

GAO Highlights

Highlights of [GAO-14-69](#), a report to the Chairman, Subcommittee on Workforce Protections, Committee on Education and the Workforce, House of Representatives

Why GAO Did This Study

The FLSA sets federal minimum wage and overtime pay requirements applicable to millions of U.S. workers and allows workers to sue employers for violating these requirements. Questions have been raised about the effect of FLSA lawsuits on employers and workers and about WHD's enforcement and compliance assistance efforts as the number of lawsuits has increased. This report (1) describes what is known about the number of FLSA lawsuits filed, and (2) examines how WHD plans its FLSA enforcement and compliance assistance efforts. To address these objectives, GAO analyzed federal district court data from fiscal years 1991 to 2012 and reviewed selected documents from a representative sample of lawsuits filed in federal district court in fiscal year 2012. GAO also reviewed DOL's planning and performance documents and interviewed DOL officials, as well as stakeholders, including federal judges, plaintiff and defense attorneys who specialize in FLSA cases, officials from organizations representing workers and employers, and academics about FLSA litigation trends and WHD's enforcement and compliance assistance efforts.

What GAO Recommends

GAO recommends that the Secretary of Labor direct the WHD Administrator to develop a systematic approach for identifying and considering areas of confusion that contribute to possible FLSA violations to help inform the development and assessment of its guidance. WHD agreed with the recommendation, and described its plans to address it.

View [GAO-14-69](#). For more information, contact Revae Moran at (202) 512-7215 or moranr@gao.gov.

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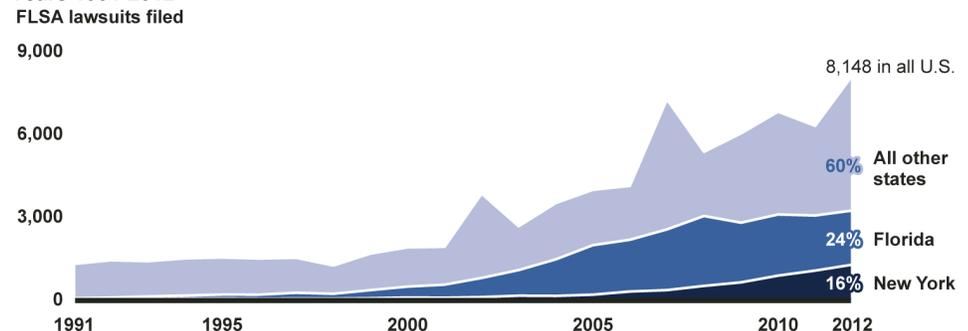
FAIR LABOR STANDARDS ACT

The Department of Labor Should Adopt a More Systematic Approach to Developing Its Guidance

What GAO Found

Substantial increases occurred over the last decade in the number of civil lawsuits filed in federal district court alleging violations of the Fair Labor Standards Act of 1938, as amended (FLSA). Federal courts in most states experienced increases in the number of FLSA lawsuits filed and the percentage of total civil lawsuits filed that were FLSA cases, but large increases were concentrated in a few states, including Florida and New York. The number of workers involved in FLSA lawsuits is unknown because the courts do not collect data on the number of workers represented. Many factors may contribute to this general trend; however, the factor cited most often by stakeholders, including attorneys and judges, was attorneys' increased willingness to take on such cases. In fiscal year 2012, an estimated 97 percent of FLSA lawsuits were filed against private sector employers, often from the accommodations and food services industry, and 95 percent of the lawsuits filed included allegations of overtime violations.

FLSA Lawsuits Filed in Federal District Court in Florida, New York, and Other States, Fiscal Years 1991-2012



Source: GAO analysis of Federal Judicial Center data.

The Department of Labor's (DOL) Wage and Hour Division (WHD) has an annual process for planning how it will target its enforcement and compliance assistance resources to help prevent and identify potential FLSA violations, but it does not compile and analyze relevant data to help determine what guidance is needed, as recommended by best practices previously identified by GAO. In planning its enforcement efforts, WHD targets industries it determines have a high likelihood of FLSA violations. Although WHD does not analyze data on FLSA lawsuits when planning its enforcement efforts, it does use information on its receipt and investigation of complaints about possible FLSA violations. In developing its guidance on FLSA, WHD considers input from its regional offices, but it does not have a systematic approach that includes analyzing relevant data, nor does it have a routine, data-based process for assessing the adequacy of its guidance. For example, WHD does not analyze trends in the types of FLSA-related questions it receives. Since 2009, WHD has reduced the number of FLSA-related guidance documents it has published. According to plaintiff and defense attorneys GAO interviewed, more FLSA guidance from WHD would be helpful, such as guidance on how to determine whether certain types of workers are exempt from overtime pay and other requirements.