



USDOL Facilitates More Secret Time Records

Insights

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We previously reported on DOL's publication of a "Work Hours Calendar", a timesheet for employees to use to keep a private record of each workday's arrival, start, stop, and departure times, along with other information. In related comments, DOL told employees that "it is recommended that you keep your own records of all the hours you work and your pay."

In a news release this week, DOL cites that publication and goes a step further by announcing the launch of DOL's "first application for smartphones, a timesheet to help employees independently track the hours they work and determine the wages they are owed." The free app is currently compatible with the iPhone and the iPod Touch. DOL will explore making it available on other smartphone platforms.

Describing the new phone app, DOL's news release says: "[U]sers conveniently can track regular work hours, break time and any overtime hours for one or more employers. **This new technology is significant because, instead of relying on their employers' records, workers now can keep their own records.** This information could prove invaluable during a Wage and Hour Division investigation when an employer has failed to maintain accurate employment records." (emphasis added).

According to reports, DOL has stated: "The app also will enable users to add comments to the information; view a summary of their work hours in a daily, weekly, and monthly format; and e-mail the summary of work hours and gross pay as an attachment." The "DOL-Timesheet" app allows employees to keep their own time records and e-mail themselves reports that they can print from their computer. It also offers one-tap e-mail access to DOL and a link to regional DOL offices.

Once again, DOL is encouraging employees to keep what amounts to a separate set of books. There is great potential here for needless mistakes or misunderstandings, or even for outright mischief on the part of some. For example, most employees have no expertise in what is and is not FLSA worktime, and it is likely that "conventional wisdom" will lead many to record time in this app that does not count as compensable FLSA "hours worked".

As we noted in our previous post, employers are well-advised to be sure they can demonstrate that their records are the best accounts of all facts relevant to compliance with the FLSA and similar laws. Among other things, employers should consider communicating explicitly to employees and managers the importance of accuracy in the employer's time records; requiring employees to report

any hours-worked questions, discrepancies, or disagreements immediately; reviewing company time records on a regular basis for accuracy; correcting mistakes in the time records (with the employee's acknowledgement of the correction); and other measures designed to make the employer's records accurate and the most credible version that exists.

Of course, employers must also educate themselves on what time must be counted as "hours worked" under the FLSA (including, but not limited to, compensable travel time) so that all such time is properly captured in the employer's records.