

135391

United States General Accounting Office

GAO

Fact Sheet for the Chairman,  
Subcommittee on Labor Standards,  
Committee on Education and Labor,  
House of Representatives

February 1988

# FAIR LABOR STANDARDS ACT

## Selected Administrative Issues



135391

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Human Resources Division

B-201792

February 25, 1988

The Honorable Austin J. Murphy  
Chairman, Subcommittee on Labor Standards  
Committee on Education and Labor  
House of Representatives

Dear Mr. Chairman:

In your January 12, 1987, letter, you asked us to review the Department of Labor's Wage and Hour Division's policies and procedures for enforcing the Fair Labor Standards Act (FLSA) and to gather certain background and statistical information about Wage and Hour's enforcement program. Your request was prompted by continuing concerns about problems in Wage and Hour's enforcement of FLSA.

FLSA establishes minimum wage, overtime pay, employer recordkeeping, and child labor requirements affecting more than 73 million private and public sector employees. Wage and Hour, a division within the Department of Labor's Employment Standards Administration, is tasked with enforcing FLSA through its compliance officers.

As agreed with your office, we have approached our work in two phases. We have gathered information included in this fact sheet in response to your specific interests in the following three areas:

- The amount and type of training given to Wage and Hour compliance officers and the policy for reviewing their performance after training.
- Wage and Hour's full-time equivalent staff-year ceiling and staffing levels for fiscal years 1981-87.
- The amount of back wage money deposited into the U.S. Treasury by Wage and Hour.

The results of the remainder of our work, including the timeliness of complaint processing and the recovery and payment of back wages owed to employees, will be provided later.

We did our work primarily at the Department of Labor's Washington, D.C., headquarters and Wage and Hour's Baltimore area office, where we discussed these issues with and gathered data from knowledgeable Wage and Hour and other Employment Standards Administration officials. The information we obtained is summarized in the following sections and discussed in more detail in the fact sheet.

#### COMPLIANCE OFFICER TRAINING

Wage and Hour, in conjunction with the Employment Standards Administration Training Branch, is responsible for training compliance officers and supervisors (area directors and assistant area directors). While Wage and Hour's management believes that on-the-job training is effective instruction, its training program also includes a 3-week entry-level course, a 4-day follow-up course for second-year compliance officers, two 2-day and two 5-day management courses for assistant area directors, executive training for area directors, and periodic training conferences given for all compliance officers when existing labor laws are revised or new ones enacted.

According to Wage and Hour's management, every case that a compliance officer completes is reviewed and approved by a supervisor for conformance with eight performance standards. Five of these standards address a compliance officer's ability to perform quality enforcement work in a timely manner and are considered critical by Wage and Hour.

#### WAGE AND HOUR'S FULL-TIME EQUIVALENT STAFF-YEAR USE

One full-time equivalent staff-year is equal to one full-time employee working one fiscal year. A full-time equivalent can also be represented as two or more part-time employees working the number of hours that equals one fiscal year.<sup>1</sup> Each fiscal year the Employment Standards Administration approves the number of compliance officer full-time equivalents needed by Wage and Hour to enforce FLSA and other labor laws as part of the Department of Labor's fiscal year budget process, and

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<sup>1</sup>For purposes of computing full-time equivalent employment, the number of hours in a fiscal year is either 2,080, 2,088, or 2,096 depending on the fiscal year as defined in Office of Management and Budget Circular No. A-11, June 1987.

during the year, Wage and Hour tracks the number of compliance officer full-time equivalents that it uses.

Wage and Hour's full-time equivalent compliance officer ceiling has ranged from 929 to 1,107 in the last 7 fiscal years (1981-87). Its compliance officer full-time equivalent ceilings were 1,107 in fiscal year 1981, 940 in fiscal year 1986, and 929 in the other 5 fiscal years. In fiscal years 1981, 1983, 1984, and 1987, Wage and Hour did not use from 28 to 91 (3 to 8.2 percent) of the authorized compliance officer full-time equivalents for those years due to governmentwide hiring freezes and agencywide hiring slowdowns.

