United States and New Jersey Department of Labor Audits: What Employers Need to Know

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Program Overview

- Common triggers for U.S. and New Jersey Department of Labor audits
- Key wage, hour, classification, leave, and recordkeeping risks
- Immediate steps to take when an audit begins
- Strategies for managing document requests and interviews
- Coordinating legal, human resources, payroll, and operations
- Responding to findings and implementing corrective action
- Preserving credibility, limiting disruption, and reducing exposure

U.S. DEPARTMENT OF LABOR AUDITS

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Federal Law: The Fair Labor Standards Act

The Fair Labor Standards Act ("FLSA") is the principal federal wage-and-hour law administered and enforced by the U.S. Department of Labor's Wage and Hour Division.

The FLSA establishes federal requirements concerning:

- Minimum wage — *29 U.S.C. § 206*
- Overtime compensation — *29 U.S.C. § 207*
- Payroll and timekeeping records — *29 U.S.C. § 211(c)*
- Child-labor protections — *29 U.S.C. § 212*
- Protection against retaliation — *29 U.S.C. § 215(a)(3)*

Covered nonexempt employees generally must receive at least the applicable minimum wage for all hours worked and overtime at one and one-half times their regular rate for hours worked over 40 in a workweek.

Exemptions depend on the applicable legal requirements—not merely an employee's job title, salary, or employer-assigned classification. *29 U.S.C. § 213; 29 C.F.R. Part 541.*

DOL may review records, inspect workplaces, interview employees, calculate back wages, and pursue appropriate remedies when a violation is identified.

Key Point: The FLSA is the starting point for most federal wage-and-hour audits, but the DOL also enforces the FMLA, federal child-labor requirements, and wage requirements applicable to certain federal contracts.

How Federal Audits Begin

Employee Complaint

- Unpaid Overtime
- Off-the-clock work
- Inaccurate pay practices

Targeted Enforcement

- DOL investigates an industry with recurring wage and hour violations
- DOL focuses on compensation practice, such as tip credits, and automatic meal deductions
- DOL may select industries, businesses, or geographic areas based on enforcement priorities and violation patterns

Pattern Recognition

- One employee’s complaint reveals same automatic deduction applies to an entire department
- Interviews indicate supervisors discourage reporting of overtime
- Review of one exempt position reveals employees with the same title perform the same nonexempt duties

Key authority: *29 U.S.C. § 211(a); U.S. DOL Fact Sheet #44*.

Most Common Federal Risk Areas

Classification

- Most executive, administrative, and professional exemptions require salary-basis, salary-level, and duties tests; job titles alone do not control. The current standard salary level is generally $684 per week. *29 U.S.C. § 213(a)(1); 29 C.F.R. pt. 541*.
- The current federal regulation regarding employee status depends on the economic reality of the relationship and whether the worker is economically dependent on the employer or is genuinely in business for themself. DOL evaluates the totality of six factors, with no single factor controlling. *29 U.S.C. § 203(d), (e), (g); 29 C.F.R. §§ 795.105, 795.110*. DOL proposed a different five-factor analysis in February 2026, but that proposed rule remains pending as of August 5, 2026.
- Multiple Pay Codes - When employees work under multiple jobs, rates, departments, or pay codes, all hours must be combined for overtime purposes and included in the proper regular-rate calculation. *29 C.F.R. § 778.115*.

Timekeeping and Recordkeeping

- Automatic meal deductions - Must maintain a reliable process for reporting missed or interrupted breaks.
- Time-entry edits - Should be documented, traceable, and reviewed to ensure that compensable time is not removed.
- Incomplete or inconsistent records - Can undermine otherwise lawful pay practices and increase potential liability.
- Timekeeping systems - Must capture all work the employer knows or has reason to believe is performed, including pre/post-shift and remote work. Bona fide meal periods must be duty-free. *29 U.S.C. § 211(c); 29 C.F.R. §§ 516.2, 785.11, 785.13, 785.19*.

