

# NFIB Webinar on Unemployment and DOL Audits

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What Employers Need to Know About FLSA



# About the Presenter

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Rose Miller, SPHR is the Owner and President of Pinnacle Human Resources, LLC located in Albany and Syracuse, NY. Rose has been an HR professional for more than 20 years. She has overseen the growth of Pinnacle Human Resources and was formerly the Managing Partner of a division of the Bonadio Group and DR Human Resources. Pinnacle Human Resource provides clients with HR services that:

- Provide strategic HR support and expert HR best practices
- Help clients reduce costs and allows them to focus on their core business
- Offer clients customized solutions that fit any size company

Pinnacle Human Resources, LLC has a staff of over a dozen HR certified professionals who perform HR assessments, employee handbooks, on-site and off-site HR support, FLSA audits, managerial training, executive coaching, leave management systems, compensation and performance systems. We specialize in the alignment of people to fit corporate initiatives.

# Session Objectives

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- Why you should be concerned about DOL audits.
- Events that trigger Unemployment or DOL audits.
- What to expect during a DOL audit.
- The value of Self-Audits.
- New regulations and changes in the Fair Labor Standards Act.
- The importance of representation.

# Are DOL Audits on the Rise

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- More than one-half of employers incorrectly classify employees under the Fair Labor Standards Act (FLSA)
- In 2013, DOL wage and hour settlements added up to \$413 million
- Targeting low-wage industries with vulnerable workforces and those industries found with a history of chronic violations.

# Why Do Audits Occur

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- Former or current employee files a complaint with the DOL.
- DOL target a specific industry for investigation.
- Former employee answers Unemployment questionnaire that raises FLSA concerns.

# What are the Steps of a DOL Audit?

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- Random Visits
  - Can ask for another, more inconvenient time
  - Allow time to prepare.
- Notice from Unemployment or DOL
  - Can be rescheduled

# What are the Steps of a DOL Audit? (continued\_

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Unemployment or DOL may review:

- Posters
- Time clock records
- 3 years worth of wage and hour records
- Wage and hour practices
- Pay registers
- Check registers
- 1099's

# What are the steps of a DOL audit? (continued\_

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- Only supply specific information requested.
- We recommend a designated person for information. This person should have:
  - A complete understanding of FLSA
  - Be familiar with the company and practices
  - Be familiar with the records being reviewed
  - Understand any current issues that may be raised.
- Employee Interviews.



# What are the steps of a DOL audit? (continued)

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When audit is complete:

- DOL determination
- Settle or litigate

# Preparing for Audit by Performing a Self-Audit

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- Self audits take time.
- Not the same as an Accounting audit or other internal audits.
- Policies based on out-of-date past experiences.
- Discovering misclassifications before it's too late.

# Elements of a Self-Audit

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- Seek Senior Management buy-in.
  - Make a business case for the expense
  - White papers
  - Recent court cases



# Elements of a Self-Audit (continued)

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- Understanding FLSA
- Nonexempt employees
- Exempt employees
- Using the right terminology helps.



# Self Audit- Equal Pay

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- Equal Pay Act
- Comparison of jobs
- Prohibited pay differentials
- Permitted pay differentials



# Self Audits (continued)

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- Include Payroll staff
- Prepare of comprehensive list of all payroll tasks to review in the self audit



# Self Audit- Job Descriptions

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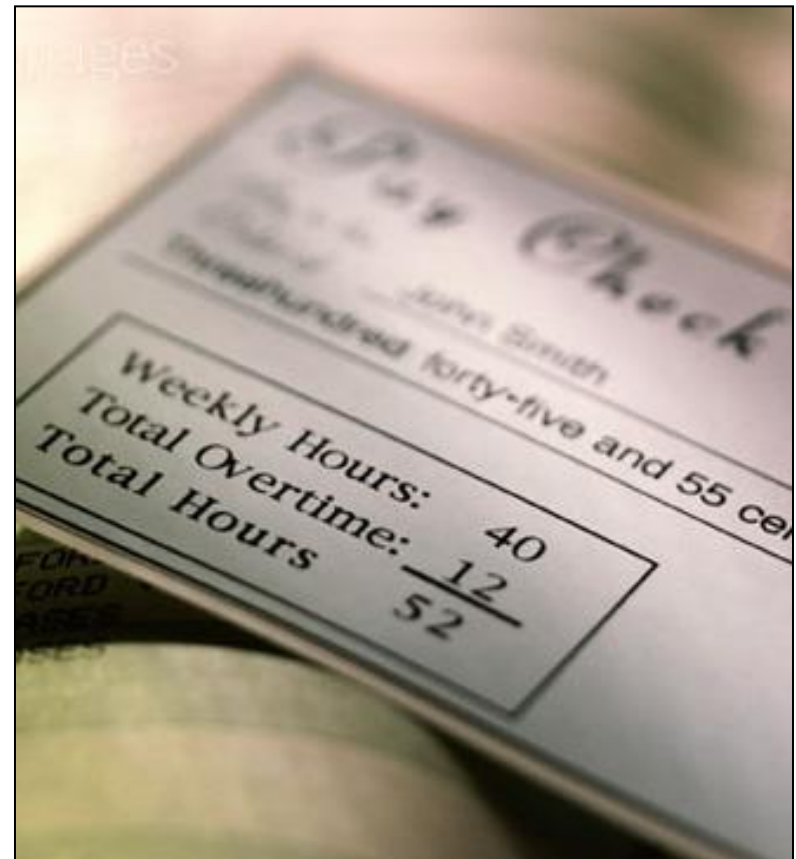
Job Descriptions that validate your DOL classifications.



