the future. It is better to be cooperative and implement the recommendations than to fight them. If your business is required to pay fines as part of the investigation, pay them. It is better to get past this inconvenience than to keep fighting a battle that you will not win.

It is important for a business to always be prepared that they are going to be audited. Keeping documentation and performing “self-audits” may help a business when the day comes that the DOL audits their organization. Being prepared, proactive and cooperative will make the process with the auditor go easier. Being confident with your employees shows that you take the process seriously and working to resolve it is no big deal.