Most Common Federal Risk Areas

Pay Calculations

- Overtime - Nonexempt employees generally receive 1½ times the regular rate after 40 hours in a workweek. *29 U.S.C. § 207(a)(1)*.
- Regular rate - Includes all remuneration unless a statutory exclusion applies; commonly included items are nondiscretionary bonuses, commissions, differentials, and incentives. *29 U.S.C. § 207(e); 29 C.F.R. pt. 778*.
- Deductions - Cannot improperly shift employer costs to employees or reduce required minimum wage or overtime. *29 C.F.R. § 531.35*.
- Multiple rates/codes - Combine all hours in the workweek and ordinarily use a weighted-average regular rate. *29 C.F.R. § 778.115*.

The First 24 to 48 Hours After DOL Contact or Visit

- Confirm credentials, agency division, stated scope, response deadline, and production format. WHD investigations may be announced or unannounced.
- Determine whether the investigation appears complaint-driven, targeted, or part of an industry-wide enforcement initiative.
- Notify counsel and establish a response team that includes legal, human resources, payroll, operations, IT, and labor relations, if applicable.
- Designate one person to communicate with the investigator and direct all agency contacts to that individual.
- Issue appropriate preservation instructions covering payroll, timekeeping, schedules, policies, personnel records, and relevant communications.
- Identify the employees, classifications, locations, entities, and time period potentially under review.
- Consider whether clarification, additional time, or modification of the agency's request should be sought.
- Do not provide informal explanations, admissions, or unreviewed records before the facts are verified. DOL may inspect records and premises and question employees. *29 U.S.C. § 211(a)*.

One Response Team: Defined Responsibilities

Legal

- Analyze the audit's scope and the DOL's apparent theory.
- Serve as, or coordinate with, the designated agency contact.
- Direct the internal investigation and provide legal advice.
- Evaluate privilege, legal defenses, potential exposure, and response strategy.
- Review all submissions and prepare managers for interviews.

Human Resources

- Collect policies, personnel records, job descriptions, complaints, and disciplinary records.
- Identify affected employees, managers, departments, and locations.
- Explain how policies are communicated and administered.
- Coordinate employee and manager communications.
- Assess leave, retaliation, classification, and employee-relations issues, including FLSA and FMLA anti-retaliation duties. *29 U.S.C. §§ 215(a)(3), 2615*.

Central Coordination

- The response team should use one DOL contact, one document-tracking process, and one internal decision-making structure. No records or substantive responses should be provided to the DOL without coordinated review.

One Response Team: Defined Responsibilities

Payroll and IT

- Preserve and extract payroll, timekeeping, scheduling, and compensation data.
- Explain pay codes, system rules, automatic deductions, edits, and regular-rate calculations.
- Reconcile time records with payroll records and identify missing or inconsistent data.
- Maintain a reliable record of what was collected, reviewed, and produced.
- Support back-pay, regular-rate, and liquidated-damages calculations and any required remediation.

Operations

- Explain how employees actually perform their work.
- Identify scheduling, staffing, meal-break, travel, training, and remote-work practices.
- Determine whether actual practices differ from written policies or payroll configurations.
- Identify local manager practices and variations among departments or locations.
- Assist in implementing operational corrections.

One Response Team: Defined Responsibilities

Labor Relations, if applicable

- Assess collective-bargaining, contractual, and representational obligations before interviews or corrective action.
- Coordinate communications involving bargaining-unit employees and union representatives.
- Review relevant contractual pay, scheduling, overtime, and leave provisions.
- Ensure that corrective action does not create unintended contractual or bargaining issues.

Define the Scope Before Producing Records

- **Analyze the agency's request.** Identify the employees, job classifications, locations, employing entities, time period, and categories of records under review.
- **Identify the likely theory.** The records requested may indicate concerns involving overtime, exemptions, off-the-clock work, meal deductions, regular-rate calculations, worker classification, leave, or retaliation.
- **Confirm the systems of record.** Determine which payroll, timekeeping, scheduling, HR, email, and document-management systems contain responsive information, including any legacy or third-party systems.
- **Clarify ambiguous or overly broad requests.** Contact the investigator when necessary to clarify terminology, employee populations, date ranges, production formats, or records that do not exist in the requested form.
- **Assess whether an extension is needed.** Request additional time promptly when necessary to collect, reconcile, review, and accurately produce the requested information.
- **Test completeness and consistency.** Reconcile time, payroll, schedules, policies, job descriptions, and manager practices before production.

