"Exceptions Reporting" Timekeeping: Is It The Answer?

Insights
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Due to coming changes in the U.S. Labor Department's compensation requirements for the federal Fair Labor Standards Act's "white collar" exemptions, many employers will no longer rely upon those exemptions for at least some workers beginning no later than December 1, 2016.

Naturally, all such re-categorized employees will have to be paid in compliance with the FLSA's minimum-wage and overtime requirements. This can be done only if the employer has *accurate* records of each employee's hours worked each workday and each workweek and uses that information to compute the individual's FLSA-complying pay.

USDOL suggests that this timekeeping can easily be accomplished via a "simple" approach involving what it calls an "exceptions reporting" system. So, is that correct?

Not So Fast
USDOL is referring to the alternative timekeeping requirement at 29 C.F.R. § 516.2(c), having to do with employees working on what the provision calls "fixed schedules". The regulation says that an employer can show the employee's normal daily and weekly schedule as his or her hours worked, ***if***:

- There is a "check mark, statement or other method" indicating that he or she in fact actually worked those hours, *or*
- The record is changed to show the "exact number" of hours worked for each day and for the workweek if the employee varied from the schedule.

This reveals that timekeeping-by-exception provides no dispensation to do anything other than keep an *accurate* record of the employee's worktime. Indeed, it rests upon the assumptions that:

1. Unless the record shows otherwise, the employee's *actual-and-in-fact* start-work and stop-work times *actually* correspond to the "fixed schedule";
2. There is an *accurate* notation in *every* instance in which his or her *actual-and-in-fact* start-work or stop-work time deviates from the "fixed schedule"; and
3. For *every* workweek, the record *accurately* reflects the employee's worktime.

Moreover, the agency has said elsewhere that this approach is appropriate only where variations from the schedule are "unusual" or occur only "seldom" or "rarely" (whatever that means). USDOL

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from the schedule are "unusual" or occur only "seldom" or "rarely" (whatever that means). USDOL also states that an exception must be noted not only when the employee works more hours than the schedule contemplates, but also when he or she works *fewer*.

Thus, before management adopts such a method for employees performing duties and responsibilities that led it to view them as exempt, it should carefully consider:

- How likely it *really* is that, due to the inherent nature of such work, deviating from the schedule will be "unusual", "seldom", or "rare"; and
- Whether instead it will *frequently* be necessary to revise the records to show the actual amount of time worked, that is, to enter an exception.

Furthermore, there is an appreciable risk that, as time goes on, an "autopilot" effect will mean that notations to reflect different amounts of work actually done (either more or less) will be made only infrequently, if at all.

The Bottom Line

Employers should not view timekeeping-by-exception as providing protection against claims that an employee was not paid the FLSA-required wages for all of his or her hours worked. For that matter, despite its soothing references, USDOL *itself* will not hesitate to make such assertions if an investigator believes that the approach has failed to produce an accurate worktime record.

It might well be that specific entries will often be necessary in order to show deviations from the formerly-exempt employee's schedule. Perhaps management will therefore conclude that timekeeping accuracy will be promoted best if employees keep by-the-workday records of the *actual* times they start and stop work in the first place.

If an employer is nevertheless inclined to adopt the "exceptions reporting" alternative, it should first determine whether that approach will also be acceptable under the applicable, analogous laws of other jurisdictions.

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