

# Considerations for Utilizing the DOL's Pilot "PAID" Program

## Labor & Employment Law Update

By Michael Hughes and Sara Zorich on April 16, 2018

In April 2018, the US Department of Labor (DOL) Wage and Hour Division, launched the six-month pilot Payroll Audit Independent Determination (PAID) program which provides a voluntary framework for employers to self-report potential FLSA overtime and minimum wage violations to the DOL and to resolve those violations without incurring additional penalties or liquidated damages. There are important benefits (and potential risks) to consider before signing up for PAID:

- The benefit of the program is that if an employer self-reports, the DOL will only require the employer to pay back wages owed to current and former employees, but not liquidated damages (double the back wages) or civil money penalties. The employer can obtain a release from the employees under the FLSA, thereby fully resolving the violation without paying attorney's fees or engaging in a class action lawsuit.
- One risk of the PAID program for employers is that the company is exposing itself to potential liability. The DOL has indicated the process will be fast (estimated 90 days start to finish), and the company will be required to pay 100% of the back wages due based on the audit on the next pay period after the DOL's determination. But the biggest risk is that not all employees will accept the payment through the PAID program and instead will choose to file an individual or class-action lawsuit. The employer itself may have laid the groundwork for the employee to collect liquidated damages and attorney's fees in federal court. Moreover, the PAID program will not provide a release for state wage and hour claims, even if employees cash their back wage check.
- Additionally, the DOL has discretion to accept or decline any company from the PAID program; however the DOL has stated (in a webinar on April 10, 2018) if the company is declined, that declination will not be used to start a DOL audit.

PAID might be the right avenue for a company to address wage and hour compliance issues, but companies should speak with their labor and employment counsel to fully understand the risks and benefits of the PAID program prior to voluntary submission.