

United States Department of Labor

Wage and Hour Division

Wage and Hour Division (WHD)

BRIDGE TO JUSTICE: Wage and Hour Connects Workers To New ABA-Approved Attorney Referral System

SEPTEMBER 2014 UPDATE: The ABA-Approved Attorney Referral System is now web-based. Where appropriate, complainants should be provided with an address for the web-based portal through which they can obtain contact information for participating ABA-approved providers in their area and/or a list of such providers. If complainants choose to visit the ABA web portal, they can complete an intake form that is sent to a local provider. Complainants without internet access can be given a copy of the approved ABA flyer which lists all the lawyer referral and information service (LRIS) providers participating in the ABA-Approved Attorney Referral System.

Many workers across the country still struggle to obtain basic employment protections under the nation's minimum wage, overtime, and family medical leave laws. When denied these protections, the workers are unable to fully contribute to their local communities and businesses. In a typical year, approximately 25,000 workers contact the Wage and Hour Division for help, including the 23,000 who need assistance with their minimum wage, overtime, or family medical leave claims – and this number does not even include many more workers who do not contact us after their rights have been violated.

Although the Wage and Hour Division is able to help the vast majority of these workers recover denied wages or lost jobs through conciliation, settlement, or, with the Solicitor of Labor, litigation, every year there are thousands of workers whose claims we cannot resolve because of limited capacity. In recognition of the fact that the Wage and Hour Division cannot remedy every violation of the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA), Congress provided workers the right to pursue their own private litigation (private right of action) under these laws.

In the past, for those workers it did not have the capacity to assist, the Wage and Hour Division simply informed the workers that, even though they may have valid claims under the FLSA or the FMLA, the Wage and Hour was declining to pursue their claims further and that they have a private right of action under the applicable statute. However, attempting to exercise rights on their own, or finding an attorney with the necessary experience and subject matter expertise to represent them, are significant and difficult obstacles to these workers obtaining justice. When it is difficult for workers to pursue redress for denied rights, it makes it easier for those employers who exploit their workers to obtain an unfair competitive advantage, which denies law-abiding employers a level playing field.

Thanks to an unprecedented collaboration between the Wage and Hour Division and the American Bar Association Standing Committee on Lawyer Referral and Information Service (ABA LRIS), the Wage and Hour Division will now connect these workers to a local referral service that will, in turn, provide the workers with access to attorneys who may be able to help. This collaboration will both provide workers a better opportunity to seek redress for FLSA and FMLA violations and help level the playing field for employers who want to do the right thing.

Beginning on December 13, 2010, when FLSA or FMLA complainants were informed that the Wage and Hour Division is declining to pursue their complaints, they were also given a toll-free number to contact the newly created ABA-Approved Attorney Referral System. If complainants chose to call the toll-free number, they were advised of the ABA-approved LRIS providers in their area. The complainant could then contact the provider and determine whether to retain a qualified private-sector lawyer.

This toll-free number will be replaced by a web based system beginning in August of 2014. Workers without access to the web can also be given a list of local ABA-approved LRIS programs without logging onto the web portal.

Since the inception of the program, when the Wage and Hour Division conducts an investigation and does not resolve the complainant's issue, the complainant is given information about the Wage and Hour Division's determination regarding violations at issue and back wages owed. This information will be given to the complainants in the same letter informing them that the Wage and Hour Division will not be pursuing further action, and can be very useful for attorneys who may take the case. The Wage and Hour Division has also developed a special process for complainants and representing attorneys to quickly obtain certain relevant case information and documents when available.

FAQs About the ABA-Approved Attorney Referral System

Q: Why do the Wage and Hour Division and workers need the ABA-Approved Attorney Referral System?

A: Although the Wage and Hour Division resolves the vast majority of complaints it receives, it does not have the capacity to pursue them all. For example, the Wage and Hour Division received over 23,000 Fair Labor Standards Act (FLSA) and Family Medical Leave Act (FMLA) complaints in 2013 the vast majority of which WHD was able to resolve through settlement, conciliation, or, through the Office of the Solicitor, litigation. Of those WHD did not pursue or was not able to resolve for various reasons, complainants were usually provided notice of their private right of action under the applicable statute(s).

The ABA-Approved Attorney Referral System will now provide these workers with a reliable way to seek qualified private legal representation.

Q: At what point might the Wage and Hour Division inform a complainant about the ABA-Approved Attorney Referral System?

A: Typically, a complainant will be provided the information about the ABA-Approved Attorney Referral System at one of four stages:

1. At the complaint intake stage, if workers decide not to file a complaint or say they would prefer to pursue their private right of action;
2. At the complaint review stage, if the reviewing manager determines, based on the Wage and Hour Division's national and regional priorities and the office's current resources and workload, that giving the complainant the ABA web portal provides the worker with the quickest access to justice;
3. After an attempt at conciliation, if the employer refuses to remedy a violation but, based on the same criteria used at the complaint review stage, the manager decides that giving the complainant the website for the referral system is a better option than further investigating or litigating the complaint, or;
4. After an investigation, if the case is not resolved through settlement, the Wage and Hour Division may decide, often in consultation with the Department's Office of the Solicitor, to leverage the resources of the private bar by providing the complainant the website for the referral system.

Q: What are the Wage and Hour Division's priorities?