Define the Scope Before Producing Records

- **Identify related exposure.** Determine whether the requested records reveal similar issues involving other employees, locations, job titles, departments, or affiliated entities.
- **Control the production.** Maintain a detailed production log identifying each request, responsible owner, source system, records produced, applicable date range, and any limitations or explanatory information.
- **Provide appropriate context.** Where records could be misunderstood, consider including a concise explanation of pay codes, system changes, missing data, organizational structure, or other relevant circumstances.
- **Apply federal retention rules.** Core payroll records generally must be retained for three years; supporting wage-computation records generally for two years. *29 C.F.R. §§ 516.5-.6*.
- **Avoid overproduction.** Produce responsive, verified records within the agreed scope.

Do not volunteer unrelated documents or unverified information that could unnecessarily broaden the audit.

Prepare Witnesses

- **Identify appropriate management witnesses with firsthand knowledge.** DOL may also interview current or former employees privately. *29 U.S.C. § 211(a); U.S. DOL Fact Sheet #44.*
- **Review relevant documents.** Provide witnesses with the policies, records, job descriptions, schedules, or communications they may be asked to explain.
- **Focus on actual practices.** Witnesses should be prepared to explain how work is performed, recorded, reviewed, and paid—not merely repeat the written policy.
- **Answer accurately and concisely.** Listen to the entire question, answer only what is asked, and request clarification if the question is unclear.
- **Avoid speculation and absolutes.** Statements such as “no one ever works off the clock” can undermine credibility when the witness lacks a basis for that conclusion.
- **Address inconsistencies honestly.** Witnesses should not conceal informal practices, policy exceptions, or differences among managers, departments, or locations.
- **Reinforce nonretaliation obligations.** No adverse action for complaints, cooperation, or truthful information. *29 U.S.C. § 215(a)(3); see also 29 U.S.C. § 2615.*

When Federal Findings Arrive

Review the Findings

- Confirm the affected employees, classifications, locations, audit period, and calculation methodology.
- Determine whether the investigator properly interpreted job duties, pay codes, time records, and actual work practices.
- Separate factual errors, disputed legal conclusions, and legitimate compliance concerns.

Identify the Law and Potential Exposure

- **FLSA:** Minimum wage, overtime, recordkeeping, and retaliation requirements. *29 U.S.C. §§ 206, 207, 211(c), 215(a)(3).* Remedies may include back wages, equal liquidated damages, civil penalties for repeated or willful minimum-wage or overtime violations, injunctions, and potential criminal liability. *29 U.S.C. §§ 216–217.*
- **FMLA:** Protected leave, reinstatement, interference, and retaliation requirements. *29 U.S.C. §§ 2612–2615.* Remedies may include lost wages and benefits, interest, equal liquidated damages, reinstatement, promotion, and civil penalties for willful posting violations. *29 U.S.C. §§ 2617, 2619.*
- **Federal Contract Laws:** Davis-Bacon generally covers federal/federally assisted construction contracts over $2,000; the Service Contract Act generally covers federal service contracts over $2,500. Both require applicable wages and fringe benefits. *40 U.S.C. §§ 3142, 3144; 41 U.S.C. §§ 6702(a)(2), 6703, 6705–6706.* Consequences may include back wages, withholding of contract funds, contract termination, and debarment.

When Federal Findings Arrive

Key Exposure Rules

FLSA claims generally have a two-year limitations period, extended to three years for willful violations. *29 U.S.C. § 255(a).*

Private FLSA actions may include attorneys' fees and costs. *29 U.S.C. § 216(b)*. Civil monetary penalties are adjusted for inflation. *29 C.F.R. § 578.3*.

