

Smartphone app underscores need for wage and hour compliance

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At a time when over 1,000 smartphone applications may be released in a single week, it should come as no surprise to learn that a federal agency has developed one for compliance purposes. â

In May, the Department of Labor launched its first app, a timesheet to help employees independently track the hours they work and determine the wages they are owed. Available in English and Spanish, it allows employees to track regular work hours, break times and any overtime hours for one or more employers.

For employees with smartphones, a printable calendar facilitates tracking and includes easy-to-understand information about employees' rights and how to file a wage violation complaint.

In a news release announcing this development, the DOL emphasized that this new technology is significant because it allows employees to track their own hours rather than relying on their employers' records.

The new app is an extension of recent DOL activities. In 2010, the agency made a decision to add 250 investigators to the Wage and Hour Division to facilitate its ability to respond to complaints more expeditiously. In the same year, it initiated a "We Can Help" campaign aimed at protecting workers' rights. It also implemented the "Employee Misclassification Initiative," to detect employers who have classified workers as independent contractors when, in fact, they are employees.

All of these activities underscore the need for employers to ensure that their organizations are in compliance with the Fair Labor Standards Act. Adherence requires attentiveness to numerous aspects of this complex law, including the determination of exempt and non-exempt classifications, accuracy of recordkeeping, status of independent contractors and overtime payments for non-exempt employees.

Recognizing that one significant area of the DOL's focus is on compensation of non-exempt employees, the following are tips to assist employers in minimizing FLSA-related risks.

1. Ensure that organizational recordkeeping procedures are in compliance with DOL requirements. Although the FLSA does not dictate time clocks or other means of tracking time, any methods selected should document all hours worked. Accurate records and timekeeping

processes offer an employer the best protection against claims of minimum wage and overtime violations.

2. Train supervisors and employees who handle timekeeping and other payroll matters on applicable overtime and other FLSA requirements. Supervisors need sufficient information on how to fulfill their responsibilities, such as ensuring that non-exempt employees accurately record hours worked.

3. Develop and communicate policies and procedures that reinforce organizational compliance. For example, establish expectations that non-exempt employees will adhere to timekeeping procedures and also will report potential mistakes in compensation promptly.

4. Establish procedures to prevent claims that “off-the-clock” work was performed. Potential assertions can be difficult to negate if controls are not in place to ensure that work is not performed prior to or after the end of scheduled shifts or during meal periods unless it is compensated.

5. Compensate non-exempt employees for any work performed in excess of a 40-hour workweek, regardless of whether the overtime was requested or approved by management. Although employees can be disciplined for violations of policies that require supervisory approval prior to working overtime, they must be paid for hours worked in accordance with the FLSA.

6. Review the status of exempt employees if there is any doubt that they currently meet the criteria for administrative, executive, professional, outside sales, or other authorized exemptions. Violations can occur if employees are misclassified and, therefore, do not receive legally required compensation for overtime hours worked.

7. Research FLSA requirements before deciding whether non-exempt employees should be paid for time spent performing activities that are incidental to their work, such as waiting and on-call time, attendance at training programs and meetings, rest and meal periods, travel, and clothes changing time. These assessments should be made on a case-by-case basis with specific facts and circumstances taken into consideration.

8. Develop a compliance plan that includes staying abreast of FLSA developments and conducting periodic reviews of organizational practices. Seek legal and human resource professionals’ assistance, as needed, throughout the process.

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