Pyramid
Time Keeping Made Simple

Recordkeeping Rules
Under the Fair Labor Standards Act

The Fair Labor Standards Act ("FLSA") regulates wages and hours, minimum wage, overtime pay, recordkeeping, and restricts child labor. It has a multitude of definitions and rules that must be understood and accounted for. That's why it is a good idea for today's payroll and human resources professionals to stay current on their company's legal obligations, making sure they don't inadvertently violate any federal employment laws. By properly identifying exempt employees, reviewing salaries, automating pay rules, and creating audit trails, an organization can minimize compliance risks.

The FLSA applies to employers that have $500,000 or more in annual gross sales or that engage in interstate commerce (meaning businesses whose employees handle, produce, sell, or otherwise work on goods or materials that come from, or will go to another state).

Accurate Records Required

Every employer covered by the Fair Labor Standards Act must keep certain records for each covered, non-exempt worker. There is no required form for the records, but the records must include accurate information about the employee and data about the hours worked and the wages earned. The following is a listing of the basic records that an employer must keep for three years:

- Payroll records showing each employee's name, address, occupation, sex, birth date (if the worker is under the age of 19), hour and day when the workweek begins, total wages paid each pay period, and the date of the payment for each pay period
- Plans, trusts, collective bargaining agreements, and individual employment contracts
- All certificates or notices required by the FLSA
- Records showing the total dollar volume of the business and the total volume of goods purchased or received

Under the FLSA, covered non-exempt workers are entitled to a federal minimum wage of not less than $5.85 per hour effective July 24, 2007; $6.55 per hour effective July 24, 2008; and $7.25 per hour effective July 24, 2009. Overtime pay at a rate of not less than one and one-half times their regular rates of pay is required after 40 hours of work in a workweek. *

For employees who are entitled to overtime and/or the minimum wage, employers must keep these additional records for each employee for three years:

- Total hours worked each day and week
- Total daily or weekly earnings
- Regular hourly pay rate in any week when the employee works overtime
- Total overtime pay for each week
- Any deductions from or additions to pay for each pay period

(*NOTE: Most states have their own wage and hour laws as extensions of the FLSA. To find out whether your state has rules on hours worked, child labor, exempt versus non-exempt employees, or other wage and hour issues, contact your local state labor department.)

For exempt employees, employers must keep sufficient records in order to calculate each employee's total compensation per pay period. These records, which must be kept for two years, include:

- Time cards or other records showing workers' daily stop and start times
- Records showing the amount of work accomplished by individual employees on a daily, weekly, or pay period basis, if those amounts affect the employees' wages (for example, if they are paid on commission or by the piece)
- Wage rate tables or other documents that show the rates used to compute piecework pay, straight time earnings wages, salary, or overtime pay
- Order, shipping, and billing records
- Records of additions to, or deductions from, wages paid, including records used by the employer to determine the original cost, operating cost, maintenance cost, depreciation, and interest charges, if these amounts are used to determine additions to or deductions from wages

Violating the FLSA

If an employee feels that their employer is violating the Fair Labor Standards Act, they can file a complaint with the Wage and Hour Division of the Department of Labor ("DOL"). The DOL may choose to investigate following a complaint. A DOL investigator may contact the employer ahead of time, or may simply show up at the workplace. The investigator will examine the employer's records and interview employees for information about the complaint. Once the investigation is completed, the investigator will meet with the employer to resolve any problems that were uncovered. The employer will have the opportunity to correct any violations, i.e., like paying overdue wages to its workers.

If the employer refuses to comply, the Secretary of Labor can file a lawsuit on behalf of one or more employees. An employee can collect up to two years' worth of back pay, or three years' worth if the employer committed a willful violation of the statute. The court may also order the employer to pay an additional penalty (known as "liquidated damages"), equal to the entire back-pay award, if the employer willfully violated the statute. In addition, the employer can be ordered to pay the employee's court costs and attorney's fees.

Proper Timekeeping is Key to Compliance

According to the U.S. Department of Labor, employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper track employees' hours, or tell their workers to write their own times on the records. Any timekeeping plan is acceptable, as long as it is complete and accurate.

By manually tallying time cards with paper and pen, a business risks being cheated out of thousands of dollars in lost time and money if they don't keep accurate records of employee time and attendance. That might explain why the Employment Standards Administration's Wage and Hour Division (WHD) recovered more than $171.5 million in back wages for over 246,000 employees in fiscal year 2006. Back wages for overtime violations represented roughly 89 percent of all FLSA back wages collected. By instituting good business practices, many companies can help avoid costly compliance mistakes.

Some payroll systems do not support the ability to manage the detailed time and attendance information that is required by the FLSA, so many companies are implementing time and attendance systems to manage the process. These systems provide an automatic audit trail for all time collection and adjustments made to the employees' timesheets.

Modern time and attendance solutions reduce paperwork and speed up the payroll process. They provide easy viewing, editing, and approvals of electronic time cards, and can automatically calculate hours worked and run reports.

It is recommended that companies evaluate their current timekeeping system to determine if it accurately calculates all transactions that impact an employee's timesheet, so that precise records are kept in compliance with the Fair Labor Standards Act.

For complete details on the FLSA, contact the U.S. Department of Labor Employment Standards Administration, Wage and Hour Division.