



Testimony

Before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives

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FAIR LABOR STANDARDS ACT

Department of Labor Needs a More Systematic Approach to Developing Its Guidance

Statement of Andrew Sherrill, Director, Education,
Workforce, and Income Security

GAO Highlights

FAIR LABOR STANDARDS ACT

Department of Labor Needs a More Systematic Approach to Developing Its Guidance

Highlights of [GAO-14-629T](#), a testimony before the 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 statement examines what is known about the number of FLSA lawsuits filed and how WHD plans its FLSA enforcement and compliance assistance efforts. It is based on the results of a previous GAO report issued in December 2013. In conducting the earlier work, 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, 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.

What GAO Recommends

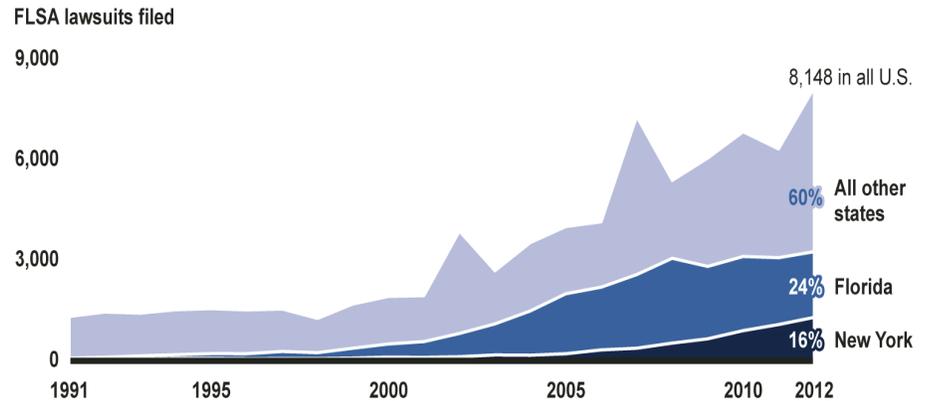
In its December 2013 report, GAO recommended that the Secretary of Labor direct the WHD Administrator to develop a systematic approach for identifying and considering areas of confusion that contribute to possible FLSA violations to help inform the development and assessment of its guidance. WHD agreed with the recommendation and described its plans to address it.

View [GAO-14-629T](#). For more information, contact Andrew Sherrill at (202) 512-7215 or sherrilla@gao.gov.

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, but large increases were concentrated in a few states, including Florida and New York. Many factors may contribute to this general trend; however, the factor cited most often by stakeholders GAO interviewed—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 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. In planning its enforcement efforts, WHD targets industries that, according to its recent enforcement data, have a higher likelihood of FLSA violations. WHD, however, does not have a systematic approach that includes analyzing relevant data, such as the number of requests for assistance it receives from employers and workers, to develop its guidance, as recommended by best practices previously identified by GAO. In addition, WHD does not 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 from employers or workers. 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 the overtime pay and other requirements of the FLSA.

Chairman Walberg, Ranking Member Courtney, and Members of the Subcommittee:

I am pleased to be here today to discuss our work on the recent increase in the number of lawsuits filed by individuals or groups alleging violations of the Fair Labor Standards Act (FLSA).¹ The FLSA sets minimum wage and overtime pay standards applicable to most U.S. workers. The Department of Labor's (DOL) Wage and Hour Division (WHD) is responsible for ensuring that employers comply with the FLSA, and workers may also file private lawsuits to recover wages they claim they are owed because of a violation of the act, such as an employer's failure to pay overtime compensation to workers who are entitled to it. In recent years, the number of FLSA lawsuits has increased and questions have been raised about the effect of FLSA litigation on employers and workers and about WHD's enforcement and compliance assistance efforts.

WHD enforces the FLSA by conducting investigations, assessing penalties, supervising payment of back wages, and bringing suit in court on behalf of employees. In addition to responding to complaints of alleged FLSA violations it receives from workers or their representatives, WHD also initiates enforcement actions in an effort to target employers likely to violate the FLSA and where workers may be particularly vulnerable. However, WHD cannot investigate all of the thousands of complaints it receives each year because of its limited capacity. Therefore, the agency informs workers whose complaints of FLSA violations are not investigated or otherwise resolved by WHD of their right to file a lawsuit. Workers filing an FLSA lawsuit may file in one of the 94 federal district courts, which are divided into 12 regional circuits across the country.²

WHD encourages compliance with the FLSA by providing training for employers and workers and creating online tools and fact sheets that explain the requirements of the law and related regulations, among other efforts. The agency refers to these efforts collectively as compliance assistance. One form of FLSA compliance assistance WHD provides is

¹ Fair Labor Standards Act of 1938, ch. 676, 52 Stat. 1060 (codified as amended at 29 U.S.C. §§ 201-19).