Determine the Response

- Correct factual errors and contest unsupported legal conclusions.
- Narrow the employee population, audit period, or back-pay methodology where warranted.
- Evaluate payment, settlement, or other resolution options.
- Implement appropriate policy, payroll, timekeeping, classification, training, and monitoring changes.
- Document corrective action carefully without admitting disputed findings.

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New Jersey Wage-and-Hour Framework

New Jersey wage-and-hour requirements arise under several statutes and regulations administered by the New Jersey Department of Labor and Workforce Development (“NJDOL”).

The principal New Jersey laws include:

Wage Payment Law: Payment and timing of wages, commissions, final wages, deductions, and wage statements. *N.J.S.A. 34:11-4.1 et seq.; N.J.A.C. 12:55.*

Wage and Hour Law: Minimum wage, overtime, hours worked, exemptions, and recordkeeping. *N.J.S.A. 34:11-56a et seq.; N.J.A.C. 12:56.*

Earned Sick Leave Law: Accrual, use, payment, notice, and recordkeeping requirements. *N.J.S.A. 34:11D-1 et seq.; N.J.A.C. 12:69.*

Worker Classification: New Jersey generally applies the ABC test to determine whether a worker is an employee or an independent contractor. *N.J.S.A. 43:21-19(i)(6)*.

Public Works Laws: Prevailing wages, certified payrolls, worker classifications, and contractor registration. *N.J.S.A. 34:11-56.25 et seq.; N.J.S.A. 34:11-56.48 et seq.*

Key Point: Compliance with federal law does not necessarily establish compliance with New Jersey law. Employers must evaluate their practices independently under both federal and state requirements.

New Jersey Department of Labor Audit Priorities

Wage Payment and Hours Worked

- Payment of minimum wage and overtime for all compensable hours
- Timely payment of wages, including final wages and commissions
- Legality of payroll deductions and wage diversions
- Off-the-clock work, automatic meal deductions, time edits, and multiple pay rates
- Accuracy and completeness of payroll and timekeeping records
  N.J.S.A. 34:11-4.1 et seq.; N.J.S.A. 34:11-56a et seq.; N.J.A.C. 12:56.

Worker Classification and Employer Responsibility

- Whether individuals labeled as independent contractors satisfy New Jersey's **ABC test**
- Whether actual supervision, control, integration, and business independence support contractor status
- Whether staffing companies, subcontractors, or affiliated entities create joint-liability issues
- Proper reporting of wages and payment of unemployment, temporary disability, and family-leave contributions
  N.J.S.A. 43:21-19(i)(6); N.J.S.A. 34:11-58.2.

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New Jersey Department of Labor Audit Priorities

Leave, Records, and State Programs

- Accrual, use, payment, notice, and recordkeeping under the New Jersey Earned Sick Leave Law
- Consistency between attendance policies, payroll codes, and actual leave practices
- Required employee notices, postings, wage statements, and payroll records
- Prevailing wages, worker classifications, certified payrolls, and contractor registration on public works projects
- Retaliation against employees who complain, request leave, or cooperate with an investigation
  N.J.S.A. 34:11D-1 et seq.; N.J.S.A. 34:11-56.25 et seq.; N.J.S.A. 34:11-56.48 et seq.

Key Audit Principle

NJDOL generally examines operational reality—not merely contracts, job titles, policies, or payroll labels. Employers should be prepared to demonstrate that their records, written policies, and actual practices are consistent.

Common New Jersey Audit Triggers

Employee or Former-Employee Complaints

- Claims involving unpaid wages, overtime, commissions, bonuses, improper deductions, missed meal periods, or final pay
- Alleged denial or improper administration of earned sick leave
- Claims of retaliation for raising wage concerns, requesting leave, or cooperating with NJDOL
  N.J.S.A. 34:11-4.1 et seq.; N.J.S.A. 34:11-56a et seq.; N.J.S.A. 34:11D-1 et seq.

