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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

May 22, 2015

Mr. Mario J. Musolino
Acting Commissioner
Department of Labor
Building 12
W.A. Harriman Campus
Albany, NY 12240

Re: Wage Theft Investigations
Report 2015-F-9

Dear Mr. Musolino:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Department of Labor (Department) to implement the recommendations contained in our audit report, *Wage Theft Investigations* (Report 2013-S-38).

Background, Scope, and Objectives

The Department's mission is to protect workers, assist the unemployed, and connect job seekers to jobs. Its Division of Labor Standards (Division) is committed to safeguarding New York State workers through vigorous enforcement of State Labor Laws, including the 2011 Wage Theft Prevention Act, established to reinforce protection of workers against unfair and/or illegal employment and wage practices. By enforcing these laws, the Division seeks to promote future compliance by the employers under investigation.

As the investigative and restitution arm of worker and wage protection, the Division conducts wage theft investigations on behalf of workers who file wage dispute claims against employers, and helps to collect unpaid wages, withheld wages, and illegal deductions. It also enforces labor laws that forbid employers from taking illegal kickbacks from wages or appropriating employee tip earnings.

Our initial audit report, which was issued on June 6, 2014, covering the period April 1, 2011 through December 20, 2013, sought to determine whether the Department efficiently utilized its resources to undertake and complete wage investigations timely and whether these efforts were successful in recovering funds for injured workers. We concluded that the Division

did not complete wage theft investigations timely and its caseload management system did not provide management with accurate or useful case management reports. The objective of our follow-up was to assess the extent of implementation as of May 8, 2015 of the recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found Department officials have made progress in implementing the recommendations identified in our prior audit report. Of the seven prior audit recommendations, six have been implemented and one has been partially implemented. In 2014, the Division reported that it recouped \$30.2 million in wages and interest on behalf of about 27,000 workers – more than any previous year and a 35 percent increase in recovered funds over 2013.

Follow-Up Observations

Recommendation 1

Continue efforts to close the oldest wage investigation cases and strive to investigate and resolve newer cases more timely.

Status - Implemented

Agency Action - The Department implemented wage theft investigation policy changes in May 2013 and operational changes which resulted in wage theft investigations being completed more timely.

One factor that was driving the growing investigation backlog was the Division's required investigative scope period. Prior to May 2013, the Division mandated a six-year investigative scope period for all cases. Such depth of examination added considerably to the length of the investigation. In an attempt to stem the rising backlog and to conduct investigations more timely, the Division reduced this investigative scope period from six years to three years. The Division also no longer accepted certain types of wage claims for investigation, including cases where more than three years have lapsed since employment ceased or since the date of the violation; complaints received from a private attorney representing a claimant; and cases involving non-monetary issues, which are now handled via letter to the employer and claimant.

During our initial audit, the Division also instituted other operational changes to streamline its work and investigate cases more timely. For instance, the Division is now identifying additional cases that can be resolved through compliance conferences and closing cases that are unlikely to reach settlement (e.g., cases where the employer has no known assets in the State) or that involve uncollectable claims of less than \$500.

Finally, during the later stages of our initial audit, the Division decided to no longer accept and investigate claims from commission salespersons and established a new policy for

handling minimum wage complaints by former employees. These investigations are now conducted primarily by mail or telephone, and the employers are given just 21 days to respond to the Division's request for records. Furthermore, to achieve a more balanced distribution of workload, the Division had staff from its upstate districts conduct these mail/phone investigations for the New York City area, where the majority of these claims are filed. Prior to this policy change, cases generally remained in their originating districts.

As a result of these policy and operational changes, the Division is now completing 80 percent of its wage investigations within six months. At the time of this follow-up, the Division had only 305 active cases that were open for more than one year.

Recommendation 2

Monitor the newly implemented strategies discussed in this report and continue to pursue additional initiatives to reduce the wage investigation case backlog and complete new wage investigation cases sooner.

Status - Implemented

Agency Action - The Division has developed weekly reports which are provided to and reviewed by upper management. These reports provide key statistics regarding caseload and investigations completed. The Division implemented initiatives to reduce the case backlog and complete wage investigations sooner.

The Division has developed a goal (Key Performance Indicator) to complete new case investigations within six months. These reports show the number of new cases each month and the number and percentage of those cases where the investigation was completed within six months. The Division is currently completing 80 percent of new investigations within six months.

To reduce backlogs in its New York City offices, the Division reassigned some cases to staff in the Albany and Buffalo district offices. In addition, a specialized team was formed in the New York City office to focus on a large group of older Labor Standards cases.

Recommendation 3

Work with ITS to correct WPM system flaws and develop its capability to create meaningful reports to better manage the current cases and backlog.

Status - Implemented

Agency Action - The Department has worked with ITS (the State's Office of Information Technology Services) to develop a new WPM (Workforce Protection Management System) Tickler Report within the Audit and Monetary System. Selected staff have received training using the new tickler system and each staff member has been given a copy of the training

manual. The report assists the investigators in meeting deadlines and serves as a reminder to investigators to complete a follow-up for a given case or claim.

Recommendation 4

Establish specific payment plan procedures and include them in the policies and procedures manual.

Status - Implemented

Agency Action - The Department has established specific payment plan procedures, which were provided to all field and supervisory staff on August 4, 2014 and will be incorporated into the Division's formal policy and procedure manual.

Recommendation 5

Develop criteria for investigators to use to determine if a payment plan should be granted.

Status - Implemented

Agency Action - The Department developed criteria for investigators to use to determine if a payment plan should be granted. The criteria is included in the new payment plan procedures.

Recommendation 6

Ensure that each district office follows the payment plan procedures and keeps similar records.

Status - Implemented

Agency Action - The Department has developed a template for each district to use for payment plans so that each district keeps similar records and tracks the same information. The payment plans, and employers' progress in completing those plans, are visible to and reviewed by senior management in Albany.

Recommendation 7

Develop a centralized payment collection system to effectively separate incompatible duties and to manage all payment plan information and transactions.

Status - Partially Implemented

Agency Action - The Department disagrees with this recommendation and has no plan to develop a centralized payment collection system. The Department believes that payment plans are most effectively monitored and enforced at the district level, and that a centralized

payment plan collection unit would require a vast re-allocation of resources. Instead, the Department created a report maintained at the district level, which is reviewed regularly by Division management in Albany. Each payment plan, and each employer's progress in completing that plan, is visible to senior management in Albany. The Labor Standards Director's Office has assigned staff to continuously monitor these plans and alert senior management to plans that are in arrears.

Auditor's Comment: While monitoring these reports is a good internal control, it still does not separate the incompatible duties that exist in the current payment handling process.

Major contributors to this report were Bob Mainello, Mike Cantwell, and Andrew Philpott.

We thank the Department's management and staff for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

Brian Reilly
Audit Manager

cc: Division of Budget
Rajni Chawla, Department of Labor