

# Department of Labor announces return of liquidated damages for wage and hour claims

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On April 9, 2021, in [Field Assistance Bulletin \(FAB\) No. 2021-2](#), the U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) announced it would return to its former policy of seeking liquidated damages from employers in pre-litigation investigations and settlements of wage and hour claims. This revived policy simultaneously rescinds the Trump Administration's employer-friendly practice of refraining from pursuing liquidated damages in such matters.

Under the Fair Labor Standards Act (FLSA), violations of minimum wage or overtime requirements subject employers to liability for the unpaid minimum wages and overtime. But the FLSA also provides that employers may be liable for an equal amount in liquidated damages, sometimes referred to as "double

damages.” 29 U.S.C. § 216(b). The Portal-to-Portal Act of 1947 amended the FLSA to add a safe harbor provision against liquidated damages for employers who act in good faith or who had reasonable grounds for believing the act or omission that resulted in liability was not a violation of the FLSA. 29 U.S.C. § 260.



The pro-employer Trump Administration’s WHD abstained from pursuing liquidated damages in certain scenarios, including when there was no evidence of bad faith on the part of the employer, or when the employer had no previous history of violations. The stated objective of this policy of abstention was to remove certain regulatory and enforcement obstacles to economic growth during America’s battle with COVID-19. In contrast, the Biden Administration’s FAB 2021-2 serves as reminder to employers of the new administration’s pro-worker agenda.

Now, under FAB 2021-2, the “WHD will return to pursuing liquidated damages from employers found due in its pre litigation investigations provided that the Regional Solicitor (RSOL) or designee concurs with the liquidated damages request.” This makes employer compliance with the FLSA more important than ever to avoid the possibility of an assessment of liquidated damages.

Phillips Murrah’s labor and employment attorneys continue to monitor developments to provide up-to-date advice to our clients regarding the DOL’s policies.

*Janet A. Hendrick is an experienced employment litigator who tackles each of her client’s problems with a tailored, results-oriented approach.*

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