Worker-Classification Concerns

- Individuals are paid on a 1099 basis but perform the same work as employees
- Contractors are closely supervised, scheduled, equipped, or integrated into the employer's regular business
- Significant numbers of workers are classified as contractors without evidence that they operate independent businesses
- Unemployment or benefit claims conflict with the employer's contractor classification
  ABC test: N.J.S.A. 43:21-19(i)(6).

Common New Jersey Audit Triggers

Payroll and Contribution Discrepancies

- Quarterly wage reports do not reconcile with payroll records, tax filings, or unemployment submissions
- Reported wages or headcount change significantly without an apparent business explanation
- Employees work under multiple entities, locations, pay codes, or payroll systems
- Unemployment, temporary-disability, or family-leave contributions appear incomplete or inaccurate

Records Suggesting Broader Noncompliance

- Time records do not match payroll, schedules, badge data, or staffing requirements
- Repeated manual edits, automatic meal deductions, missing time entries, or identical recorded hours
- Pay codes exclude bonuses, differentials, or other compensation from overtime calculations
- Written policies appear compliant, but manager communications or employee statements indicate a different practice

Common New Jersey Audit Triggers

Targeted or Industry-Based Enforcement

- NJDOL focuses on industries with decentralized workforces, subcontracting, cash payments, high turnover, or recurring classification concerns
- Commonly scrutinized industries include staffing, construction, logistics, healthcare, hospitality, retail, home care, and building services
- An audit of one location, contractor, or affiliated entity may lead to review of related operations

Public Works and Prevailing-Wage Issues

- Certified payrolls are missing, late, inaccurate, or inconsistent with actual hours and work performed
- Workers appear to be placed in lower-paid classifications
- Required prevailing wages or fringe benefits were not paid
- A contractor or subcontractor lacks required public-works registration
  N.J.S.A. 34:11-56.25 et seq.; N.J.S.A. 34:11-56.48 et seq.

Audit Expansion Trigger: NJDOL investigators may examine employer records, interview other workers, and broaden an investigation when the initial complaint or production suggests that the issue affects additional employees or reflects a recurring practice. NJDOL states that investigators commonly seek at least 24 months of records, although applicable laws may require employers to retain records for up to six years.

New Jersey-Specific Pressure Points

Independent-Contractor Classification

- New Jersey presumes worker status unless the employer proves **all three prongs of the ABC test**:
  - **A:** The worker is free from control or direction, contractually and in practice.
  - **B:** The services are outside the employer's usual course of business or performed outside all of its places of business.
  - **C:** The worker is customarily engaged in an independently established trade, occupation, profession, or business.
- NJDOL will examine scheduling, supervision, equipment, training, exclusivity, integration into operations, business registrations, other customers, and the worker's ability to operate independently.
- A 1099, contractor agreement, LLC, or payment through another entity does not determine status.
- Misclassification can create liability for wages, overtime, unemployment and temporary-disability contributions, earned sick leave, taxes, interest, penalties, and stop-work orders.
  N.J.S.A. 43:21-19(i)(6); Hargrove v. Sleepy's, LLC, 220 N.J. 289 (2015); N.J.S.A. 34:1A-1.18; 34:11-58.1.
- *Timing note: N.J.A.C. 12:11, adopted in 2026, becomes operative October 1, 2026.*

New Jersey-Specific Pressure Points

Earned Sick Leave Administration

- Covered employees generally accrue **one hour for every 30 hours worked**, up to 40 hours per benefit year, unless the employer advances the required leave.
- Review whether the employer properly handles accrual, frontloading, carryover, permissible uses, notice, documentation, payment, transfers, and rehires.
- The payroll system, written policy, attendance rules, and managers' actual practices must be consistent.
- Common risks include improperly denying foreseeable or unforeseeable leave, requiring replacement workers, assessing attendance points, miscalculating the rate of pay, or failing to restore leave after a qualifying rehire.
- Employers must provide the required notice and retain records showing hours worked and earned sick leave accrued and used.
  N.J.S.A. 34:11D-1 et seq.; N.J.A.C. 12:69.