² Workers may also file FLSA lawsuits in state court. In addition, state laws may establish higher minimum wage, lower maximum hours, or higher child labor standards than those established by the FLSA. Lawsuits filed in federal court with FLSA claims may include related state law claims.

written interpretive guidance that attempts to clarify the agency's interpretation of a statutory or regulatory provision. WHD disseminates this guidance to those who request it—such as employers and workers—and posts it on the WHD website for public use. WHD's interpretive guidance includes opinion letters which apply to a specific situation. In 2010, WHD stopped issuing opinion letters and indicated that it would instead provide administrator interpretations, which are more broadly applicable.

My statement today examines what is known about the number of FLSA lawsuits filed and how WHD plans its enforcement and compliance assistance efforts.³ The statement is based on a report we issued in December 2013.⁴ To conduct our prior work, we analyzed federal district court data compiled by the Federal Judicial Center—the research and education agency of the federal judicial system—from fiscal years 1991 to 2012. To assess the reliability of the data we obtained from the Federal Judicial Center, we reviewed documentation related to the collection and processing of the data, interviewed officials at the Administrative Office of the U.S. Courts and the Federal Judicial Center, and performed electronic testing to identify any missing data, outliers, and obvious errors. We determined that the data included in our report were sufficiently reliable for our purposes. In addition, we reviewed selected documents from a nationally representative sample of 97 FLSA lawsuits filed in federal district court in fiscal year 2012.⁵ All estimates from our sample had a 95 percent confidence interval of within plus or minus 10 percentage points. We 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

³ For the purposes of this testimony, unless otherwise specified, the term "FLSA lawsuits" refers to lawsuits filed in federal district court under the FLSA.

⁴ GAO, *Fair Labor Standards Act: The Department of Labor Should Adopt a More Systematic Approach to Developing Its Guidance*, [GAO-14-69](#) (Washington, D.C.: Dec. 18, 2013).

⁵ For this analysis, we reviewed only the initial complaint from the lawsuits in our sample. A "complaint" is the legal term for the document the plaintiff files with the court to initiate a civil lawsuit. Our review did not include any subsequent documents filed, and therefore the information we collected was limited to the information provided by the plaintiff at the time the lawsuit was filed.

compliance assistance efforts. Further details on our scope and methodology are available in the previously published report.

We conducted the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

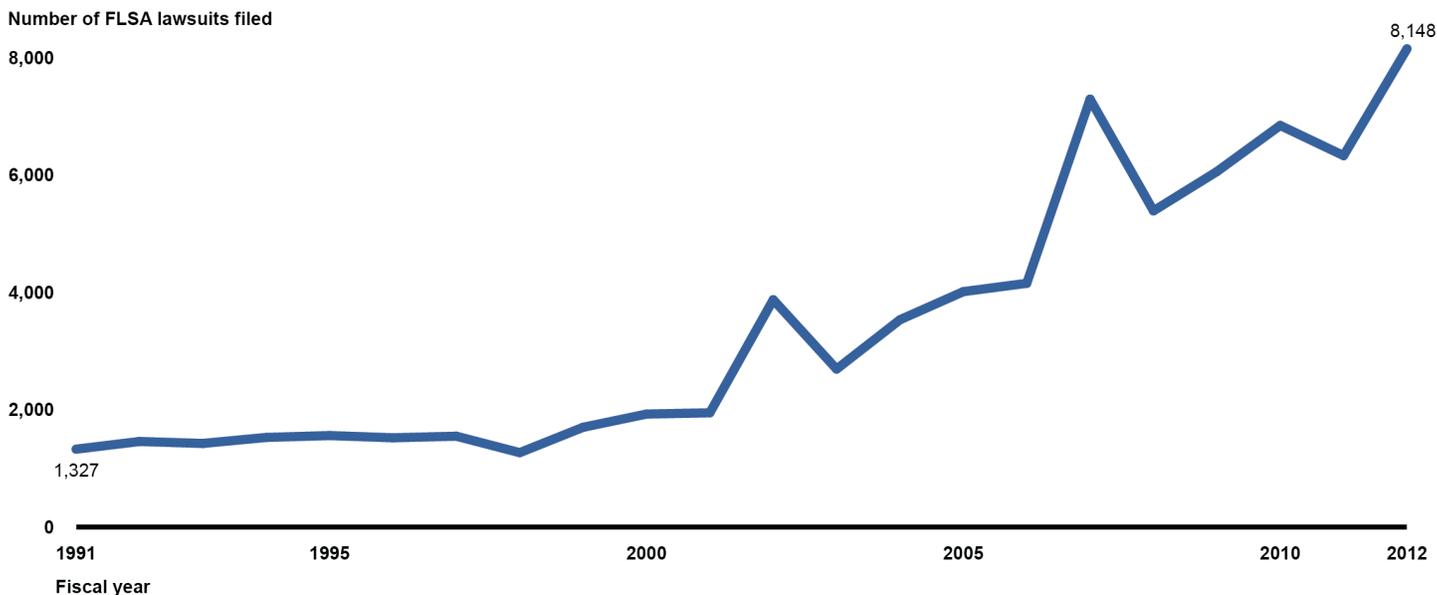
FLSA Lawsuits Have Increased Substantially over the Last Decade and Most FLSA Lawsuits Filed in Fiscal Year 2012 Alleged Overtime Pay Violations