# Self Audit- Hours of Work

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- FLSA requires regular and overtime pay
- Hours worked
- Workweek
- Preparatory and concluding activities





# Self Audit- Hours of Work

(cont.)

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- Waiting time
- On-call time
- Travel time

# Self Audit - Hours of Work

(cont.)

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- Split shifts
- Training programs, lectures, and meetings
- Holidays, vacations, and sick days
- Medical attention
- Report-in pay

# Self Audit – Recording Work Time

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- Means of tracking hours
- Regular starting and stopping times
- Discrepancies
- Rounding off



# Self Audit – How Overtime is Calculated

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Overtime for hours worked over 40

- Averaging hours prohibited
- Holiday/sick pay not included
- On-call and travel time may be included
- Employee rights
- Time of payment



# Self Audit - Rest Periods

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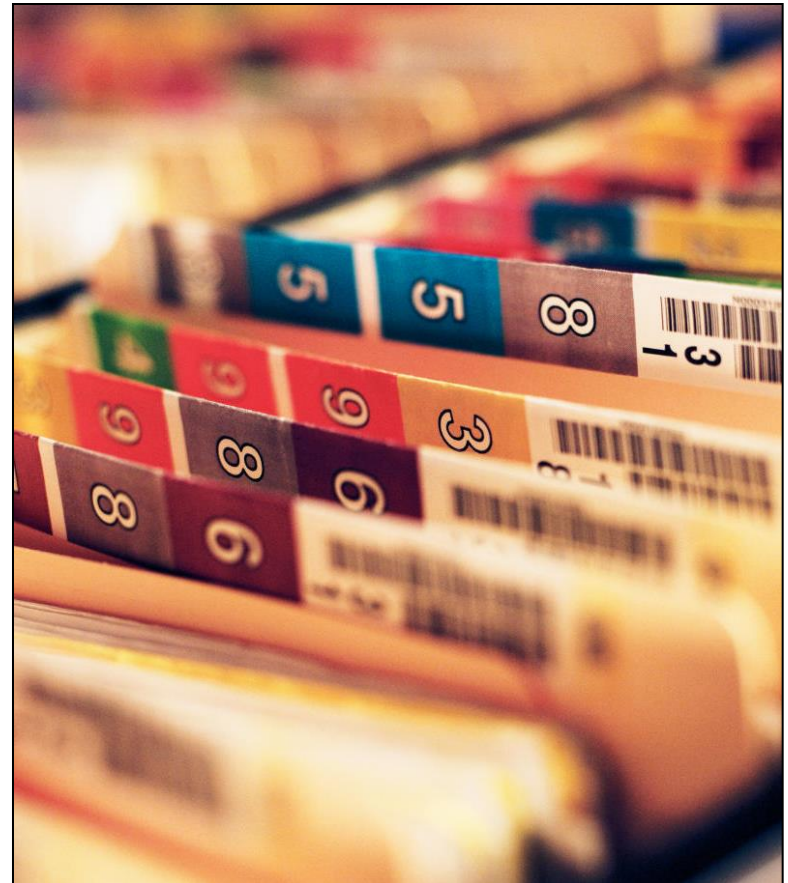
- Meals
- Work breaks
- Sleep time



# Employee Files and Recordkeeping

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- Employee information
- Basic employment and earnings records
- Records on employees receiving tips
- Minimum requirements



# FLSA Exemptions

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- Who is exempt?
  - Salary basis test
  - Duties test
- How do you determine exemptions?