New Jersey-Specific Pressure Points

Payroll and Record Integrity

- Employers must maintain complete, accurate records of hours, rates, gross wages, deductions, net pay, pay dates, and other required employee information.
- NJDOL may compare payroll with timecards, schedules, badge data, staffing records, tax filings, quarterly wage reports, and employee statements.
- High-risk indicators include missing records, identical time entries, undocumented edits, automatic meal deductions, unexplained pay codes, cash payments, and differences among affiliated entities.
- Wage-and-hour records generally must be retained for **six years**. Insufficient records may create a rebuttable presumption in favor of the employee's account.
  N.J.A.C. 12:56-4.1, 4.4, N.J.S.A. 34:11-58(d).
- **Key Point:** New Jersey places substantial weight on operational reality. Contracts, policies, and payroll labels are useful only if they match how employees and contractors are actually managed and paid.

Immediate Response to a New Jersey Audit

Confirm the Nature and Scope of the Audit

- Verify the investigator's identity, NJDOL division, asserted authority, response deadline, and required production format.
- Determine whether the matter involves a wage complaint, classification audit, unemployment contributions, earned sick leave, public works, or another state program.
- Identify the employing entities, locations, workers, classifications, and time period under review.
- Obtain and carefully analyze the complaint, audit notice, subpoena, or records request, if available.

Centralize the Employer's Response

- Notify counsel and assemble a response team that includes legal, HR, payroll, operations, IT, and labor relations, where applicable.
- Designate one representative to communicate with NJDOL and instruct managers to direct agency contacts to that individual.
- Establish one internal decision-making process, production log, and document repository.
- Notify appropriate leadership of the audit without unnecessarily distributing privileged or sensitive information.

Immediate Response to a New Jersey Audit

Preserve and Collect Relevant Records

- Preserve payroll, timekeeping, schedules, personnel files, policies, wage notices, pay statements, leave records, contractor agreements, and manager communications.
- Preserve records from current, legacy, and third-party systems, including metadata and audit trails for time-entry changes.
- Determine whether records exist for the full potential liability period. New Jersey wage-and-hour records generally must be retained for six years. *N.J.A.C. 12:56-4.4.*
- NJDOL reports that investigators commonly request at least 24 months of records, although the applicable inquiry may extend further.

Conduct a Privileged Internal Assessment

- Compare payroll records with time entries, schedules, pay codes, badge data, staffing records, and quarterly wage reports.
- Determine whether written policies match actual practices across managers, departments, locations, and affiliated entities.
- Identify potential issues involving overtime, deductions, earned sick leave, contractor classification, contributions, prevailing wages, or retaliation.
- Estimate the potentially affected population, financial exposure, and likelihood that the audit may expand.

Immediate Response to a New Jersey Audit

Manage NJDOL's Access and Requests

- Confirm the purpose and scope of any proposed workplace inspection, employee interview, or demand for an in-person appearance.
- Seek clarification or a reasonable extension promptly when necessary to produce complete and accurate records.
- NJDOL has statutory authority to inspect and copy payroll and employment records and obtain information necessary to enforce the Wage and Hour Law. *N.J.S.A. 34:11-56.4.*
- Cooperate professionally, but do not provide unreviewed records, speculative explanations, or documents outside the agreed scope.

Protect Employees and Preserve Credibility

- Remind managers that retaliation, interference, intimidation, and attempts to influence employee statements are prohibited.
- Prepare management witnesses to answer truthfully, distinguish firsthand knowledge from assumptions, and explain actual practices.
- Do not alter, backdate, recreate, or "correct" historical records without preserving the original record and documenting any legitimate correction.
- Promptly correct ongoing violations where appropriate, while carefully documenting the corrective action and preserving disputed defenses.

