Timekeeping For Exempt Employees

Insights
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Should an employer keep records of the time worked by employees who qualify for a federal Fair Labor Standards Act minimum-wage and/or overtime exemption?

At the risk of giving the proverbial "lawyer's answer", it depends.

Is Timekeeping *Mandatory*?

First, it is necessary to know whether timekeeping is *required* for some reason under the particular exemption being relied upon. If the employee is exempt only from the FLSA's overtime requirement, for example, then an accurate record of all his or her hours worked is still necessary in order to ensure compliance with that law's minimum-wage provision.

It might also be that such a record is essential for purposes of determining whether the applicable exemption *itself* is being properly maintained. As an illustration, consider the FLSA's Section 7(i) overtime exception for commission-paid employees of a retail or service establishment. This provision requires that a worker's regular hourly rate of pay for an overtime workweek must be more than 1.5 times the FLSA's minimum wage. Without accurate hours-worked information, an employer cannot know for sure whether this condition has been met. Consequently, the recordkeeping requirements for Section 7(i) incorporate by reference the general FLSA timekeeping obligation at 29 C.F.R. § 516.2(a)(7).

Is Timekeeping *Desirable*?

If timekeeping is not obligatory, then the question becomes one of what other goal(s) would be achieved by having exempt employees record their worktime.

For instance, one consideration might have to do with the federal Family and Medical Leave Act. If an employer does not keep accurate records of the hours worked by exempt employees, then, in any dispute about whether such an employee has met the FMLA's 1,250-hour threshold, it will be the employer's burden to demonstrate that the employee failed to do so. 29 C.F.R. § 825.110(c)(3).

Some employers require exempt-employee timekeeping in order to monitor attendance, that is, to know whether the employee worked his or her full schedule. This purpose might also be adequately

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served by an attendance sheet calling for entering checkmarks or some other short attendance-focused entry, instead of by detailed timekeeping.

Others are motivated by a desire to have a record of hours worked if there is ever a dispute about whether the person actually met the applicable exemption requirements. Keep in mind that how valuable these records will be when it matters will depend on their *accuracy*, which necessitates management's rigorously and consistently enforcing its timekeeping policy for these employees. Moreover, having such records will not lessen the importance of making wise, well-founded exemption decisions in the first place.

The Bottom Line

As this shows, there is no single, all-encompassing answer to whether an employer "should" keep records of exempt employees' worktime.

Instead, management must first take stock of all of the relevant considerations (including other applicable laws besides just the FLSA). It must then evaluate whether and how its aims will be accomplished by whatever timekeeping practice it is considering.

Editor's note: This post originally contained a reader poll. See the following post for the results of that poll.

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