# Deductions from Pay

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- Absences due to illness or disability
- Absences for personal reasons
- Offsets
- Disciplinary suspensions and penalties
- First and last weeks of employment
- Unpaid leave



# Part-Timers and FLSA

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- Minimum wage
- Overtime
- Equal pay



# Contractor Relationships

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- Contractors include workers who contract with the company
- Reasonable basis test
- Common law test

# Other Exposures

- Required Posters
- Employees living and work in other States
- Child Labor Laws and restrictions



# Being Prepared

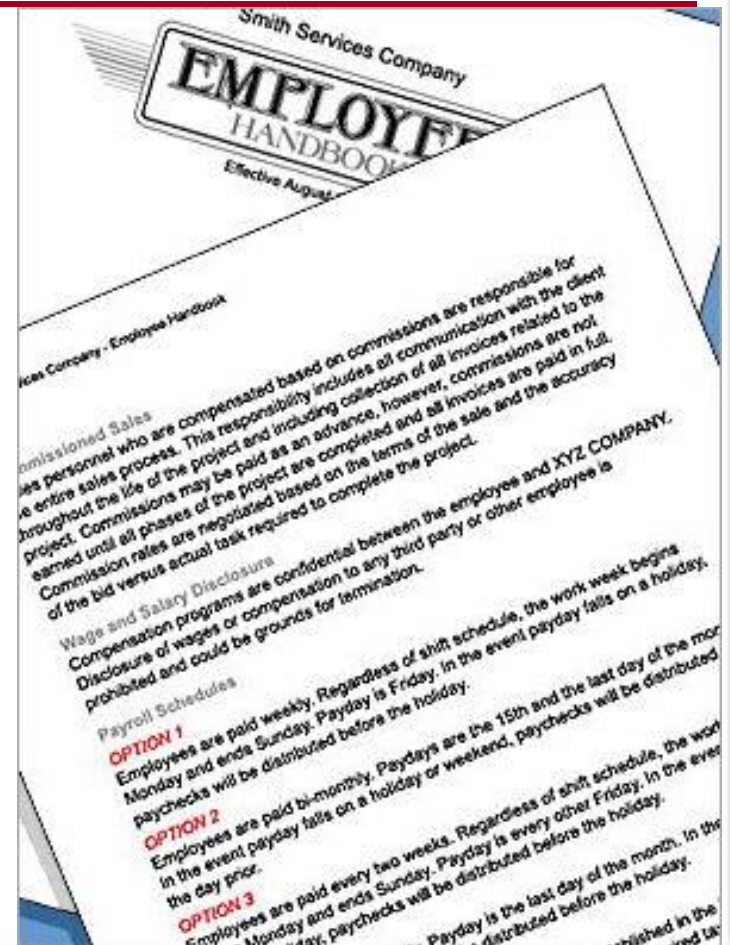
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A leading speaker, Vicky Lambert for Business & Legal Reports is quoted regarding the value of self-audits. She has stated, "It's always better than the alternative. No matter what you end up doing to try to get yourself into compliance and ensure you are in compliance, it's always better than the alternative – which basically is getting audited by the IRS, Unemployment or the NYS Department of Labor and letting them find the errors for you. [It's better] because when you find the errors, it's going to be a lot less problems and a lot less money involved."



# Being Prepared (continued)

The Value of a Comprehensive Employee Handbook and



# **New Regulations Are Coming!**

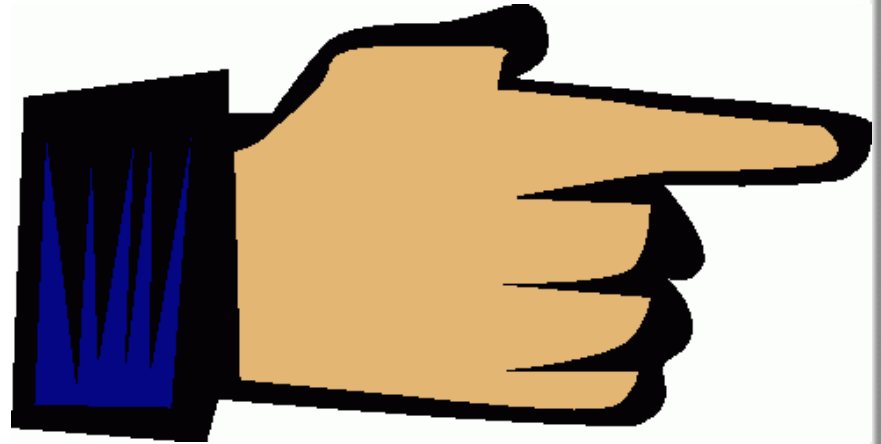
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- Increase in Salary Basis Test
- Revisions to Exempt Definitions
- Increase scrutiny in Contractor status.

# The Importance of Representation

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- Designate a Point Person
- Client/Attorney Privilege



# DOL Audit vs Private Settlements

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Private Law Suits

Seeking DOL Approval

Open Door Policy

Never Retaliate!





# KEY POINTS To Remember!

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- Unemployment and DOL audits will increase.
- There are triggers for Unemployment or DOL audits.
- Know what to expect during a DOL audit.
- Preparing for an Audit through Self-Audits.
- Rules regarding Exemptions and Contractors are changing.
- Designating a knowledgeable Representative.
- Educate your Managers and Never Retaliate.

# Thank you for Listening

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I hope you have found this webinar about Unemployment and DOL audits helpful and informative.

We will open the webinar for questions now.