Documents in a New Jersey Audit

Documents NJDOL May Request

- Payroll registers, wage statements, pay rates, deductions, bonuses, commissions, and overtime calculations
- Timecards, electronic time records, schedules, meal-period records, badge data, and audit trails for time edits
- Employee rosters identifying names, addresses, occupations, hire dates, locations, and employment status
- Policies addressing timekeeping, overtime, meal periods, deductions, earned sick leave, remote work, and complaint reporting
- Job descriptions, organizational charts, exemption analyses, and records concerning actual duties
- Independent-contractor agreements, Forms 1099, invoices, business registrations, insurance, and evidence of work for other customers
- Earned sick leave accrual, use, carryover, payment, notices, and supporting documentation
- Quarterly wage reports and records concerning unemployment, temporary-disability, and family-leave contributions
- Public-works contracts, worker classifications, certified payrolls, fringe-benefit records, and contractor registrations, if applicable
- Employee complaints, investigation records, disciplinary actions, and communications potentially involving retaliation

Documents in a New Jersey Audit

Review Records Before Production

- Confirm that records cover the correct entities, employees, locations, and audit period.
- Reconcile payroll with timekeeping, schedules, leave records, and quarterly wage reports.
- Identify missing records, unexplained edits, conflicting pay codes, or differences among systems.
- Compare written policies with actual practices before providing policy-based explanations.
- Redact legally protected or irrelevant personal information where appropriate.
- Maintain a production log identifying what was produced, when, from which system, and subject to what explanation.
- Provide concise context for system changes, legacy data, payroll codes, or unavoidable record limitations.

Documents in a New Jersey Audit

Preparing for Interviews

- Identify witnesses with firsthand knowledge of payroll systems, HR policies, scheduling, supervision, and actual work practices.
- Review relevant documents with each witness so the witness understands the records he or she may be asked to explain.
- Prepare managers to describe actual practices, including exceptions and informal workarounds, rather than merely repeating written policies.
- Instruct witnesses to listen carefully, answer only the question asked, avoid guessing, and distinguish personal knowledge from assumptions.

During and After Interviews

- Clarify who will attend, whether counsel may participate, and whether the interview will be recorded or memorialized.
- Where permitted, maintain careful notes of the questions asked, documents discussed, and answers provided.
- Correct material misunderstandings promptly through the designated NJDOL contact.
- NJDOL may inspect employer records, require an employer to appear, and obtain worker statements as part of an investigation. *N.J.S.A. 34:11-56.4.*

Responding to New Jersey Findings

Analyze the Assessment

- Review the alleged violations, affected employees, audit period, back-wage calculations, administrative fees, and penalties.
- Confirm the deadline and procedure for submitting a response or requesting a hearing.
- Separate factual errors, disputed legal conclusions, calculation issues, and violations that may warrant corrective action.
- Determine whether NJDOL has improperly grouped different positions, locations, entities, pay practices, or time periods.

Responding to New Jersey Findings

Potential Wage-and-Hour Exposure

- Payment of unpaid wages, overtime, commissions, bonuses, or other compensation
- Liquidated damages of up to **200% of the wages owed**, creating potential liability of up to three times the unpaid wages
- Interest, costs, and applicable administrative penalties
- Administrative fees generally equal to:
  - **10%** of wages due for a first violation
  - **18%** for a second violation
  - **25%** for a third or subsequent violation
- Wage-payment administrative penalties of up to **$250 for a first violation** and generally **$25 to $500 for subsequent violations**
- A potential six-year recovery period for wage claims
  N.J.S.A. 34:11-58; N.J.A.C. 12:55-1.5 and 1.6.

Responding to New Jersey Findings

Misclassification and Operational Penalties

- Misclassification penalty of up to **$250 per employee for a first violation** and **$1,000 per employee for each subsequent violation**
- Additional payment to each misclassified worker of up to **5% of the worker's gross earnings during the preceding 12 months**
- Unpaid unemployment, temporary-disability, and family-leave contributions, together with interest and penalties
- Possible suspension or revocation of licenses and issuance of a stop-work order
- Civil penalty of **$5,000 per day** for operating in violation of a stop-work order
- Employees affected by a final stop-work order may be entitled to pay for the first 10 days of work lost
  N.J.S.A. 34:1A-1.18; N.J.S.A. 34:11-58.1.

