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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510–6300

June 3, 2014

The Honorable David Weil
Wage and Hour Division Administrator
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Dr. Weil:

As members of the Senate Health, Education, Labor and Pensions Committee, we write to request information about the Department of Labor (DOL) Wage and Hour Division's (WHD) investigative process. A recent federal district court decision raises questions about whether WHD investigators are properly and fairly conducting wage and hour investigations. Therefore, we request a staff briefing to discuss issues raised by the court's decision.

On April 7, 2014, the United States District Court for the Southern District of Texas, Victoria Division ordered DOL to pay over $550,000 in attorneys' and other fees for a failed wage and hour lawsuit.[1] In its opinion, the court noted many troubling missteps taken by the WHD in the course of a wage and hour investigation that was the subject of the lawsuit. Specifically, a WHD investigator "appeared to have made up his mind [that the company being investigated violated wage and hour laws] before the investigation was even underway";[2] interview notes from the WHD investigation were inappropriately shredded and/or burned;[3] and WHD overestimated the back wages it demanded from the company by approximately $4 million dollars because, among other things, it failed to conduct a sufficient amount of interviews at the beginning of the investigation.[4] The lead DOL litigation attorney was barred from defending depositions, in part, because, according to the court, her 102 objections at the first deposition gave her "more speaking lines than the deponent."[5] In sum, the court states, "DOL failed to act in a reasonable manner both before and during the course of [the] litigation. . ."[6] and therefore determined DOL should pay the company's litigation fees.

The actions noted in the court's opinion raise questions about whether WHD investigators are properly trained and receive proper supervision as they carry out investigations. While these

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[1] *Guard Gate Services v. Perez*, No. V-10-91, slip. op. (S.D. Tex. Apr. 7, 2014).
[2] *Id.* at 16.
[3] *Id.*
[4] *Id.*
[5] *Id.* at 5.
[6] *Id.* at 20.

actions did not occur under your leadership, as the new administrator, you are in a position to ensure investigators perform their duties appropriately. Indeed, during your confirmation process you committed to visit WHD field offices, identify any problems, and work to address them. To understand how the WHD trains its investigators and how it plans to ensure the integrity of its future investigations, we request a staff briefing to discuss these issues.

Please have your staff contact Kristin Nelson, Oversight Counsel, for the HELP Committee at 202-224-6770 by June 17, 2014, to schedule the requested briefing. Thank you for your attention to this matter.

Sincerely,

Lamar Alexander
Ranking Member
Senate Committee on Health, Education, Labor and Pensions

Johnny Isakson
Member
Senate Committee on Health, Education, Labor and Pensions

Tim Scott
Member
Senate Committee on Health, Education, Labor and Pensions