



BRIEFLY...

COVID-19: THE PANDEMIC HIGHLIGHTED THE NEED TO STRENGTHEN WAGE AND HOUR DIVISION'S ENFORCEMENT CONTROLS

September 30, 2021

WHY OIG CONDUCTED THE AUDIT

In January 2020, the Secretary for Health and Human Services declared a nationwide public health emergency in response to COVID-19. Since then, millions of Americans contracted COVID-19 and many public schools and child care facilities closed temporarily, leaving parents without child care to work. In response, Congress passed the Families First Coronavirus Response Act (FFCRA) to ensure American workers would not be forced to choose between their paychecks and the public health measures needed to combat the virus.

Wage and Hour Division (WHD) was responsible for implementing and enforcing the new law, while also making critical operational decisions during the COVID-19 pandemic. As part of the OIG's Pandemic Oversight Response Plan, this report presents the results of our audit of the WHD's enforcement of the paid leave provisions of the FFCRA.

WHAT OIG DID

We conducted a performance audit to answer the following question:

Has WHD implemented effective controls for enforcing its FFCRA paid leave compliance?

To answer this question, we conducted interviews with agency officials and reviewed the FFCRA, the temporary rule resulting from it, guidance and training documents, and WHD data.

READ THE FULL REPORT

<https://www.oig.dol.gov/public/reports/oa/2021/19-21-008-15-001.pdf>

WHAT OIG FOUND

WHD implemented controls for enforcing FFCRA paid leave compliance. However, we found that these controls could be strengthened.

WHD relied on incoming complaints to enforce FFCRA paid leave. The agency does not require staff to document all incoming complaints and did not implement additional complaint handling controls specific to the FFCRA. As a result, WHD cannot ensure the agency took proper action on all FFCRA complaints, and could have turned away employees whose employers violated their right to obtain paid leave benefits through the FFCRA. Because WHD incorporated the FFCRA into its existing processes, these control deficiencies also apply to non-FFCRA labor laws enforced by the agency.

In addition, WHD did not ensure FFCRA complainants received the leave payments they were owed. WHD also did not have a method for analyzing trends regarding conciliation outcomes or a conciliation performance measure to determine if WHD was meeting agency objectives. As a result, WHD cannot determine how effective the agency was at securing FFCRA payments for workers when using conciliations.

Lastly, we found WHD continued to experience enforcement challenges such as increasing the amount of remote investigations and limiting direct investigations of other labor laws, such as the Fair Labor Standards Act (FLSA), due to COVID restrictions.

WHAT OIG RECOMMENDED

While the paid leave provisions of the FFCRA are no longer in effect, WHD should address the control weaknesses we identified in its complaints and conciliation processes for the other enforcement programs. We made five recommendations to the Acting Administrator of WHD. WHD generally agreed with our recommendations and indicated the agency has already taken action to implement some recommendations.