



Employer Beware: Employees Might Be Keeping Secret Records At USDOL's Recommendation

Insights
10.23.10

Tucked away in a recent U.S. Labor Department e-newsletter was the announcement of a new "Work Hours Calendar." It is a time-tracking document that the Wage and Hour Division urges workers to maintain separately from the employer's official records. According to the newsletter:

[The] Work Hours Calendar in English and Spanish has been developed to help workers make sure they are properly paid at the end of the work week. The calendar helps workers track their rate of pay, when they start and stop working, and arrival and departure times. ***This information would prove invaluable during an investigation*** where an employer has failed to maintain accurate employment records. Designed for use by those who are the most vulnerable workers in the country, the calendar includes easy-to-understand information about worker rights and how to file a wage violation complaint. The calendar can be ordered by calling 1-866-4US-WAGE (866-487-9243).

[Emphasis added].

Regulations already require employers to keep accurate records of all hours worked by non-exempt employees. Nevertheless, USDOL's Calendar tells workers:

[I]t is recommended that you keep your own records of all the hours you work and of your pay. ***It is recommended that you keep*** all your pay stubs, information your employer gives you or tells you about your pay rate, how many hours you worked, including overtime, and other information on your employer's pay practices. This work hours calendar should help you ***keep as much information as possible***.

[Emphasis added].

The Calendar not only contains spaces for each workday's "start" and "stop" times but also calls for recording the employee's "arrive" and "leave" times for the day. We anticipate that this information might be used by USDOL in an investigation to examine whether, for example, any compensable work was allegedly performed after the "arrival" time but before the "start" time, and whether the employer properly counted and compensated such time as hours worked, particularly when it comes to any overtime pay due for the workweek.

Despite its otherwise-detailed nature, the Calendar includes nothing calling for the employee to certify, attest, or so much as even acknowledge that the information written on it is accurate and correct.

The Calendar concludes by saying that workers have "the right to be paid fairly," and that "[i]t is a serious problem when workers in this country are not being paid every cent they earn." As we have said in connection with USDOL's *We Can Help* initiative, statements like this might well lead to employee dissatisfaction about things having nothing to do with any law USDOL enforces. There are of course other compelling reasons to pay employees "fairly" and to be sure they receive "every cent they earn", but federal wage-hour laws impose no such obligations.

Given today's supercharged wage-hour litigation environment, and in light of this not-so-subtle urging that employees create an alternate set of records, 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 federal Fair Labor Standards Act and similar laws.