BACK WAGES TRANSFERRED INTO THE U.S. TREASURY

Wage and Hour transferred into the U.S. Treasury about \$1.5 million in FLSA back wages during fiscal years 1986 and 1987. The wages were transferred because employees due the wages could not be located or refused payment. Of the 10 Employment Standards Administration regions, the Atlanta regional office (including the Wage and Hour regional office in Birmingham) transferred about \$608,000 in back wages to the Treasury as miscellaneous receipts--the largest transfer of back wages for the period.

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We discussed the contents of this fact sheet with Labor officials and considered their comments in preparing this document.

As arranged with your office, unless its contents are announced earlier, we plan no further distribution of this fact sheet until 30 days from its issue date. At that time, we will send copies to the Secretary of Labor and other interested parties and make copies available to others on request.

Should you need additional information on the contents of this document, please call me on 275-5451.

Sincerely yours,



Janet L. Shikles  
Associate Director

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ABBREVIATIONS

CO            compliance officer  
ESA           Employment Standards Administration  
FLSA          Fair Labor Standards Act  
FTE           full-time equivalent  
GAO           General Accounting Office

**FAIR LABOR STANDARDS ACT:**  
**SELECTED ADMINISTRATIVE ISSUES**

**BACKGROUND**

The Fair Labor Standards Act (FLSA), enacted in 1938 and amended several times since, sets standards for minimum wage, overtime pay, child labor, and employer recordkeeping. It is administered by the Department of Labor's Wage and Hour Division within the Employment Standards Administration (ESA).

Wage and Hour's primary enforcement method is to investigate complaints of employer FLSA violations.<sup>1</sup> These complaints are usually made to Wage and Hour by a current or former employee of an establishment. FLSA investigations are performed by compliance officers (COs) in Wage and Hour's 11 regional offices and 64 area offices throughout the United States.

A complaint can be addressed through an on-site investigation of the employer's establishment (where practical, this may include an examination of payroll records and employee interviews) or by conciliation--a technique used to provide fast service to the complainant that, according to the Wage and Hour Field Operations Handbook, can be performed by telephone. Whether a complaint is investigated or conciliated depends on the type of violation, the number of employees affected by it, and the willingness of the employer to cooperate. Both types of compliance actions require a CO to (1) determine whether the employer and its employees are covered under FLSA, (2) determine whether there are any FLSA violations, (3) calculate back wages for employees affected by the violations, and (4) obtain the employer's agreement to pay back wages due employees and to comply with FLSA in the future. All employees of certain firms<sup>2</sup> could be entitled to back wages if a Wage and Hour CO determines at the close of an investigation or conciliation that the employer violated FLSA's minimum wage or overtime provisions. In fiscal year 1987, Wage and Hour COs completed 42,367 FLSA investigations and 29,633 FLSA conciliations with back wage findings totaling \$126.5 million.

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<sup>1</sup>While most investigations originate from complaints, Wage and Hour also initiates its own investigations, known as directed investigations.

<sup>2</sup>Generally, enterprises engaged in interstate commerce are covered under FLSA. Also covered are employees of enterprises with annual sales or business volume of not less than \$250,000, federal government employees, and state and local government employees.



## **OBJECTIVES, SCOPE, AND METHODOLOGY**

As requested by the Chairman, Subcommittee on Labor Standards, House Committee on Education and Labor, we collected background and statistical information on the following issues: (1) the amount and type of training given to COs and Wage and Hour's policy for reviewing their performance after training, (2) Wage and Hour's full-time equivalent (FTE) use for fiscal years 1981-87, and (3) the amount of back wages deposited into the U.S. Treasury by Wage and Hour.

To address these issues we interviewed and gathered data from ESA officials in the Office of Policy, Planning, and Review; Division of Financial Management; and Division of Personnel and Organization Management. We also interviewed officials of Wage and Hour's Baltimore area office. We performed our work at the Department of Labor's headquarters in Washington, D.C., and Wage and Hour's Baltimore office from May through December 1987 in accordance with generally accepted government auditing standards.

