

The New Smartphone App: Are Your FLSA Time Records In Order?

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On May 10, 2011, the U.S. Department of Labor (DOL) announced a free timesheet application for smartphones (currently limited to iPhone and iPod Touch) to “help employees independently track the hours they work and determine the wages they are owed” in accordance with the Fair Labor Standards Act (FLSA). The application is available in both English and Spanish. The electronic timesheet application allows employees to privately record regular work hours, break and meal times, and hours worked beyond the regular work day. This new application supplements a printable 12-month “Work Hours Calendar” already on the DOL website that allows employees to track activities, such as “arrive, start, stop, leave, meal breaks, other breaks.” Both resources include explanations of basic hours-worked concepts and DOL contact information for questions or registering wage violation complaints.

The new time keeping application is not a revolutionary development. Employees have always had the option of maintaining their own time records using conventional means such as desk calendars, day planners, etc. Moreover, it is debatable whether the majority of non-exempt employees who are the intended users/beneficiaries of this app are likely to own the smartphones for which the app was designed.

Nonetheless, the stated purpose of the new application is to enable and empower individual employees to keep their own time records, rather than relying on their employer’s records. The DOL indicated that these records “could prove invaluable during a Wage and Hour investigation when an employer has failed to maintain accurate employment records.”

In the past, private employee records of work hours were occasionally encountered by employers during a wage and hour investigation. Now, the availability of these various sources could increase the instances of private employee documentation. Moreover, because the app is designed to assist employees to record work hours contemporaneously, an employee who uses the app has a way to enter his or her hours at the time he or she claims to be working them. Thus, the evidence of hours recorded using the app is arguably more credible than if the employee subsequently recorded them on a written calendar or day planner.

It is not clear from the announcement how much weight the DOL will give to the employee’s private, unverified records to the extent they differ from the employer’s payroll records. Regardless, these initiatives are further proof of DOL’s aggressive approach to the enforcement of the Fair Labor Standards Act (FLSA) that we [reported previously](#). In addition, DOL has indicated that additional apps are forthcoming that will track other data, including tip income, bonuses, commissions, pay deductions, holiday pay, shift differentials and paid time off.

What preventive actions should an employer take to meet these challenges? We recommend that employers consider one or more of the following steps:

- Ensure that exempt employees are classified properly
- Periodically audit timekeeping and payroll procedures to ensure accuracy

- Adopt or revise policies and procedures to correct any errors in recorded work time
- Train supervisors and employees on the proper recordation of work time
- Require employees to review and sign timesheets that include a verification that the recorded information is correct
- Require employees to timely report any discrepancies they note on time records
- Require employees to provide copies of any privately recorded work time records or pay calculations that contradict the employer's records

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