FLSA Lawsuits Increased Substantially Over the Last Decade, and Most Were Filed in a Few States

Over the past two decades—from 1991 through 2012—there was a substantial increase in the number of FLSA lawsuits filed, with most of the increase occurring in the period from fiscal year 2001 through 2012.⁶ As shown in figure 1, in 1991, 1,327 lawsuits were filed; in 2012, that number had increased over 500 percent to 8,148.

⁶ The fact that a lawsuit was filed does not provide any information about how it was ultimately resolved. A case may be resolved in a variety of ways, such as settlement out of court, dismissal, or a judgment in favor of the plaintiff or defendant.

Figure 1: Number of FLSA Lawsuits Filed in Federal District Court, Fiscal Years 1991-2012



Source: GAO analysis of Federal Judicial Center data. | GAO-14-629T

Note: An FLSA lawsuit may be filed on behalf of an individual worker or multiple workers. Data on the number of workers involved in each lawsuit were not readily available.

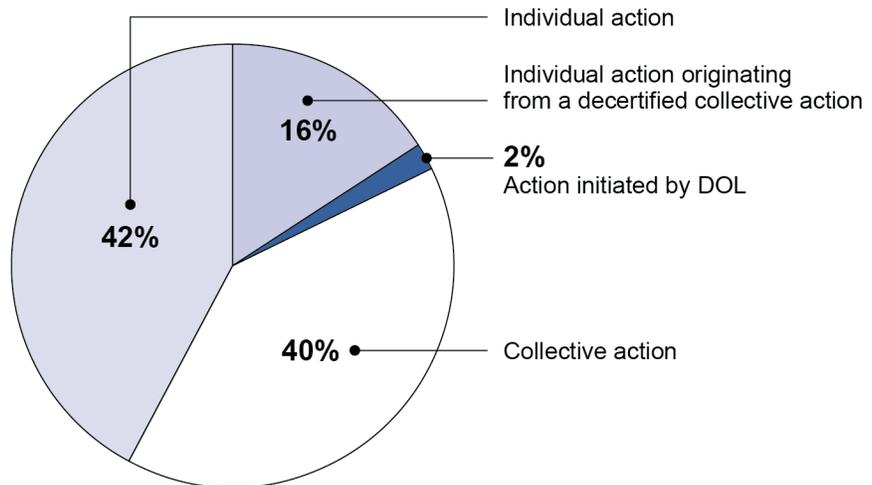
FLSA lawsuits can be filed by DOL on behalf of employees or by private individuals. Private FLSA lawsuits can either be filed by individuals or on behalf of a group of individuals in a type of lawsuit known as a “collective action”.⁷ The court will generally certify whether a lawsuit meets the requirements to proceed as a collective action. The court may deny certification to a proposed collective action or decertify an existing collective action if the court determines that the plaintiffs are not “similarly situated” with respect to the factual and legal issues to be decided. In

⁷ The FLSA provides that an action may be brought “by any one or more employees for and in behalf of himself or themselves and other employees similarly situated.” 29 U.S.C. § 216(b). Collective actions under the FLSA and some other laws operate on an “opt-in” basis, meaning that workers must affirmatively consent in writing to participate as plaintiffs. In contrast, litigation under other laws may generally be brought as a class action. Class actions operate on an “opt-out” basis, whereby anyone who is part of a court-certified class is included as a plaintiff unless they actively choose not to be. Unlike the members of a class action, a potential plaintiff who does not “opt-in” to an FLSA collective action is not bound by the court’s judgment in the case. In some cases, a federal court may hear both a collective action under the FLSA and a class action under state law.

such cases, the court may permit the members to individually file private FLSA lawsuits.

