

*PROTECTING
AMERICA'S
GARMENT
WORKERS*

A MONITORING GUIDE



**U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division**

NOTE: This pamphlet provides only general information about the FLSA. It does not attempt to answer all legal questions that may arise under the FLSA. It should not be considered in the same light *as* official statements of position contained in regulations or in the official opinion letters of the Wage & Hour Administrator. Copies of those publications may be obtained free from the nearest office of the Department of Labor's Wage & Hour Division

HOW TO START

If you are not quite convinced that you want to undertake monitoring of your contractors, here is another reason: "**hot goods**." Hot goods are items made in violation of the minimum wage, overtime or child labor requirements. The Fair Labor Standards Act (FLSA) hot goods provision makes it illegal for any person (who is not specifically exempt) to ship or sell hot goods in interstate commerce.

That means that you might be ordered by a court to stop shipment or sale of goods you receive from a contractor that violated the FLSA. The Department of Labor (DOL) will not lift its objection to goods being shipped or sold until the contractor's employees have received the back wages owed them and suitable assurances of future compliance are received. Thus, it is in your best interest to ensure that your contractors comply with the FLSA.

Some things you can do

Once you have decided to monitor your contractors, here is how to start:

1. Let your contractors know that you intend to comply with the FLSA and that you expect them to do so, too, as part of their contract with you. Let them know that you intend to monitor their compliance with the Act.
2. Work with your contractor to conduct a pre-contract review of pricing terms. Contractors' pricing terms should be competitive but sufficient to cover the actual costs of producing the goods. A contractor may try to win a contract with you by setting prices too low to pay employees at the required minimum wage or to pay employees overtime for hours worked over 40.
3. Provide your contractors with copies of the DOL publication on the FLSA and a copy of its Wage & Hour poster, which explains the FLSA. Instruct your contractors to display the poster at their worksite (in language spoken by workers if available).
4. Ask your contractors to post a copy of your business card and telephone number at the worksite, along with an open invitation to employees to make inquiries about their rights under the FLSA (in language spoken by workers).

Developing Monitoring Agreements With Your Contractors

Contractual agreements govern your relationship with your contractor. You and your garment contractors have many contractual understandings - about quality, prices, delivery time. In the same way, a written contractual agreement is the ideal mechanism to establish both your expectation that a contractor will comply fully with the FLSA and your intent to monitor the contractor's working conditions, either by you or an independent monitor.

At a minimum, such an agreement would require your contractors to comply with the FLSA:

- pay all employees at least the federal minimum wage
- pay employees time-and-a-half for hours worked in excess of 40 per week
- establish specific pay periods
- keep and maintain accurate time, pay and employment records
- comply with child labor provisions
- not use prohibited industrial home work

An enhanced written compliance agreement would be more effective. An enhanced agreement would also require your contractors to:

- use electronic time clocks
- not subcontract work without prior approval from you
- pay employees weekly, on the same day of the week
- pay employees with a payroll check, accompanied by a check stubⁱ
- allow unannounced, on-site monitoring visits
- make the following available to monitors upon demand:
 - time records
 - payroll records (individual entry for every employee, every week)
 - information on every employee (name, address, work ID) number, social security number)
- employees to talk privately to monitors on a drop-in basis
- a management representative and an alternate for the monitors to interview

You may also want to encourage your contractors to use an outside payroll service, and to provide your contractors with an electronic time clock.

ⁱ Some states may have specific requirements with respect to the form of payment; for example, New York state law requires employers to obtain a license before paying by check.

Monitoring a Garment Contractor

Once your contractors have agreed to comply with the FLSA, you will want to know that they are living up to that agreement. On-site monitoring of the contractor's employment practices, by you or an independent monitoring service, is the best way to be sure your contractor is following the law.

Site Visits

An effective monitoring program uses trained individuals with experience in the garment industry to conduct unannounced site visits with contractors, at least quarterly (and more often if problems are found). During site visits, review time and payroll records, interview employees, and observe the employees' working conditions to:

- determine the hours worked by employees and actual pay they received
- determine whether any children are working
- establish that the contractor is following labor laws
- determine whether the contractor is using subcontractors, and
- determine whether work is given to home sewers

Preparing for Site Visits

During the 7 days prior to a site visit, monitors should look for employees entering or leaving the work site before or after hours on week nights and on at least one weekend day. Make notes to check against time cards.

If, for example, monitors observe employees working over the weekend, but the time cards show only Monday through Friday, those records are not credible.

Conducting a Site Visit

There are two steps to a successful site visit. Walk through the workplace and conduct interviews with employees. Be sure the monitor, or one of the monitors, can speak the workers' language. Talk to the contractor and examine the employment records.

Step 1: Meeting with the Employer

1. Conduct an initial meeting with the contractor and/or person in charge of payroll. It is important to know how all employees are paid and how wages are determined. Obtain the following information:
 - Is compensation based on a piece rate? Is it hourly, salary, or a combination of both?
 - What are the rates of pay?
 - What is the method of payment, cash or check?
 - What is the frequency of payment?
 - What are the reasons for all deductions?
 - What constitutes a pay period?
 - What are the hours of business operations?
 - What is the method for computing overtime, if any?
2. Determine how much time is necessary to complete work paid at a piece rate. If, for example, an employee is paid \$4 per garment, but on average, it takes 75 minutes to complete, that would be a violation of minimum wage.
3. Check the contractor's records, including
 - time cards/time sheets
 - payroll registers/cash pay records
 - canceled checks
 - piece-rate tickets
 - current addresses and social security numbers for all employees

Take a closer look at records that seem too perfect or have handwritten changes or corrections.

4. Make copies or take notes on some records for a later comparison and future visits.
5. Compare data on time cards/time sheets with information gathered from observing the contractor shop prior to the initial meeting with the employer.
6. Look at all the work orders that are currently "in house." If the orders include women's apparel, it may be necessary to count the goods to assure that they are all at the factory, and not being worked on in employees' homes.

Step 2: Observing and Interviewing the Employees

1. Walk through the establishment. Count the number of employees for later comparison with the number of time cards.
2. Make arrangements to interview several employees to hear their description of work and pay conditions and to verify the records. These interviews should be confidential. Some typical questions to ask employees:
 - What are your starting and stopping times?
 - How much time do you get for lunch and rest periods?
 - What days do you work?
 - Who keeps your time?
 - Do you have or know of any off the clock work, either at the factory or at home?
 - How are you paid and how often?
 - When were you last paid?
 - What is your rate of pay?
 - What specific goods are you working on?
 - What deductions are made from your paycheck or your cash pay?
 - How is your overtime computed?
 - How is the piece rate figured?
 - Are you told in advance how much you will be paid?
 - Are you given check stubs?
 - Are time records accurate?
 - Were you "coached" for this interview?

It is important to interview employees about recent pay periods since memories often fail, as the time grows longer. Analyze the interviews and compare them with the payroll records and information gathered from observing the contractor shop. Get answers for any questions or discrepancies that emerge. This is where even the best schemes can unravel. Look carefully at any employee statement that suggests a violation, even if the other statements indicate compliance.

Let Us Help

For more information on monitoring, or for technical assistance in setting up your own monitoring program, please contact:

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FOR MORE INFORMATION ABOUT THE FLSA, INCLUDING THE POSTER AND SAMPLE MONITORING AGREEMENTS: Please contact the nearest office of the Wage & Hour Division, which is listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration. For information about State or local laws, please contact the State or local agency responsible for the enforcement of those laws.