



Assessing The Risk:

Wage and Hour Tip Of The Week

Trust But Verify: Authentication of Pay Records Reduces Risk of Wage Claims

TIP: Require nonexempt employees to explicitly verify the accuracy of their time and break records at submission and for any post-submission modifications.

As we have reminded you in previous tips, employers bear the burden of maintaining accurate time and break records for all nonexempt employees. Even if you have the records, there is always the risk that employees will deny their accuracy, arguing that they actually worked far longer and skipped breaks. Thankfully, you can reduce appreciably the risk of such challenges to the time records by requiring your nonexempt employees to verify the accuracy of their records. They will then be forced to contradict their verifications if they later claim to have worked more hours than are reflected in the records. Indeed, the employee's handwritten signature or initials on a statement verifying the accuracy of the time can be powerful evidence.

The substance of such a verification statement is simple. You should have a policy (separate from the verification) stating that each employee is responsible for reporting accurate time and break information, and you should include this policy language in the verification. The written verification should require the employee to attest to the accuracy of the specific time records upon which payment will be based.

The mechanics of verification should also be straightforward. Best practices include:

- requiring that the employee take affirmative action (clicking a box, typing in a response, etc.) during the verification process;
- ensuring that the underlying time and break details remain accessible to the employee for a significant time period, such as somewhere between a month and a year;
- obtaining electronic verifications when possible;
- procuring the employee's verification of the accuracy of the hours before they are submitted to payroll, which is often on a weekly or bi-weekly basis; and
- maintaining in an easily retrievable form all verification activity (as you should maintain all other relevant aspects of the time and break records) for a minimum of three years (to comply with federal law), or for longer than three years in states that have different recordkeeping requirements or have state wage payment statutes with longer statutes of limitations.

We also recommend that you plan for the handling of post-submission modifications to these records, because mistakes sometimes happen. Such verifications may be even more important for employers that utilize exception-based reporting or pre-population for work and break times, because the less involvement employees have in the reporting of the hours on which they are paid, the easier it becomes for them to credibly claim a lack of correspondence to their actual work hours.

Verifications should be obtained from both the affected employee and a manager for each post-submission modification, particularly if it results in a pay reduction. Otherwise, you might be faced with a claim that the employee's reported hours are being unlawfully undermined.

Of course, the goals of verification policies and procedures are best supported through a culture that genuinely promotes identifying and paying for all compensable time. Ideally, verifications become just one among many vibrant features in a cultural fabric that leaves employees feeling responsible for the hours for which they are paid.

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