Collective actions can serve to reduce the burden on courts and protect plaintiffs by reducing costs for individuals and incentivizing attorneys to represent workers in pursuit of claims under the law.⁸ They may also protect employers from facing the burden of many individual lawsuits; however, they can also be costly to employers because they may result in large amounts of damages. For fiscal year 2012, we found that an estimated 58 percent of the FLSA lawsuits filed in federal district court were filed individually, and 40 percent were filed as collective actions. An estimated 16 percent of the FLSA lawsuits filed in fiscal year 2012 (about a quarter of all individually-filed lawsuits), however, were originally part of a collective action that was decertified (see fig. 2).

Figure 2: FLSA Lawsuits Filed in Federal District Court in Fiscal Year 2012, by Type



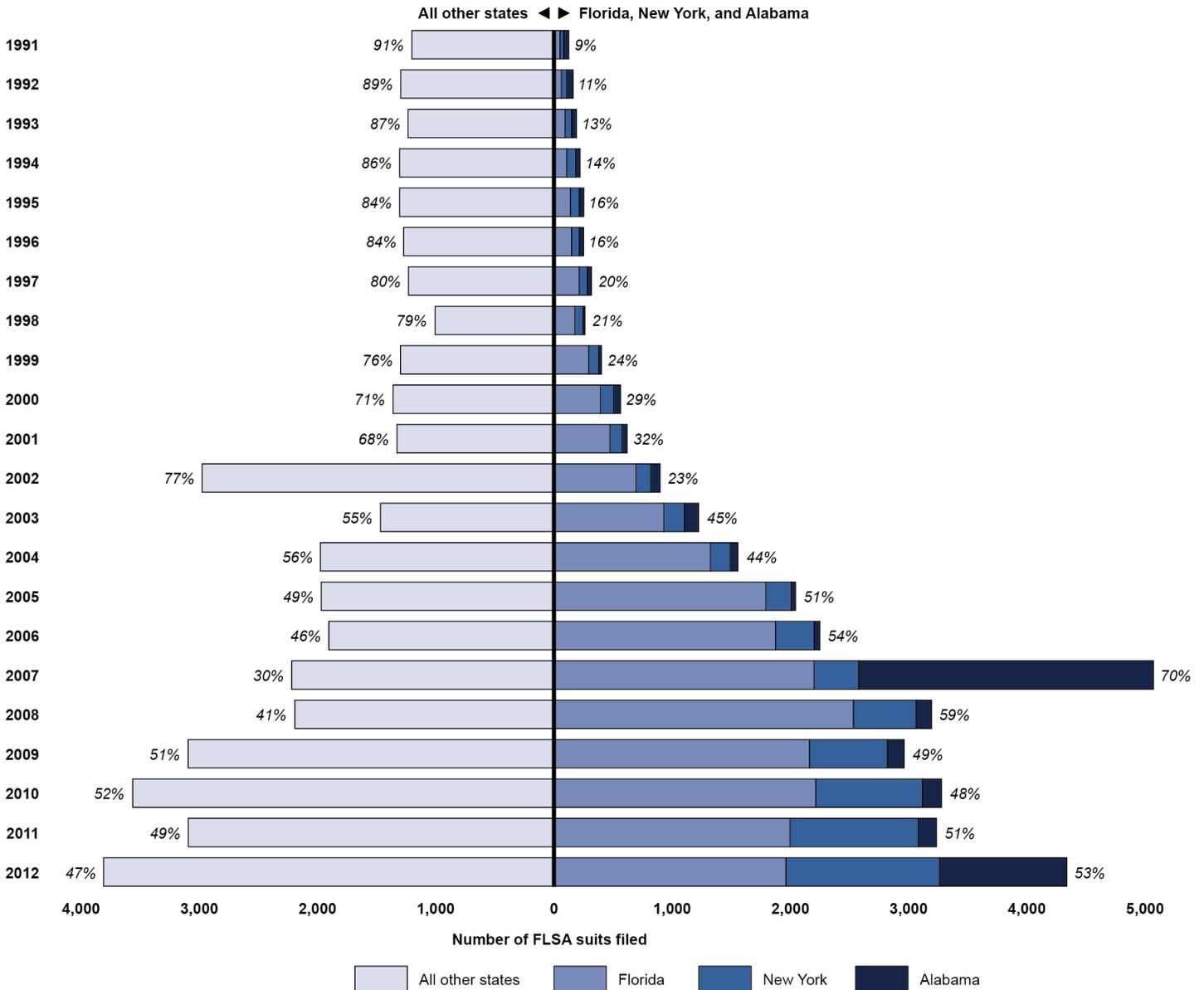
Source: GAO analysis of complaints from FLSA lawsuits obtained through the federal judiciary's Public Access to Court Electronic Records (PACER) system. | GAO-14-629T

⁸ According to the Supreme Court in *Hoffmann-La Roche, Inc. v. Sperling*, a collective action allows plaintiffs "the advantage of lower individual costs to vindicate rights by the pooling of resources. The judicial system benefits by efficient resolution in one proceeding of common issues of law and fact arising from the same ... activity." 493 U.S. 165, 170 (1989).

