

DOL Timesheet App: Encouraging Wage/Hour Disputes?

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On May 9, 2011, the U.S. Department of Labor, Wage and Hour Division, released the "DOL Timesheet App." Although its accuracy and utility in its current form are questionable, the DOL touts this application as allowing workers to track their work time and wages owed.

The DOL Timesheet App is available for Apple's iPhone, iPod Touch, and iPad in English and Spanish. It can be downloaded free from the Apple iTunes App Store. Because this app is an "official" DOL app, it is likely to be used by some workers, thus underscoring the need for employers to ensure that their timekeeping and payroll practices are accurate and defensible.

[The DOL's press release](#) encourages employees to use the app to challenge the employer's wage and hour records.

The U.S. Department of Labor today announced the launch of its first application for smartphones, a timesheet to help employees independently track the hours they work and determine the wages they are owed. . . .

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This new technology is significant because, instead of relying on their employers' records, workers now can keep their own records. This information could prove invaluable during a Wage and Hour Division investigation when an employer has failed to maintain accurate employment records.

"I am pleased that my department is able to leverage increasingly popular and available technology to ensure that workers receive the wages to which they are entitled," said Secretary of Labor Hilda L. Solis. "This app will help empower workers to understand and stand up for their rights when employers have denied their hard-earned pay."

The DOL's premise is that employers' payroll records may not be trustworthy; ironically, the app includes a disclaimer stating that DOL does not guarantee the accuracy of information generated by the app.

Potential inaccuracy and misuse

There is genuine potential for conflict between the employer's and employee's records not only due to limitations in the app but also based on the employee's record-keeping errors, whether intentional or not. For example:

- Employees may clock in/out using the employer's timekeeping system at a different time than they clock in/out using the app.
- Given the app's general statement regarding breaks (breaks "are customarily paid for as working time"), employees may enter break time incorrectly, creating a discrepancy with the employer's records.
- Employees may not understand or compensate for valid modifications of their hourly wage based on tips, shift differentials, training or travel periods, or other permissible situations.
- Employees may not know the proper way to round time if such rounding is applicable.
- The software itself can trigger disparities between the employee's and employer's records. For example, iPhone software has experienced several massive failures related to its timing features, such as the failure of alarms to go off on January 1, 2011.

All of these scenarios may result in an employee genuinely, but mistakenly, believing the employer has failed to account for the employee's time worked, or has paid the employee incorrectly. The consequences of such misunderstandings range from reduced morale to employee retaliation, distrust of the employer, or baseless charges or other legal action.

Employees may also intentionally inflate their time entries in an effort to get more pay. Although there is no reason to assume an employee's personal time records would control over an employer's properly maintained records, there is a potentially significant nuisance value if an employee files a claim alleging his or her timesheet app is correct, whereas the employer's records are not. Conversely, records kept on the worker's phone could be used as evidence against a worker making an off-the-clock or unpaid overtime claim.

Recommendations for employers

- › Ensure that time recording systems are consistent and accurate.
- › Require employees to verify/certify the accuracy of time records used for payroll purposes.
- › Encourage employees to promptly report any pay problems.
- › Implement formal internal complaint systems if you have not already done so. Internal complaint systems can diffuse problems arising from honest mistakes and may help insulate you from liability or enhanced damages if an investigation or lawsuit develops.
- › Don't prohibit employees from using the app on personal devices not otherwise used as part of job duties; such a prohibition could violate state or federal law (including the Fair Labor Standards Act).
- › You may regulate the use of handheld devices provided to employees for business purposes, such as prohibiting the download of applications or programs not provided by the employer and allowing the employer to access information contained on such employer-owned devices (assuming such policies are clearly communicated and uniformly enforced). However, the current law is not clear as to what extent an employer can restrict the use of employee-owned handheld devices that are sometimes used for business purposes.

What the DOL Timesheet App does

The app allows workers to record time, either by a live timer that runs while the worker is working or by manual entry of time worked on a previous occasion. Time can be recorded for multiple employers and time entries for breaks and meals can be entered in addition to time actually worked. The app allows workers to enter comments associated with their breaks. For example, a worker can add a comment to a break saying "dinner break" or "extra-long break to go to dentist." However, there are a number of problematic aspects in the app and, of course, it depends completely on the accuracy of the information entered by the employee.

The first time a worker enters a break, the app presents the user with a description of breaks and mealtimes. According to the app, breaks are "usually 20 minutes or less, are common in industry and are customarily paid for as working time. These short periods must be counted as hours worked." Despite this statement, the app deducts break time from total hours worked.

The app can provide workers with a summary of hours worked and gross pay earned broken down by (1) day, week, or month, (2) regular and overtime pay, and (3) work and break time. It has a disclaimer stating that it does not include every possible work situation and does not take into account alternative pay structures including tips, commissions, bonuses, deductions, holiday pay, pay for weekends, shift differentials, or pay for regular days of rest. However, the disclaimer is only visible by selecting an "i" button on the summary screen, which users may miss.

Workers can email the app's summary of work records, which appear in the receiver's inbox as an Excel spreadsheet. The spreadsheet includes the worker's start and stop work times for each day recorded, the worker's hourly rate, breaks (meal and other) with any associated worker comments, and totals for time worked and gross pay earned. The body of the email includes a disclaimer as follows:

Disclaimer: This App is designed as a reference tool. It does not include every possible situation encountered in the workplace. Some situations not addressed in this App may yield a different result in

the calculation of total pay. These include, but are not limited to, situations where, for example, the employee is not covered by the Fair Labor Standards Act or is exempt from the minimum wage and/or overtime pay requirements of the FLSA. Further, the conclusions reached by this App rely on the accuracy of the data provided by the user. Therefore, DOL make no express or implied guarantees as to the accuracy of this information.

Finally, the app includes contact information for the DOL Wage and Hour Division and a glossary of terms. The contact information includes the Wage and Hour Division's toll-free help line and hours of operation, a link to WHD's main Web page, a link to WHD's email Web page, and a link to WHD's Web page listing its local office locations throughout the United States. A worker can access any of these Web pages or, in the case of the iPhone, call the WHD simply by tapping on the link. The glossary is basic but includes terms such as "breaks," "employer," "gross pay," "regular rate of pay," and "workweek."

What the app does not do

The DOL openly admits that the functionality of its app is limited. It does not account for compensation affected by tips, commissions, bonuses, deductions, holiday pay, pay for weekends, shift differentials, pay for regular days of rest, or any other legally permissible variation from standard wage/hour requirements. It is not clear whether the app maintains metadata (for example, records of when time is entered or modified, and whether time entries are deleted).

The app is currently limited to Apple devices; other smartphones (such as the BlackBerry and phones that use the Android operating system) cannot use the app. However, the DOL has stated it intends to release updates that address pay variations and extend the app's availability to non-Apple devices.

Depending on what features the DOL adds, further time computation problems may arise. For example, an update that lets users assign email addresses or phone numbers as "work-related" might permit the automatic recording of time spent using the device to contact those addresses or numbers. This is time that in some instances may not be recorded by the employer and may not be work-related in any way.

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