A: Given the Wage and Hour Division's resources limitations, it has to set enforcement priorities in a way that will make the biggest impact for the greatest number of workers. Although specific initiatives will vary from year to year and from region to region, generally the Wage and Hour Division prioritizes cases involving minimum wage and overtime violations against low wage and vulnerable workers, child labor, recidivist employers, retaliation or discrimination, or criminal violations. In addition, as described in the Department's Strategic Plan for Fiscal Years 2011-2016, the Wage and Hour Division is targeting "fissured" industries -- those sectors that increasingly rely on a wide variety of organizational methods that have redefined employment relationships: subcontracting; third-party management; franchising; independent contracting; and other contractual forms that alter who is the employer of record or make the worker-employer relationship tenuous and less transparent. These industries include the agricultural, construction, janitorial, and hotel/motel industries.

Q: What information will a worker be provided from the Wage and Hour Division when the worker receives the referral information?

A: How much information the Wage and Hour Division gives the worker will depend on at what stage the referral is given and whether there has been an investigation. At all stages, the Wage and Hour Division will give the worker the website for the referral system as well as instructions on using the ABA-Approved Attorney Referral System. If this information is provided verbally at the complaint intake stage, no other information will be provided because the Wage and Hour Division will not have any further information about the complaint. If the complaint is declined at the complaint review stage, the worker will be sent a letter that includes this information, along with a statement that the Wage and Hour Division did not investigate the worker's complaint. At the conciliation state, the complainant will be notified by letter that will include information about the complaint and the Wage and Hour Division's attempt at conciliation. The amount of information available at the conciliation stage will vary.

If the Wage and Hour Division has completed an investigation, it will send the complainant a letter with the Wage and Hour Division case number, the violations found, and the amount of back wages owed. Complainants will also get a form that will allow them or an authorized attorney representative to quickly obtain certain items from the investigation case file.

Q: How does the ABA-Approved Attorney Referral Document Request process work?

A: A complainant who has received the website for the referral system after a Wage and Hour Division investigation will also receive a form to request the most relevant documents from her case file. These documents include the complainant's own statement, the Wage and Hour Division's back wage computations for the complainant, and copies of any documents the complainant provided to the Wage and Hour Investigator. The Wage and Hour Division will provide these documents expeditiously. The form also allows the worker or authorized attorney representative to request the case narrative from the file; however, it explains that requesting the narrative will delay the Wage and Hour Division's response because it must be redacted. The letter sent to the complainant with notification of the Wage and Hour Division's decision to not pursue the case will also include information about the violations found and back wages owed to the complainant.

All other documents in the case investigation file must be requested through the Freedom of Information Act.

Q: What other types of documents are available in the case investigation file?

A: The contents of a Wage and Hour investigation file vary from case to case. Please note, however, that certain information in the file is always redacted under the Freedom of Information Act, including the names, contact information, and identifying characteristics of any other complainants or witnesses, and information about the employer protected by the Trade Secrets Act.

Q: How does the ABA-Approved Attorney Referral System work?

A: The ABA-Approved Attorney Referral System is built on a pre-existing network of local and state LRIS programs that are "ABA-LRIS approved," meaning they have complied with the ABA model rules concerning the operation of public service lawyer referral programs. There are nearly 70 ABA-approved LRIS programs throughout the country. The majority of these are operated by state and local bar associations. Building on this system, the ABA created a toll-free number for use by workers with FLSA and FMLA complaints nationwide connected them to the local and state LRIS programs. This toll-free number will be replaced by a web based system beginning in August of 2014 and is available in both English and Spanish.

Q: How will the website for the referral system help connect workers to an attorney?

A: When workers log onto the ABA web portal, they will be asked to complete a form. Upon submission of the form, an e-mail will automatically be sent to the worker with the local LRIS information. If workers wish to have the LRIS program contact them, upon submission of the form, an e-mail will also be sent to the local LRIS program with the worker's contact information. Workers without access to the web can also be given a list of local ABA-approved LRIS programs without logging onto the web portal.

Q: Will the attorneys to whom the individual is referred be experienced in FLSA and FMLA matters?

A: Yes, the participating ABA-approved referral providers have created subject matter panels in both FLSA and FMLA, and attorneys who wish to join those panels and accept referrals must demonstrate an objective measure of expertise in these areas of law, according to the standards established by the local referral provider and in accordance with the ABA's Model Rules for Lawyer Referral Services.

Q: What are the ABA's Model Rules for Lawyer Referral Services?

A: Although the ABA is really the expert on this issue, the important components of the model rules, from the Department's perspective, are the requirements that referral providers confirm that the attorney is licensed, has malpractice insurance, and has the proper experience to accept referrals in a particular area of law if they wish to be on a subject matter panel.

Q: Will the Department of Labor guarantee that individuals who are being turned away will be given legal assistance from a private attorney?

A: No, the Department cannot guarantee that a complainant will be able to find an attorney interested in providing representation. WHD is providing this website to the ABA-Approved Attorney Referral System as a service to those who may be seeking assistance. WHD does not guarantee the accuracy of the information provided through this website or by any ABA-approved attorney referral provider, or that an attorney will accept any case. In addition, WHD is not endorsing the services of any lawyer to whom a complainant may be referred, or guaranteeing the results of any services. Providing this website creates no liability on the part of the government.

Q: How will the Wage and Hour Division know if these referrals are being accepted or if the cases are being resolved by the private bar?

A: The ABA may provide the Wage and Hour Division with aggregate information about the numbers of referrals accepted and the outcome of those cases.

Q: I'm an attorney and I would like these cases to be referred to me. How do I participate in the ABA-Approved Attorney Referral System?

A: Participating state and local bar association lawyer referral programs are listed on <http://www.abanet.org/legalservices/lris/attorneyapprovproginfo.html>. Please contact these state and local bar associations for membership information in the respective LRIS. Membership in the respective bar association is not required, but there is a membership fee for participating in the lawyer referral program.

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