

Retail Detail



The Department of Labor Investigates Retailers' Relationships with Janitors

By Timothy Haley and Karla E. Sanchez

Recently, we have learned that the Department of Labor ("DOL") has launched a sweeping FLSA compliance review focused on major retailers who employ janitorial workers. As part of that initiative, the DOL has visited multiple retailer locations and has interviewed location management and janitorial employees. The DOL has targeted both retailers that hire janitors as employees and those that retain janitors through independent contractors. Based on our conversation with the Assistant District Director of the DOL in Seattle, we believe that the Washington D.C. DOL office is directing the local DOL offices to conduct these investigations. We also know that the Seattle office has directed investigators to interview managers and janitorial employees for the entire month.

Keep in mind that retaining janitors through independent contractors will not necessarily shield retailers from liability for employment law violations. In 2004, janitors filed a class action lawsuit seeking unpaid overtime compensation against three of the largest supermarket chains in California and they settled it for over \$22 million. The supermarket chains had treated the janitors as independent contractors. In 2005, another major retailer reportedly agreed to pay \$11 million dollars to settle accusations that it retained hundreds of illegal immigrants through janitorial contractors to clean its stores. More recently, the Washington Supreme Court overturned a trial court which had granted summary judgment to a grocery store chain on its janitors' claims that the broker company which employed them and the grocery store chain were joint employers.

We strongly recommend that retailers examine their relationships with janitors and janitorial contractors. We believe that governmental agencies and plaintiffs' attorneys will continue to focus on these relationships.

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