Responding to New Jersey Findings

Additional Consequences

- Reinstatement, lost wages and benefits, liquidated damages, or other relief for retaliation
- Rebuttable presumptions in favor of employees when required records are not maintained
- Public-works back wages, unpaid fringe benefits, contract-payment withholding, contractor-registration consequences, and potential debarment
- Criminal exposure may arise from a qualifying pattern of wage nonpayment and, in public-works matters, willful interference with an investigation, record falsification, or other specified violations. *N.J.S.A. 34:11-58.6; N.J.S.A. 34:11-56.56*.

Develop the Response Strategy

- Correct factual and mathematical errors with supporting records.
- Challenge unsupported legal conclusions and overbroad employee groupings.
- Seek to narrow the audit period, affected population, or penalty calculation where warranted.
- Evaluate settlement, payment, hearing, or appeal options.
- Implement corrective action addressing payroll systems, timekeeping, classification, leave administration, policies, training, and monitoring.

Corrective Action Must Address the Underlying System

Stop and Correct Ongoing Violations

- Correct any continuing minimum-wage, overtime, deduction, leave, classification, or recordkeeping problem.
- Pay undisputed wages, benefits, contributions, or fringe benefits within the required timeframe.
- Preserve historical records and document any corrections; do not overwrite or alter original time or payroll data.
- Assess whether corrective action must extend to additional employees, locations, departments, or affiliated entities.

Corrective Action Must Address the Underlying System

Repair Payroll and Timekeeping Systems

- Correct pay codes, overtime formulas, regular-rate calculations, automatic meal deductions, and multiple-rate calculations.
- Restrict and monitor manual time edits and require a documented business reason for each change.
- Establish periodic exception reports for missed punches, unusual edits, repeated deductions, and excessive unrecorded time.

Review Classification Decisions

- Reevaluate exempt positions using actual duties and compensation, rather than job titles or descriptions alone.
- Apply New Jersey's ABC test to contractors and document the evidence supporting each prong. *N.J.S.A. 43:21-19(i)(6).*
- Review relationships involving staffing companies, subcontractors, professional corporations, and affiliated entities.
- Correct tax, unemployment, temporary-disability, family-leave, workers' compensation, and benefit treatment where necessary.
- Establish a formal approval and periodic review process for exemptions and contractor engagements.

Corrective Action Must Address the Underlying System

Correct Earned Sick Leave Administration

- Reconcile leave balances and restore improperly denied or deducted leave.
- Correct accrual, frontloading, carryover, payment-rate, transfer, rehire, and benefit-year practices.
- Align attendance and discipline policies with protected leave requirements.
- Update employee notices, payroll coding, manager procedures, and recordkeeping.
- Audit whether local managers have imposed replacement-worker requirements, attendance points, or unauthorized documentation requirements.
  N.J.S.A. 34:11D-1 et seq.; N.J.A.C. 12:69.

Corrective Action Must Address the Underlying System

Strengthen Oversight and Accountability

- Assign responsibility for each corrective action, with deadlines and documented completion.
- Require legal, HR, payroll, and operations approval before implementing material pay or classification changes.
- Conduct follow-up audits
- Monitor high-risk locations, job classifications, supervisors, pay codes, and contractor relationships.
- Include wage-and-hour compliance in manager performance expectations and disciplinary standards.
- **Document and Verify Remediation**
- Preserve calculations, revised policies, system configurations, training records, and proof of payment.
- Confirm that corrections are functioning in practice through employee interviews and payroll sampling.
- Communicate completed remediation to NJDOL when strategically appropriate, while preserving disputed defenses and avoiding unnecessary admissions.

CONCLUSION

The most effective way to manage U.S. and New Jersey Department of Labor audits is to be proactive before an audit begins. Regular reviews of classification decisions, payroll calculations, timekeeping, leave administration, recordkeeping, and actual workplace practices can identify and correct problems before they become systemic. When an audit occurs, a prepared employer can respond promptly and consistently, preserve credibility, limit disruption and exposure, and demonstrate a genuine commitment to compliance.