Federal courts in most states experienced increases in the number of FLSA lawsuits filed between 1991 and 2012, but large increases were concentrated in a few states, including Florida, New York, and Alabama. Of all FLSA lawsuits filed since 2001, more than half were filed in these three states, and in 2012, about 43 percent of all FLSA lawsuits were filed in Florida (33 percent) or New York (10 percent). In both Florida and New York, growth in the number of FLSA lawsuits filed was generally steady, while changes in Alabama involved sharp increases in fiscal years 2007 and 2012 with far fewer lawsuits filed in other years (see fig. 3). Each spike in Alabama coincided with the decertification of at least one large collective action, which likely resulted in multiple individual lawsuits. For example, in fiscal year 2007, 2,496 FLSA lawsuits (about one-third of all FLSA lawsuits) were filed in Alabama, up from 48 FLSA lawsuits filed in Alabama in fiscal year 2006. In August 2006, a federal district court in Alabama decertified a collective action filed by managers of Dollar General stores. In its motion to decertify, the defendant estimated the collective to contain approximately 2,470 plaintiffs.⁹

⁹ Order on Motion to Decertify, *Brown v. Dolgencorp, Inc.*, No. 02-673 (N.D. Ala. Aug. 7, 2006). Several stakeholders we interviewed cited decertifications of collective actions as a possible cause of spikes in the number of FLSA lawsuits filed.

Figure 3: Percentage of FLSA Lawsuits Filed in Federal District Court in Florida, New York, and Alabama Compared to FLSA Lawsuits Filed in All Other States, Fiscal Years 1991-2012



Source: GAO analysis of Federal Judicial Center data. | GAO-14-629T

Note: The large increase in FLSA lawsuits in all other states in fiscal year 2002 can be attributed to a spike in FLSA lawsuits filed in Mississippi in that year, coincident with an effort by a group of attorneys to bring FLSA lawsuits on behalf of certain school workers in Mississippi at that time.

FLSA Lawsuits Filed in 2012 Were Concentrated in a Few Industries and Most Alleged Overtime Violations

In fiscal year 2012, an estimated 97 percent of FLSA lawsuits were filed against private sector employers, and an estimated 57 percent of FLSA lawsuits were filed against employers in four industry areas: accommodations and food services; manufacturing; construction; and “other services”, which includes services such as laundry services, domestic work, and nail salons.¹⁰ Almost one-quarter of all FLSA lawsuits filed in fiscal year 2012 (an estimated 23 percent) were filed by workers in the accommodations and food service industry, which includes hotels, restaurants, and bars. At the same time, almost 20 percent of FLSA lawsuits filed in fiscal year 2012 were filed by workers in the manufacturing industry. In our sample, most of the lawsuits involving the manufacturing industry were filed by workers in the automobile manufacturing industry in Alabama, and most were individual lawsuits filed by workers who were originally part of one of two collective actions that had been decertified.¹¹

FLSA lawsuits filed in fiscal year 2012 included a variety of different types of alleged FLSA violations and many included allegations of more than one type of violation. An estimated 95 percent of the FLSA lawsuits filed in fiscal year 2012 alleged violations of the FLSA’s overtime provision, which requires certain types of workers to be paid at one and a half times their regular rate for any hours worked over 40 during a workweek.¹² Almost one-third of the lawsuits contained allegations that the worker or workers were not paid the federal minimum wage.¹³ We also identified more specific allegations about how workers claimed their employers

¹⁰ We used the North American Industry Classification System (NAICS) when determining the industry of workers filing lawsuits. For 14 percent of the FLSA lawsuits in our sample, we were unable to identify the industry in which the workers were employed because information about the industry was not included in the complaint we reviewed from the lawsuit.

¹¹ Our sample included individual lawsuits originating from one of two collective actions initially filed in Alabama against an automobile manufacturer in 2008. In fiscal year 2012, these collective actions were decertified and a number of individual lawsuits were subsequently filed. One of these collective actions also named two staffing agencies as co-defendants.