### **COMPLIANCE OFFICER TRAINING AND PERFORMANCE ASSESSMENT**

Wage and Hour, in conjunction with the ESA Training Branch, is responsible for training COs and supervisors--area directors and assistant area directors. Wage and Hour training includes one 3-week entry-level course, one 4-day follow-up course for second-year COs, two 2-day and two 5-day management courses for assistant area directors, executive training for area directors, on-the-job training, and periodic training conferences given to all COs when existing labor laws are revised or new ones enacted.

The assistant administrator for the Office of Policy, Planning, and Review said that Wage and Hour generally has spent less than \$100,000 for training in a fiscal year. Budget records show that in fiscal year 1986, Wage and Hour spent \$80,798 for training. However, in fiscal year 1987 its training expenditures totaled \$901,652 primarily because Wage and Hour conducted divisionwide training conferences on the Immigration Reform and Control Act, the Garcia Amendment, and industrial homemaker issues, which significantly increased training expenses for that year. (All figures above include travel costs related to the training.)

COs are hired at the GS-5 or GS-7 level with a college degree or equivalent work experience and, at the recommendation of their supervisor, can receive noncompetitive promotions to the GS-11 journeyman level. During their initial weeks on the job,

COs familiarize themselves with FLSA and with Wage and Hour policies and procedures.<sup>3</sup>

### On-the-Job Training

According to the Wage and Hour program analyst for training, on-the-job training for new COs is a critical part of staff development. As part of this training, a trainee observes and shadows an experienced CO trainer as he or she performs typical CO case work until the trainee has observed and participated in all phases of investigation and conciliation case work. Once the trainer and supervisor decide that the trainee is ready, the supervisor will begin to assign the trainee cases. The Wage and Hour program analyst said that during this time and usually until they reach the GS-11 level, trainees are supervised and generally perform less complex FLSA investigations and conciliations. He also said that senior COs (GS-11s and 12s) are usually assigned the more difficult and complex FLSA cases and government contract cases covered under other labor laws that Wage and Hour enforces.

### Classroom Training

According to a Wage and Hour training goals and objective statement, Wage and Hour's classroom training is designed to give new COs a foundation of FLSA subject matter knowledge and investigative skills. Advanced COs (usually second-year) receive additional classroom training to provide subject knowledge and investigative skills relating to other laws administered by Wage and Hour. Both the entry-level and follow-up training courses are taught by supervisors and senior COs. Course work for both classes is task oriented and includes lecture, discussion, group, and individual exercises as well as practice cases.

Compliance Officer Basic Training is a 3-week, entry-level course that introduces trainees to the history of FLSA and its overtime, minimum wage, child labor, and recordkeeping provisions. During this class, trainees learn methods for performing investigations and conciliations and participate in classroom case investigations to practice the skills they have acquired.

Compliance Officer Follow-up Training is a 4-day course that covers the provisions and enforcement of the other labor laws that Wage and Hour is responsible for enforcing. The course teaches the provisions of the Davis-Bacon Act, the Walsh-Healey

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<sup>3</sup>The ESA Training Branch is testing a self-instructional, self-paced workbook (Basic Training for Wage and Hour Compliance Officers) to supplement reading done by COs during their first weeks on the job.

Public Contracts Act, the Service Contract Act, the Contract Work Hours and Safety Standards Act, and the Migrant and Seasonal Agricultural Worker Protection Act. This course is offered to advanced (generally second-year) COs.

### Refresher or Developmental Training

The program analyst for training said that Wage and Hour does not provide developmental or refresher courses for COs. ESA's Branch of Training and Development, however, offers a self-paced training package for newly hired COs and provides information on external training courses. Also, specialized training packages are developed to address legislative and regulatory changes as they occur. (For example, a special training package was developed for the Garcia Amendments to FLSA.)

