



Department of Labor Launches Application to Track Employee Hours Worked

05.20.2011

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On May 9, 2011, the Department of Labor ("DOL") launched its first application for smartphones. The DOL describes the application as "a timesheet to help employees independently track the hours they work and determine the wages they are owed." The application allows users to track regular work hours, break time, and any overtime hours they work for one or more employers. In addition, the application includes information about workers' rights and instructions on how to file a wage violation complaint. According to the DOL, the information tracked on the application "could prove invaluable during a Wage and Hour Division investigation when an employer has failed to maintain accurate employment records."

The free application is currently compatible with the iPhone and iPod Touch. The DOL, however, is considering future updates to provide similar versions of this application to other smartphone platforms such as Android and Blackberry. In addition, the DOL will look into adding features to address tips, commissions, bonuses, deductions, holiday pay, pay for weekends, shift differentials, and pay for regular days of rest.

The release of this application raises numerous concerns for employers with regard to time tracking policies and recording of hours worked. First, the application gives employees an easy way to create their own contemporaneous version of time records without any ability on the part of the employer to verify the accuracy of those records. Thus, it will be interesting to see how much weight will be accorded to employee-kept time records when they conflict with those kept by the employer. Second, there may be an increase in wage and hour litigation. The contemporaneous evidence created by the application will make such claims more enticing to the DOL and to plaintiffs' attorneys. Third, the application may have an impact on employers that issue smartphones to their employees. Specifically, employers who prohibit their employees from downloading and using this application on company-issued smartphones may be subject to claims of retaliation.

Certainly, the launch of this application highlights the need for employers to maintain accurate time keeping procedures for non-exempt employees. Failure to do so would put employees in a better position than the employer to prove unpaid hours worked. Employers that have automated time recording systems should make sure that employees are clocking-in and clocking-out appropriately. Employers that allow employees to fill out their own timesheets should include a signature line for verification. Also, employers should always obtain an employee's written acknowledgement when correcting a mistake in the time records.

Furthermore, employers should explicitly communicate to employees and supervisors the importance of keeping accurate time records, require employees to report any alleged discrepancies immediately, and periodically review time records for mistakes. Finally, employers should review their time keeping policies and procedures periodically to ensure compliance with state and federal wage and hour laws and to minimize the impact of this new application.

For more information about this topic, please contact the author or any member of the Williams Mullen Labor & Employment Team.
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