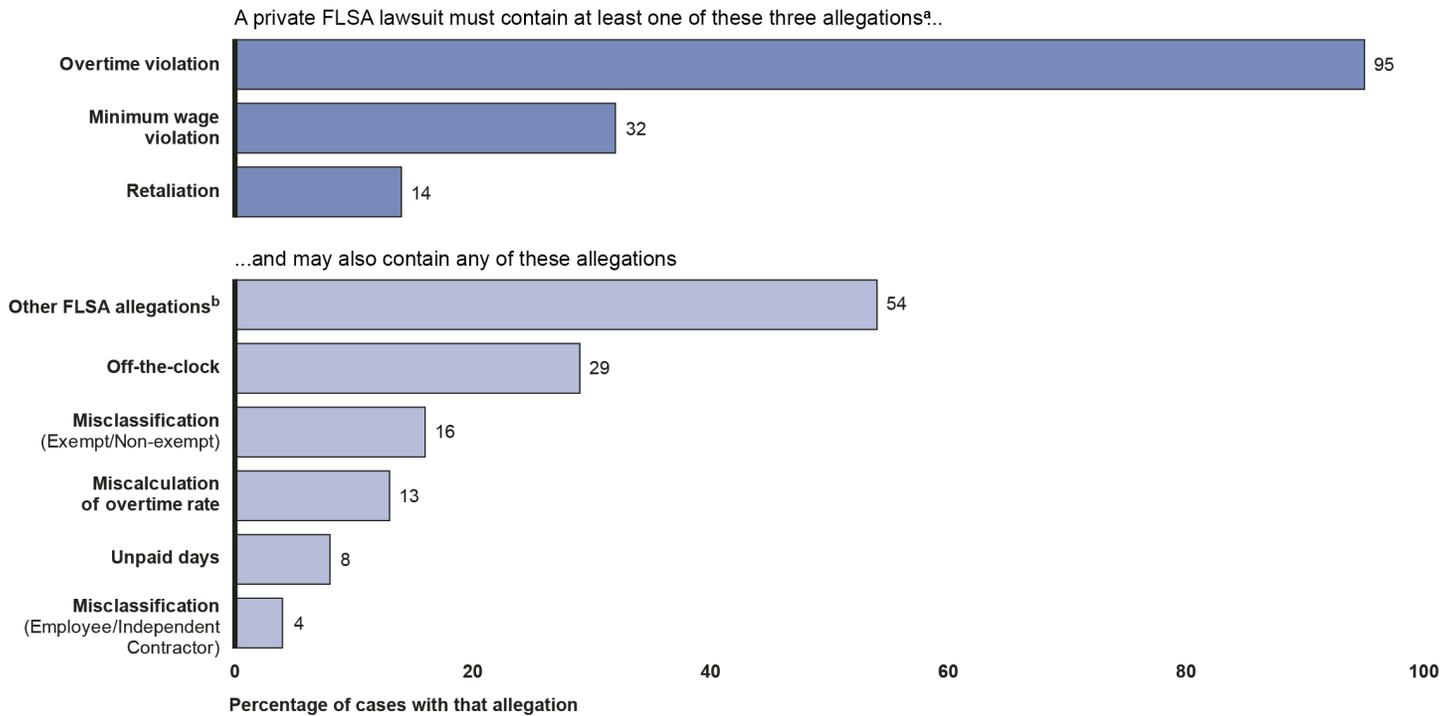
¹² See 29 U.S.C. § 207. The FLSA exempts certain types of workers from these requirements, including outside salespersons; workers in bona fide executive, administrative, or professional positions; and workers in certain computer-related occupations. 29 U.S.C. § 213(a)(1) and (17).

¹³ See 29 U.S.C. § 206.

violated the FLSA. For example, nearly 30 percent of the lawsuits contained allegations that workers were required to work “off-the-clock” so that they would not need to be paid for that time.¹⁴ In addition, the majority of lawsuits contained other FLSA allegations, such as that the employer failed to keep proper records of hours worked by the employees, failed to post or provide information about the FLSA, as required, or violated requirements pertaining to tipped workers such as restaurant wait staff (see fig. 4).

¹⁴ For the purposes of our review, we defined an “off-the-clock” allegation as a claim that an employer did not pay workers for all of the hours they worked within a day. Examples include claims that workers were not credited or paid for time worked outside their scheduled work hours, such as the hours when they were donning protective gear or booting up their computers before starting work. Requiring an employee to work off-the-clock can result in both overtime and minimum wage violations. An overtime violation could occur if the hours worked off-the-clock result in more than 40 hours worked during the workweek. A minimum wage violation could occur if a worker’s wage is at or close to the minimum wage, and the extra hours worked without pay result in his or her average hourly wage falling below the minimum wage.

