



"Flexible Work" Trend Still Necessitates Wage-Hour Compliance

Insights

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A recent *Time* magazine [item](#) by Dan Schawbel of Millennial Branding discusses what he sees as a growing trend to abandon the traditional on-premises, 9-to-5 workday in favor of permitting employees to "work odd hours, telecommute and otherwise tweak the usual 9 to 5 grind."

Schawbel says that Generation Y employees (those born between 1982 and 1993) are spearheading this because they prioritize workplace flexibility so highly. He warns that employers who fail to offer the option to telecommute, to work atypical hours, and to use technology to facilitate alternative work patterns run the risk of turning away a group of prospective workers projected to comprise 75% of the global workforce by 2025.

Potential FLSA Complications

Be that as it may, it is also essential to take wage-hour compliance into account in deciding how to accommodate this trend. Under the federal Fair Labor Standards Act alone, thorny issues are presented by employees who spend less worktime on-premises in favor of working at home and elsewhere and at unpredictable times. Complicating matters is the fact that the FLSA is in many ways an unforgiving creature of a bygone era in which workplace flexibility was largely irrelevant.

As just one illustration, an employer's responsibility to keep an accurate record of non-exempt employees' hours worked has been a challenging task even when the employees report to a single workplace and perform their duties during a normal, fixed-schedule workday. Employers have now been hit with FLSA [claims](#) based upon the additional timekeeping difficulties posed by the advent of helter-skelter, offsite work activities made possible by computers, personal digital assistants, and other remote-access electronics.

Risks Not Hypothetical

The U.S. Labor Department is also following these trends. We [reported](#) last May about DOL's release of a smartphone app designed to help employees "independently track the hours they work and determine the wages they are owed." This development likely represents an increased threat of claims by tech-savvy employees who work under non-traditional circumstances.

And while employees might favor a flexible approach in the beginning, experience suggests that some will not hesitate to make wage-hour claims later when it behooves them to do so. Employers cannot count on successfully defending against these claims simply on the basis that the workers

agreed to the arrangement, or even that they sought it out. Neither is it likely to be a broad-based solution to "make them all exempt."

The Bottom Line

In the end, employers who move toward letting employees "tweak the 9 to 5 grind" must commit themselves to joining this with effective methods to maintain wage-hour compliance, including measures ensuring that all hours worked by non-exempt employees are accurately recorded. Moreover, these compliance steps will not be an autopilot proposition; they will always require vigilant, hands-on management.

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