Training conferences are conducted by regional offices on an as-needed basis. These conferences are taught by COs, assistant area directors, area directors, and national office staff members and may cover information on new labor laws, legislative changes to existing laws, Labor Department/Wage and Hour policy, or other issues that affect CO work. In the last 5 years, Wage and Hour held training conferences in fiscal years 1983 and 1987 for its work force of over 900 COs.

Area directors and assistant area directors also regularly provide COs with training in area office meetings, which are held at least twice a year.

### Industrial Homeworker Issues Covered During Training Conferences

From July through August 1987, Wage and Hour conducted 3-day training conferences for its CO staff in all 10 ESA regions. The conference presented the latest information and investigative techniques concerning industrial homeworker issues as well as the Immigration Reform and Control Act of 1986<sup>4</sup> and coverage of state and local government employees under FLSA as a result of the Garcia decision.<sup>5</sup>

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<sup>4</sup>This act contains civil and criminal penalties for employers who knowingly hire illegal aliens and also requires all U.S. employers to complete, maintain, and provide for inspection of employment verification forms for all new employees.

<sup>5</sup>The Supreme Court, in Garcia v. San Antonio Metropolitan Transit Authority, et al. determined that state and local government employees are covered under FLSA's minimum wage and overtime provisions.

The lecture and handouts given during the 2-hour conference segment on FLSA regulations governing industrial homeworkers-- persons involved in producing a product for employers in their homes--gave COs an overview of the history of homemaker legislation and rulemaking and highlighted some of the criticisms the Labor Department has received over the years concerning weaknesses in its homemaker investigations. In addition, the conference segment covered techniques for investigating homeworkers and the role of work observation<sup>6</sup> in homemaker investigations. COs were given time to practice work observation techniques and to analyze the results of their observations during an in-class exercise.

Wage and Hour's Mechanisms for Assessing  
CO Performance After Training

Wage and Hour has eight standards for assessing COs' performance. The Wage and Hour area director for the Baltimore area office said that these standards are designed to identify outstanding COs as well as poor performers. The performance standards focus on a CO's ability to

- use time on the job primarily for enforcement activities,
- complete compliance actions in accordance with established Wage and Hour policies and procedures,
- complete compliance actions on time as defined by Wage and Hour criteria,
- effectively manage hours spent on a case in such a way that the complexity and nature of the case supports the time expended,
- independently negotiate the payment of back wages by the employer,
- prepare a case file so that it fully describes and supports case findings,

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<sup>6</sup>A technique used to reconstruct hours worked when verifiably accurate records of the actual hours worked are not available. It involves a CO observing and recording the time it takes a homemaker to perform a particular task in order to estimate the number of hours the homemaker previously worked on that or a related task.

- complete special assignments on time and in an acceptable manner, and
- complete administrative reports on time and in an acceptable manner.

A Wage and Hour program analyst in the Office of Policy, Planning, and Review said that a satisfactory rating for these standards (particularly the first five listed above) means that a CO is doing quality enforcement work in a timely manner.

According to the area director of the Baltimore Wage and Hour area office, every investigation and conciliation that a CO completes is reviewed by a supervisor for conformance with these standards. Supervisors use their evaluations of investigation cases to compute COs' annual performance ratings. The area director said that although the CO performance rating system is largely quantitative, supervisors can use discretion in applying the standards when rating a CO's performance on an especially difficult case. A Wage and Hour directive encourages supervisors to provide positive feedback to COs for work that is "significantly above that which is ordinarily expected."

According to the Department of Labor Performance Appraisal Plan for Employees, if a CO's performance is deficient, a Performance Improvement Program can be prepared by the supervisor. Performance Improvement Programs are documented explanations of (1) reasons why the supervisor believes performance is less than satisfactory, (2) specific performance improvement goals, (3) the time period allotted to the CO to meet these goals, and (4) advice about what the CO can do to improve his or her performance. If a CO's performance does not improve within a reasonable time, the CO could be denied a salary increase, demoted, or fired.