Figure 4: Estimated Percentage of FLSA Lawsuits Filed in Federal District Court in Fiscal Year 2012, by Type of Allegation



Source: GAO analysis of complaints from FLSA lawsuits obtained through the federal judiciary's Public Access to Court Electronic Records (PACER) system. | GAO-14-629T

Note: Percentages do not add to 100 because FLSA lawsuits may contain multiple allegations. Any allegations not specifically mentioned in the lawsuit complaint were not counted. All estimates have a 95 percent confidence interval of within plus or minus 10 percentage points.

^aThis figure also includes lawsuits filed by DOL. An FLSA lawsuit filed by DOL may include certain other allegations, such as those related to child labor violations; however, the DOL-initiated lawsuits in our sample did not include such additional allegations.

^bOther FLSA allegations include recordkeeping violations, failure to post FLSA-related information as required, and violations related to tipped workers, among others.

Stakeholders Cited Several Reasons for the Rise in FLSA Litigation

While it was not possible to determine the exact cause of the increase in the number of FLSA lawsuits filed in recent years, stakeholders we interviewed cited several potential contributing factors:

- Increased awareness and activity by plaintiffs' attorneys.** Stakeholders we interviewed—including federal judges, officials with WHD, and attorneys—most frequently cited increased awareness about FLSA cases and activity on the part of plaintiffs' attorneys as a significant contributing factor. Many stakeholders, including two plaintiffs' attorneys, told us that financial incentives, combined with the

fairly straightforward nature of many FLSA cases, made attorneys receptive to taking these cases.¹⁵ In Florida, for example, where nearly 30 percent of all FLSA lawsuits were filed from 1991 to 2012, several stakeholders told us that plaintiffs' attorneys advertise for wage and hour cases via billboards, radio, foreign language press, and other methods.

- **Evolving case law.** Several stakeholders we interviewed told us that evolving case law may have contributed to the increased awareness and activity on the part of plaintiffs' attorneys. For example, they said the 1989 Supreme Court decision *Hoffmann–La Roche, Inc. v. Sperling* made it easier for plaintiffs' attorneys to identify potential plaintiffs and reduced the work necessary to form collectives. Historically, according to several stakeholders, the requirement that plaintiffs must “opt in” to a collective action had created some challenges to forming collectives because the plaintiffs' attorneys had to identify potential plaintiffs and contact them to get them to join the collective. In this case, the Supreme Court held that federal courts have discretion to facilitate notice to potential plaintiffs of ongoing collective actions.¹⁶
- **Economic conditions.** According to some stakeholders we interviewed, economic conditions, such as the recent recession, may have played a role in the increase in FLSA litigation. Workers who have been laid off face less risk when filing FLSA lawsuits against former employers than workers who are still employed and may fear retaliation as a result of filing lawsuits.¹⁷ In addition, some stakeholders said that, during difficult economic times, employers may be more likely to violate FLSA requirements in an effort to reduce costs, possibly resulting in more FLSA litigation.
- **State wage and hour laws.** Many stakeholders also told us that the prevalence of FLSA litigation by state is influenced by the variety of state wage and hour laws. For example, while the federal statute of

¹⁵ The FLSA requires the court to award a reasonable attorney's fee to a prevailing plaintiff, to be paid by the defendant. 29 U.S.C. § 216(b). Several stakeholders said plaintiffs' attorneys in FLSA cases typically work on a contingent basis, meaning that, if the case settles, they receive a percentage of the settlement as a fee. However, if the plaintiff does not receive a settlement or win the case, the attorney is not paid for his or her services.

¹⁶ *Hoffmann–La Roche, Inc. v. Sperling*, 493 U.S. 165 (1989).

¹⁷ An estimated 14 percent of FLSA lawsuits filed in federal district court in fiscal year 2012 included an allegation of retaliation.

limitations for filing an FLSA claim is 2 years (3 years if the violation is “willful”), New York state law provides a 6-year statute of limitations for filing state wage and hour lawsuits. A longer statute of limitations may increase potential financial damages in such cases because more pay periods are involved and because more workers may be involved. Adding a New York state wage and hour claim to an FLSA lawsuit in federal court could expand the potential damages, which, according to several stakeholders, may influence decisions about where and whether to file a lawsuit. In addition, according to multiple stakeholders we interviewed, because Florida lacks a state overtime law, those who wish to file a lawsuit seeking overtime compensation generally must do so under the FLSA.

