

# Thoughts on ‘Payroll by Exception’ and Weekly Time Sheets

*The new overtime rules mean tracking time for employees who are not used to recording their hours*

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In a recent Department of Labor (DOL) blog post, Wage and Hour Administrator David Weil tries to underplay employer concerns about the new overtime exemption rules, including worries about the difficulty of tracking time for employees who are not used to recording their hours, stating:

There’s no requirement that employees “punch in” and “punch out.” Employers have flexibility in designing systems to make sure appropriate records are kept to track the number of hours worked each day.

And in the DOL’s information sheets for higher education institutions and nonprofit organizations regarding the new rules, the Department suggests two alternatives to the traditional punch clock setup:

- **For employees who work a fixed schedule that rarely varies**, the employer may simply keep a record of the schedule and indicate the number of hours the worker actually worked only when the worker varies from the schedule—the “payroll by exception” approach.
- **For an employee with a flexible schedule**, an employer does not need to require an employee to sign in each time she starts and stops work. The employer must keep an accurate record of the number of daily hours worked by the employee. So an employer could allow an employee to just provide the total number of hours she worked each day, including the number of overtime hours, by the end of each weekly pay period.

The Department is of course correct that either of these methods can be a permissible method of tracking employee time. The Fair Labor Standards Act (FLSA) regulations don’t mandate any particular method of tracking employee time. They require only that the record be *accurate*. But it’s this mandate for accuracy that makes payroll by exception and time sheets a potentially dangerous way to approach timekeeping under the FLSA.

I've reviewed a lot of these records, and they tend to follow a common pattern: an employee who is scheduled to work a 40-hour week will record 8 hours per day, every day that they work. That would be fine if those were the hours the employee actually worked, but this sort of record encourages laziness. It's just easier to write 8-8-8-8-8 than it is to remember that you started 12 minutes early on Tuesday and took a 9-minute call during your lunch break on Wednesday.

Because of that inherent inaccuracy, these sorts of records can make it very easy for employees to claim that they worked additional time before or after their shift or over a meal break, that their supervisors knew about but didn't bother to record.

Such claims can be tough to disprove, even if the employee bore some responsibility for failing to report the extra hours. (See the case discussed in [this post](#) for an example.) While the same issues can arise even if an employer uses a punch clock or electronic timekeeping system, those systems at least create a contemporaneous record of exact times, rather than relying on often faulty after the fact estimates

So, for employers now confronting how to track time for newly reclassified employees (or really for any nonexempt employees), here are some points to keep in mind:

- **Consider using a computerized timekeeping system** that tracks the actual start and end of each work period, including the start and end of any unpaid meal breaks. There are many options, including mobile applications that require no expensive hardware.
- **If you decide to use periodic time sheets or payroll by exception**, insist that employees record their time each day, not just at the end of the week or pay period. Also ensure that supervisors are actually reviewing the records for accuracy and that employees are reporting *all* work time. That includes time worked before the "official" start of a shift or after hours, during meal periods, or offsite (e.g., answering e-mail at home).
- **If feasible, have employees review and sign off on their hours** worked each pay period. While it may not be a "get out of jail free" card, it's certainly helpful to be able to point to an employee's signature on a time sheet when defending against an off-the-clock work claim.
- **Make sure you have clear and explicit policies** regarding your expectations for recording time, and train your supervisors!
- **Whatever method you use, conduct periodic checks** to make sure that the information coming from your timekeeping system matches up with reality. That

includes closely scrutinizing any employee whose hours show absolutely no fluctuation from day to day or week to week. It's possible that some people might actually work 8 hours every single day, week in and week out, but that's almost certainly not as common as a lot of employers' time records might suggest.

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