The Wage and Hour test reinvestigation program is another mechanism used by management to monitor CO performance. According to the Wage and Hour Field Operations Handbook, the test reinvestigation program ensures that Wage and Hour's policies and procedures governing investigations are administered by COs and enforced in accordance with the handbook.

A test reinvestigation involves a supervisor's reinvestigating a case initially investigated by a CO. The handbook requires supervisors to perform one test reinvestigation for each CO every 18 months. It also requires that there be a 6-month period between the CO's initial investigation and the test reinvestigation and that the test reinvestigation cover a 2-year period that includes the time after the completion of the initial investigation. The assistant administrator of the Office of Policy, Planning, and Review said that this periodic

reinvestigation of cases also helps to ensure the integrity of Wage and Hour's enforcement-through-investigation program.

**WAGE AND HOUR'S FULL-TIME EQUIVALENT  
USE FOR FISCAL YEARS 1981-87**

As part of the budget process each fiscal year, ESA, in conjunction with Wage and Hour's Office of Policy, Planning, and Review, estimates the number of full-time equivalents (FTEs), that is, staff-years, it will need to enforce FLSA and other labor laws in the next fiscal year. During the year, the Office of Policy, Planning, and Review tracks the number of CO FTEs that Wage and Hour uses.

Table 1 shows the number of unused Wage and Hour CO staff-years for fiscal years 1981-87. As the table shows, Wage and Hour has had a CO FTE ceiling of 929 for 5 of the last 7 years. Wage and Hour used almost all of its authorized CO FTEs in 3 of the 7 years, but did not use from 28 to 91 FTEs in the other 4 years. The assistant administrator in the Office of Policy, Planning, and Review indicated that generally, governmentwide hiring freezes and agencywide hiring slowdowns affected Wage and Hour's ability to use all of its CO FTEs approved in fiscal years 1981-87, as shown in the table.

**Table 1: Wage and Hour Division's Unused Full-Time Equivalent Compliance Officer Staff-Years--Fiscal Years 1981-87**

	Fiscal years						
	<u>1987</u>	<u>1986</u>	<u>1985</u>	<u>1984</u>	<u>1983</u>	<u>1982</u>	<u>1981</u>
CO FTE ceiling <sup>a</sup>	929	940	929	929	929	929	1,107
CO FTEs used <sup>b</sup>	<u>901</u>	<u>937</u>	<u>928</u>	<u>895</u>	<u>894</u>	<u>927</u>	<u>1,016</u>
Unused FTEs	<u>28</u>	<u>3</u>	<u>1</u>	<u>34</u>	<u>35</u>	<u>2</u>	<u>91</u>

<sup>a</sup>Data were provided by ESA's Division of Financial Management.

<sup>b</sup>Data were provided by Wage and Hour's Management Information System.

**BACK WAGES TRANSFERRED INTO THE  
U.S. TREASURY BECAUSE EMPLOYEES  
CANNOT BE LOCATED**

Generally, when a Wage and Hour CO finds an employer in violation of FLSA, the employer pays the back wages directly to the affected employees. However, in cases involving (1) litigation, (2) a substantial back wage case finding (i.e., \$5,000 or more), and (3) some doubt that the employer will make a bona fide offer of back wages to the employees, employers may be required to deposit back wages in the Wage and Hour back wage disbursement account in the U.S. Treasury. Wage and Hour regional office back wage clerks and ESA then process the back wage payments and pay the affected employees from this account.

In such cases, back wages for employees who cannot be located or who refuse payment must be transferred as miscellaneous receipts to the U.S. Treasury 3 years after the back wages were deposited in the disbursement account. Once these back wages are transferred to the Treasury, ESA can no longer disburse them to employees.