- **Ambiguity in applying the law and regulations.** Ambiguity in applying the FLSA statute or regulations—particularly the exemption for executive, administrative, and professional workers—was cited as a factor by a number of stakeholders. In 2004, DOL issued a final rule updating and revising its regulations in an attempt to clarify this exemption and provided guidance about the changes, but a few stakeholders told us there is still significant confusion among employers about which workers should be classified as exempt under these categories.¹⁸
- **Industry trends.** As mentioned previously, about one-quarter of FLSA lawsuits filed in fiscal year 2012 were filed by workers in the accommodations and food service industry. Nationally, service jobs, including those in the leisure and hospitality industry, increased from 2000 to 2010, while most other industries lost jobs during that period.¹⁹ Federal judges in New York and Florida attributed some of the concentration of such litigation in their districts to the large number of restaurants and other service industry jobs in which wage and hour violations are more common than in some other industries. An academic who focuses on labor and employment relations told us that changes in the management structure in the retail and restaurant industry may have contributed to the rise in FLSA lawsuits. For example, frontline managers who were once exempt have become nonexempt as their nonmanagerial duties have increased as a portion of their overall duties.

¹⁸ Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 69 Fed. Reg. 22,122 (Apr. 23, 2004) (codified at 29 C.F.R. pt. 541).

¹⁹ Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, volume 135, number 1 (Washington, D.C.: January 2012), p. 66.

WHD Uses a Data-based Approach to Target Its FLSA Enforcement Efforts but Does Not Analyze Data on Requests for Assistance to Improve Its Guidance

We also reviewed DOL's annual process for determining how to target its enforcement and compliance assistance resources. The agency targets industries for enforcement that, according to its recent enforcement data, have a higher likelihood of FLSA violations, along with other factors. In addition, according to WHD internal guidance, the agency's annual enforcement plans should contain strategies to engage related stakeholders in preventing such violations. For example, if a WHD office plans to investigate restaurants to identify potential violations of the FLSA, it should also develop strategies to engage restaurant trade associations about FLSA-related issues so that these stakeholders can help bring about compliance in the industry.

However, DOL does not compile and analyze relevant data, such as information on the subjects or the number of requests for assistance it receives from employers and workers, to help determine what additional or revised guidance employers may need to help them comply with the FLSA.²⁰ In developing its guidance on the FLSA, WHD does not use a systematic approach that includes analyzing this type of data. In addition, WHD does not 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. This type of information could be used to develop new guidance or improve the guidance WHD provides to employers and workers on the requirements of the FLSA.

Because of these issues, we recommended that WHD develop a systematic approach for identifying areas of confusion about the requirements of the FLSA that contribute to possible violations and improving the guidance it provides to employers and workers in those areas. This approach could include compiling and analyzing data on requests for guidance on issues related to the FLSA, and gathering and using input from FLSA stakeholders or other users of existing guidance through an advisory panel or other means.

²⁰ According to federal standards for internal control, program managers need operational data to determine whether they are meeting their agencies' strategic and annual performance plans as well as their goals for effective and efficient use of resources. See GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999). In documenting best practices about planning and performance management, we have suggested that agencies involve regulated entities in the prevention aspect of performance. See GAO, *Managing for Results: Strengthening Regulatory Agencies' Performance Management Practices*, [GAO/IGD-00-10](#) (Washington, D.C.: Oct. 28, 1999).

While improved DOL guidance on the FLSA might not affect the number of lawsuits filed, it could increase the efficiency and effectiveness of its efforts to help employers voluntarily comply with the FLSA. A clearer picture of the needs of employers and workers would allow WHD to more efficiently design and target its compliance assistance efforts, which may, in turn, result in fewer FLSA violations.

WHD agreed with our recommendation that the agency 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 stated that it is in the process of developing systems to further analyze trends in communications received from stakeholders such as workers and employers and will include findings from this analysis as part of its process for developing new or revised guidance.

In closing, while there has been a significant increase in FLSA lawsuits over the last decade, it is difficult to determine the reasons for the increase. It could suggest that FLSA violations have become more prevalent, that FLSA violations have been reported and pursued more frequently than before, or a combination of the two. It is also difficult to determine the effect that the increase in FLSA lawsuits has had on employers and their ability to hire workers. However, the ability of workers to bring such suits is an integral part of FLSA enforcement because of the limits on DOL's capacity to ensure that all employers are in compliance with the FLSA.

Chairman Walberg, Ranking Member Courtney, and members of the Committee, this completes my prepared statement. I would be happy to respond to any questions you may have.

GAO Contact and Staff Acknowledgments

For further information regarding this statement, please contact Andrew Sherrill at (202) 512-7215 or sherrilla@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony include Betty Ward-Zukerman (Assistant Director), Catherine Roark (Analyst in Charge), David Barish, James Bennett, Sarah Cornetto, Joel Green, Kathy Leslie, Ying Long, Sheila McCoy, Jean McSween, and Amber Yancey-Carroll.

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