

Tick Tock: Whatever Happened to the Time Clock?

5/3/2011

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Remember the good old days when employees came to work, punched a time clock, worked until lunch, punched the time clock again, took a break and punched the time clock, then worked until the end of their shift and punched the time clock one more time?

I don't remember it either; I'm too young. But some of the old guys in the firm have told me stories about getting yelled at by supervisors for punching in and out in the wrong space on the time card. Besides messing up the time card, which required a supervisor to fix it, that's a bit of a hassle and a lot of punching. Most employers thought so, too. So fewer and fewer of them continue to use the time clock.

Instead, employees began using time sheets or their work computer to record time. That's OK. In fact, Fair Labor Standards Act (FLSA) regulations specifically state that a time clock is not required.

Still, some employers didn't think that was good enough, so they started to use what is commonly known as "exception timekeeping."

In exception timekeeping, meal periods and other non-working hours are subtracted automatically from an employee's compensable hours, except on those rare occasions when the employee does not work a preset schedule. There's nothing wrong with exception timekeeping either, as long as it accurately reflects the hours that the employee works. In fact, the Wage Hour Division issued an opinion letter in 2007 specifically stating that exception timekeeping is an acceptable method of timekeeping.

But as exception timekeeping becomes more and more popular, the Wage Hour Division and plaintiffs' lawyers are taking note. And what do plaintiffs' lawyers like more than anything else? Class action lawsuits. Exception timekeeping seems to be made for them.

In March, a New York District Court certified a class of current and former hospital employees whose hourly pay was subject to an automatic 30-minute deduction. Three named plaintiffs brought this class action against St. Joseph's Hospital and 18 other defendants (various inter-related entities and individuals). At the time of the decision, 72 current or former employees had opted in to the FLSA collective action.

The plaintiffs challenged the defendants' policy of automatically deducting 30 minutes each day from an employee's pay for a meal period, even though employees often missed their meal period due to patient care demands.

The court granted class certification for all current and former hourly employees of defendants, from the present to *the past 8 years*, whose pay was subject to an automatic 30 minute deduction but were not afforded a bona fide meal period of at least 30 minutes. Class certification is the initial and most onerous step for plaintiffs pursuing a class action – without certification of their proposed class, the collective action must be dropped and only individual suits may be brought.

Don't forget, meal periods must be counted as hours worked (and therefore compensated) unless all of the following three conditions are met:

- The meal period is generally at least 30 minutes
- The employee is *completely* relieved from all duties during the period
- The employee is free to leave the duty post

What has this got to do with exception timekeeping? When an employee skips or takes a shortened meal break, an FLSA violation occurs if automatic time deductions deprive an employee of earned compensation.

So should you dump your exception timekeeping system? Of course not. We already told you that it is lawful under the FLSA if it results in an accurate record of non-exempt employees' hours worked. Just don't forget that accuracy is the employer's burden, and may be harder to ensure when time is calculated automatically.

The St. Joseph's Hospital class action suit should serve as a reminder that supervisors must keep an eye on employees. Under the exception timekeeping system, employers must be notified when employees don't take meal breaks. And don't forget, if employees do work through lunch – even when you don't want them to – you have to pay them. You also might want to talk to them about following directions.

It is never a solution to refuse to pay an employee when the employee is working. Always remember, no timekeeping system relieves you of your responsibility to make sure that your timekeeping records are accurate.