

WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

LEGAL FIELD LETTER

NO. 21

SUBJECT: ENFORCEMENT OF RECORD KEEPING REQUIREMENTS.

The Division recently determined to emphasize enforcement of the record keeping requirements (section 11(c)) of the Fair Labor Standards Act since the keeping of proper records substantially facilitates inspections and reduces the time, effort and expense of the Government in enforcing the Act.

An Administrative Field Letter now being prepared will set forth the procedure to be followed to secure compliance with record keeping requirements. It is advisable to set forth herein the policy to be followed by legal staffs of the regional offices in order that this work may properly be coordinated.

1. Civil suits will be instituted in certain cases, based solely on record keeping violations. However, such suits will be brought only in those cases which do not warrant criminal action. As hereinafter indicated, it may be advisable after civil action has been brought based solely on record keeping violations, to institute another civil suit based on other violations.
2. Where an inspection has progressed sufficiently to indicate coverage of employees and substantial record keeping violations (such as the keeping of very inadequate records, or failure to keep any records whatever) and it is impossible because of lack of adequate records to ascertain without considerable further investigation whether there are other violations, the Division will consider bringing civil suits immediately based solely on the record keeping violations, without waiting for completion of the inspection by employee interviews, etc. Where such suits are brought and the completed inspection later discloses additional violations, the Division will subsequently consider whether they should be made the basis of an additional suit.
3. Where an inspection has been completed and indicates substantial record keeping violations but no other violations which are sufficient by themselves to warrant civil suit, and no criminal case is indicated, the Division will consider bringing civil suit based solely on record keeping violations.

4. As soon as any case of the type described in paragraphs 2 or 3 above is referred to the Regional or other ranking Attorney to consider civil action based solely on record keeping violations, the Regional Attorney should immediately submit to Washington in the usual manner, a brief statement of the facts of the case and a recommendation concerning suit. It is advisable, in order to save time, that proposed pleadings be submitted also in any such cases where the recommendation advises suit. It is pointed out that the model complaint and judgment now in use need merely be amended in such cases by omitting the language relative to violations of sections 6, 7, 15(a)(1) and 15(a)(2).

It is expected that a number of cases of the type described in paragraphs 2 or 3 will soon be submitted to the legal staffs in each region in order to secure increased compliance with record keeping requirements. It is important, of course, to give prompt consideration to such cases. They should be given priority to the extent that the press of other legal work will permit. Where time is particularly important in securing Washington clearance to start civil suits based solely on record keeping violations, attorneys should follow the existing instructions to advise Washington of the facts and to request authority by telephone or telegraph.

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