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Kathy Hochul, Governor
Roberta Reardon, Commissioner

July 29, 2024

Mr. Kenrick Sifontes, Audit Director
Division of State Government Accountability
Office of the New York State Comptroller
110 State Street, 11th Floor
Albany, NY 12236

Re: Audit Report – 2022-S-17, Issued January 31st, 2024

Dear Mr. Sifontes:

The New York State Department of Labor (NYSDOL) has reviewed the Office of the State Comptroller's (OSC) Audit Report 2022-S-17 titled "*Labor Investigations in New York City*", for the period of January 2019 through March 2023. The report contained seven recommendations and NYSDOL's response is as follows:

Recommendation #1:

Establish a mechanism to ensure claims are reviewed promptly and labeled accurately and explore whether a dedicated Central Intake Unit might have a role in achieving this.

NYSDOL 180-day Response:

A new Pre-Investigation Unit has been created and will be fully staffed with supervisory, professional, and clerical staff by July 2025. This Unit handles all intake responsibilities including documenting the research, review, and acceptance notes for all incoming complaints.

The New York State Office of Information Technology Services is implementing an enhancement to the Worker Protection Audit/Management System (WPM), with estimated implementation by January 1st, 2025. This enhancement will include adding additional descriptive claim statuses to the intake status menu that will improve tracking and reporting statistics. A Pre-Investigation Unit Manual is also in development, with estimated completion by January 1st, 2025. Finally, Chief Investigators conduct a quarterly review of all claims to ensure all proper actions have been taken, documentation has been uploaded, and the correct statuses has been chosen.

Recommendation #2:

Develop guidelines to identify child labor cases involving instances of hazardous employment.

NYSDOL 180-day Response:

The enhancement to WPM will also include a new case type, *prohibited occupation*, so all allegations involving prohibited occupations can be tracked separately and with urgency. Section 133 of the Labor Law, *Prohibited employment of minors*, refers to specific tasks as well as occupations that are prohibited. Note that “hazardous employment” is generally a term used in federal law, or in reference to hazardous work regulated within particular industries. Therefore, in New York State, the term *prohibited occupation* is more applicable. In addition, a new claim type will be added to WPM, *Under Permitted Age*, to denote allegations of minors working below the minimum age and to differentiate those allegations from others involving dangerous and prohibited occupations.

A child labor coordinator has been appointed to monitor all child labor cases for timeliness and to ensure proper notifications have been sent to all interested parties, such as the Workers’ Compensation Board (WCB) and Superintendents of Schools. The new Labor Standards Child Labor Manual is currently being drafted with estimated issuance by January 1st, 2025. Additionally, new guidelines have been issued for timeframes on prohibited occupation investigations and other categories of child labor investigations, including referrals from WCB. Any case that does not comply with these guidelines should have the reasons documented in WPM. The child labor coordinator will monitor all child labor cases and review files for cases involving allegations of prohibited occupations to ensure compliance.

Recommendation #3:

Develop target completion time frames for all child labor and wage-related case investigations and ensure they are being followed.

NYSDOL 180-day Response:

Guidance has been established to conduct site visits of child labor cases involving prohibited occupations or underage employment no later than one week from receipt, with a preference for within 48 hours. These cases should be completed, i.e., violations served, within 30 days, with a preference for one week or less. On all other child labor cases, including complaints and WCB referrals, if there are no allegations of prohibited occupations/underage requirements, a site visit should be conducted if warranted or a determination made within 30 days, but with a preference for within one week or less. These matters should be completed, i.e., violations served, within 90 days. Any case that does not comply with these guidelines, or that does not warrant a site visit, should have the reasons documented in WPM. The child labor coordinator will routinely review case records to ensure compliance.

Recommendation #4:

Revise the Manual to include updated policies and procedures.

NYSDOL 180-day Response:

A new Child Labor Manual with updated procedures, timelines, and techniques has been drafted and is planned to be finalized and released by January 1st, 2025.

NYSDOL will begin a complete overhaul of the Labor Standards Investigator Manual starting September 1st, 2024. The goal of this overhaul is to standardize and format the Labor Standards Investigator Manual into subject specific electronic manuals, including non-field investigative work, for Worker Protection that will be reviewed for updates quarterly. Program leadership will review sections of the manual and propose edits that will be reviewed by Counsel's Office and the Executive Deputy Commissioner before being issued to the staff. Individual sections will be issued to staff as they are completed.

Recommendation #5:

Ensure claim and cases information in the WPM includes all relevant data, including but not limited to dates of events/activities and investigator's notes.

NYSDOL 180-day Response:

Every month, Chief Labor Standard Investigators audit all closed cases to ensure all relevant data and activities are uploaded to the case file. Currently 100% of closed cases are audited. In the future, audits for districts with more than 10 cases closed will transition to a statistically relevant sampling of cases. Errors or omissions are currently being discussed with District Supervisors and trends or patterns of non-compliance will be addressed with investigators, along with feedback to correct inadequacies during six-month check-ins and annual performance reviews when needed.

Recommendation #6:

When investigators leave Department employment, ensure their cases are reassigned in a timely manner.

NYSDOL 180-day Response:

The enhancement to WPM will also allow cases to be *unassigned* when an investigator leaves employment or if an investigator's caseload is too large. These *unassigned* cases can be easily tracked in WPM and reassigned to other staff when appropriate. A monthly report with all open cases, including *unassigned* cases, is emailed directly to Supervisors to ensure cases are monitored timely for reassignment.

Recommendation #7:

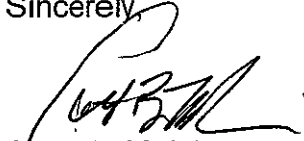
Collaborate and communicate with DOE on labor-related issues involving minors.

NYSDOL 180-day Response:

A new form was released on July 1st, 2024 along with a memo directing investigators to inform school superintendents of any minor in their schools who was employed in violation of the labor law. A NYSDOL child labor coordinator has been appointed to monitor all notifications sent pursuant to this process. While NYSDOL requested that the New York State Education Department (NYSED) receive these notification forms, NYSED indicated that per Labor Law Section 137, NYSED's role is to supply the form. NYSED reviewed and made edits to the form prior to the release of protocol regarding notifying school superintendents of minors who are employed in violation of the law.

If you have any comments, please contact Donald Temple, Director of Internal Audit (518) 457-7332.

Sincerely,



Scott B. Melvin
Executive Deputy Commissioner