



## 2011 GULF COAST SYMPOSIUM ON HUMAN RESOURCE ISSUES

May 11-12, 2011 • Reliant Center • Houston, Texas

# Auditing Compensation Practices

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# Why Conduct Your Own Audit?

(instead of waiting for the government or a plaintiff's lawyer to do it for you)

- Litigation over compensation is on the rise
- Aggressive DOL, TWC and IRS auditing and enforcement
- Unlawful practices create significant liabilities (such as liquidated damages and jail)
- Compensation problems are usually easily identifiable and can be fixed
- Pay administrators and managers can be held personally liable
- Pay practices can impact federal contractor status
- Conducting an audit and making corrections may protect you if you are audited by DOL or TWC or are sued



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# Audit Basics

- Conduct audit under direction of counsel
  - Attorney-client privilege and work-product protections
- Knowledgeable HR personnel and key managers should be involved
- Audit without fear of finding problems (you are looking for them)
- Carefully manage communications about the audit
- Make corrections carefully and thoughtfully



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# What Should Be Audited?

- Recordkeeping and Posting
- Pay Practices
  - Exempt/Non-Exempt
  - Pay Deductions
  - Hours Worked
  - Regular Rate
- Administration of Benefits Linked to Compensation
- Use of “Independent Contractors”
- Executive Comp Agreements and Compliance With IRC 409A



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## What Records Should Be Audited?

- Payroll Records
  - Form W-4
  - Time Sheets
  - Pay Records
  - Authorizations for Deductions/Withholding
  - Garnishment Orders
- Required Posters
- Job Descriptions
- Performance Appraisals and Disciplinary Documents Affecting Compensation
- Written Company Policies
  - Hours worked, expense reimbursement, overtime, deductions, vacation, travel, etc.
- Severance Plans/Policies and Documents Reflecting Severance “Practices”
- Independent Contractor “Agreements”
- 401k and Retirement Plan Records
- Executive Compensation Agreements (Severance, Change of Control, Deferred Comp)



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## What Pay Practices Should be Audited?

- Classification of Employees as Exempt
  - Does each employee qualify based on actual duties?
  - Deductions from Pay
    - In what circumstances does company make deductions?
    - Does company have signed authorizations or valid garnishment order?
- Payment of Wages to Non-Exempt Employees
  - Payment for all “hours worked”?
  - Are non-discretionary payments included in “regular rate”?
  - Do time sheets match pay records?
- Frequency of Payment of Wages
- Direct Deposit Practices
- Timing of Payment of Last Paycheck



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# What Else Should Be Audited?

- Administration of Benefits Tied to Compensation
  - 401k and retirement plan “matching”
    - Based on base pay or all compensation?
  - Severance benefits
    - Paid in a consistent manner pursuant to a written policy?
    - Pursuant to an unwritten policy?
    - Pursuant to an ad hoc practice?



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# What Else Should Be Audited?

- Use of Independent Contractors
  - Factual inquiry
  - IRS and TWC independent contractor standards
  - TWC and other state agencies are actively auditing
  - Issues relating to retention of terminated employees and individuals contracted long-term
- Executive Compensation Agreements
  - Applicability of IRC 409A
  - Severance, change of control, and deferred comp arrangements





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For more information about any of the topics addressed in this presentation, please contact Larry Stuart or Glen Rigby at (713) 337-3750 or by email at [lstuart@stuartpc.com](mailto:lstuart@stuartpc.com) or [grigby@stuartpc.com](mailto:grigby@stuartpc.com).

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