

Labor & Employment

Discipline/Termination/
Counseling/Training

Employment
Agreements/Severance
Agreements/Lay-Offs

Litigation/Administrative
Investigations

NLRB

OSHA

Unfair Competition/Trade
Secrets/Non-Compete
Agreements

On May 10, 2011, the U.S. Department of Labor (“DOL”) announced the launch of its first **application for smartphones**, a timesheet available in English or Spanish, in order “to help employees independently track the hours they work and determine the wages they are owed.” (emphasis added) This free app allows employees to track regular work hours, break time and any overtime hours and is currently compatible with the iPhone and iPod Touch. The Labor Department will explore apps for other smartphone platforms, as well as updates to include pay features not currently provided for, such as tips, commissions, bonuses, deductions, holiday pay, pay for weekends, shift differentials and pay for regular days of rest.

Employees without smartphones can use the previously created calendar/timesheet located on the DOL website, also available in **English** and **Spanish**. Both the website timesheet and smartphone app include explanations of terms and concepts regarding time worked, regular rate of pay and overtime calculation, as well as contact information for the Labor Department in order to ask questions or file a wage violation complaint.

The DOL explicitly states the purpose and significance of the new app is to allow employees to keep their own records instead of relying on their employers’ records. The DOL goes on to say that “[t]his information could prove invaluable during a Wage and Hour Division investigation when an employer has failed to maintain accurate employment records.” Secretary of Labor Hilda Solis announced “[t]his app will help empower workers to understand and stand up for their rights when employers have denied their hard-earned pay.”

While employee records of time worked often surface in wage related investigations and lawsuits, DOL encouragement and enabling of such a practice will certainly increase the prevalence. Moreover, this development could indicate that the DOL will give at least as much credence to employee-kept records as it does to the employer-kept records. In fact, the DOL appears to assume that many employers’ records cannot be trusted, and that the DOL prefers the employee to keep a second set of unverified records, rather than encouraging open communication between employee and employer, or providing additional

information or training to employers to help them appropriately record and maintain time records.

In light of the DOL’s push for employee-kept time records, the vastly increased number of DOL investigators and DOL investigations, and in recognition of many employees’ ability to work unmonitored from home or from a PDA, it is imperative for employers to ensure their time records are accurate and that exempt employees are appropriately classified. Employers now need to establish not only that their records are accurate, but that their records are more reliable than the employees’ own records. Employers should audit their timekeeping and payroll mechanisms, thoroughly train employees on how to complete timesheets, and put appropriate policies and procedures in place to check for and correct any errors in recording time or in calculating overtime pay. Employers should consider addressing in their policies any independently kept employee time records, whether recorded in this new DOL app or website calendar/timesheets or otherwise. Employers should require employees to personally review and sign their timesheets each week, to verify that the information is true and correct, and to state that the employee has no other record of time worked for the employer which differs from the time reported on the time sheet. Employers should request that employees immediately report any discrepancies noted, or provide to the employer any contradictory records of time worked or other calculations in any way affecting their pay.

Please contact a member of Locke Lord’s Labor & Employment Group for more information.

www.lockelord.com

This brochure is provided solely for educational and informational purposes. It is not intended to constitute legal advice or to create an attorney-client relationship. Readers should obtain legal advice specific to their enterprise and circumstances in connection with each of the topics addressed.

If you would like to be removed from our mailing list, please contact us at either unsubscribe@lockelord.com or Locke Lord Bissell & Liddell LLP, 111 South Wacker Drive, Chicago, Illinois 60606, Attention: Marketing. If we are not so advised, you will continue to receive brochures.

Attorney Advertising

© 2011 Locke Lord Bissell & Liddell LLP