Table 2 presents data provided to us by ESA's Division of Financial Management showing that about \$1.5 million in FLSA back wages was transferred by ESA Wage and Hour regional offices into the U.S. Treasury during fiscal years 1986 and 1987 as miscellaneous receipts because employees due these wages could not be located or refused payment. The number of transfers made and the amount of money transferred varied greatly among the regions. ESA procedures require that regions make transfers in November, February, May, and August of each fiscal year. The three regions making the most transfers--Boston, Atlanta/Birmingham, and Chicago--made five to seven transfers during the 2-year period, followed by Kansas City and Seattle with four. The regions making the largest transfers during the period were Atlanta/Birmingham with about \$608,000; Dallas, about \$285,000; and Seattle, about \$138,000.

**Table 2: FLSA Back Wages Transferred by Employment Standards Administration Regions Into the U.S. Treasury--Fiscal Years 1986 and 1987**

	Region I <u>Boston</u>	Region II <u>New York</u>	Region III <u>Philadelphia</u>	Region IV <u>Atlanta</u> <u>Birmingham</u>	
Oct. 1985					
Nov. 1985					
Mar. 1986	\$27,236.83				\$7,795.63
May 1986				\$215,865.58	
June 1986	\$6,920.39			\$28,398.38	
July 1986					\$69.50
Aug. 1986					\$4,606.09
Sept. 1986				\$65,633.88	
TOTAL FY 1986	<u>\$34,157.22</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$309,897.84</u>	<u>\$12,471.22</u>
Oct. 1986				\$61,407.05	
Nov. 1986					\$6,191.21
Dec. 1986	\$7,784.16		\$41,935.53		
Mar. 1987	\$35,732.03			\$129,772.73	
Apr. 1987					
May 1987	\$3,931.42			\$58,345.42	
June 1987					\$1,869.37
Aug. 1987				\$27,711.91	
Sept. 1987	\$12,796.36				
TOTAL FY 1987	<u>\$60,243.97</u>	<u>\$0.00</u>	<u>\$41,935.53</u>	<u>\$277,237.11</u>	<u>\$8,060.58</u>
TOTAL FY 1986 AND 87	<u>\$94,401.19</u>	<u>\$0.00</u>	<u>\$41,935.53</u>	<u>\$587,134.95</u>	<u>\$20,531.80</u>

Source: Data provided by the Division of Financial Management, Employment Standards Administration, Department of Labor.

<sup>a</sup>Birmingham is a Wage and Hour regional office that has responsibility for half the area offices in ESA's Atlanta region.



<u>Region V</u> <u>Chicago</u>	<u>Region VI</u> <u>Dallas</u>	<u>Region VII</u> <u>Kansas City</u>	<u>Region VIII</u> <u>Denver</u>	<u>Region IX</u> <u>San Francisco</u>	<u>Region X</u> <u>Seattle</u>	<u>TOTAL</u>
\$25,794.56						\$25,794.56
					\$40,490.66	\$40,490.66
\$87,025.91	\$27,722.06	\$40,284.35				\$190,064.78
			\$30,023.32		\$84,257.04	\$330,145.94
						\$35,318.77
		\$7,253.32				\$7,322.82
						\$4,606.09
		\$59,605.64				\$125,239.52
<u>\$112,820.47</u>	<u>\$27,722.06</u>	<u>\$107,143.31</u>	<u>\$30,023.32</u>	<u>\$0.00</u>	<u>\$124,747.70</u>	<u>\$758,983.14</u>
						\$61,407.05
						\$6,191.21
		\$17,556.17			\$7,150.73	\$74,426.59
\$6,962.81						\$172,467.57
\$2,302.54						\$2,302.54
\$7,230.64						\$69,507.48
						\$1,869.37
	\$257,254.11				\$5,672.97	\$290,638.99
						\$12,796.36
<u>\$16,495.99</u>	<u>\$257,254.11</u>	<u>\$17,556.17</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$12,823.70</u>	<u>\$691,607.16</u>
<u>\$129,316.46</u>	<u>\$284,976.17</u>	<u>\$124,699.48</u>	<u>\$30,023.32</u>	<u>\$0.00</u>	<u>\$137,571.40</u>	<u>\$1,450,590.30</u>

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