

Employers Won't Face Double Damages from DOL Wage and Hour Division's Administrative Proceedings

By Justin R. Barnes & Jeffrey W. Brecher

July 8, 2025

Meet the Authors



Justin R. Barnes

(He/Him)

Office Managing Principal

(404) 586-1809

Justin.Barnes@jacksonlewis.com



Jeffrey W. Brecher

(Jeff)

Principal and Office Litigation
Manager

(631) 247-4652

Jeffrey.Brecher@jacksonlewis.com

Related Services

Energy and Utilities

Wage and Hour

Takeaways

- The WHD will no longer seek liquidated damages when trying to settle wage violations through administrative proceedings.
- The policy change took effect 06.27.25 and does not apply prospectively to prior written agreements with the WHD.
- The DOL said it may continue to pursue liquidated damages when it files litigation in court.

Related link

- [Field Assistance Bulletin No. 2025-3](#)

Article

The U.S. Department of Labor's Wage and Hour Division (WHD) has issued new internal guidance that significantly changes its approach to administrative settlements under the Fair Labor Standards Act (FLSA). In [Field Assistance Bulletin \(FAB\) No. 2025-3](#), Acting Wage and Hour Administrator Donald M. Harrison rescinded FAB 2021-2, issued under the Biden Administration, which authorized WHD to pursue liquidated (or double) damages against employers at the administrative investigation stage.

As a matter of agency policy, the acting administrator prohibits the agency's regional solicitors (RSOLs) from seeking liquidated damages, except when the WHD pursues an enforcement action in court.

Field Assistance Bulletin

According to the FAB, the FLSA does not authorize the agency to pursue liquidated damages when supervising payments to workers in administrative (pre-litigation) proceedings under Sec. 216(c). Rather, employees can recover liquidated damages only through a judicial proceeding pursuant to FLSA Sec. 216(b).

Only courts have the authority to determine whether liquidated damages are appropriate, particularly given employers' right to assert a good-faith defense under Sec. 260 in court, the FAB states.

The FAB takes the position that WHD's authority in administrative proceedings is limited to supervising the payment of unpaid minimum wages or overtime compensation. Liquidated damages, the FAB continues, can be sought only pursuant to private lawsuits brought by employees or litigation filed by the DOL itself. The FAB expressly states it does

not bar RSOLs from seeking liquidated damages in litigation.

The FAB took effect June 27, 2025. It does not apply retroactively to agreements reached with WHD prior to that date.

Takeaways

The new WHD policy makes early settlement a significantly more favorable option for employers facing DOL enforcement proceedings. The restriction on RSOLs seeking liquidated damages sharply reduces potential employer exposure and can mean a quicker resolution. The FAB asserts that the practice of seeking liquidated damages has extended the administrative investigation stage by 28 percent.

Employers should promptly respond to WHD investigations. Since administrative settlements now carry less financial risk, employers may wish to resolve matters more quickly at the administrative stage to avoid the possibility of litigation and liquidated damages. Timely cooperation and prompt payment of back wages can contain costs and avoid escalation.

Employers should be vigilant if a WHD investigator implies that the agency will seek liquidated damages in an administrative proceeding. Cite the new policy in the FAB to argue that any settlement with WHD must be limited only to unpaid wages or overtime.

The WHD's new policy alters the risk analysis for employers when considering whether to settle at the administrative stage. Carefully assess the facts and evaluate whether the employer may be able to demonstrate good-faith compliance and reasonable grounds for the compensation practice under challenge, as this will be critical in defending against liquidated damages in court. Even though WHD cannot consider good-faith defenses in administrative settlements, maintaining thorough documentation of wage and hour compliance efforts is essential in seeking to avoid or reduce liquidated damages in court.

The FAB does *not* address the civil monetary penalties (CMP) that WHD can impose at the administrative stage. CMPs are adjusted annually; the current maximum CMP is \$2,515 per violation for repeated or willful violations of the FLSA's minimum wage or overtime requirements. CMPs are typically assessed on a per-employee basis. As the DOL under the current administration reevaluates its approach to wage and hour enforcement, WHD may revisit this practice as well, and the amount of CMPs assessed.

Contact your Jackson Lewis attorney if you have questions about the latest FAB or WHD's enforcement practices generally.

©2025 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.