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Auditing and monitoring the timekeeping system for wage-and-hour compliance

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As organizations face a wide array of compliance issues, one that is often overlooked is the accuracy of employee timekeeping records. The use of electronic timekeeping systems is frequently viewed as a highly efficient means of obtaining indisputable records of employees' hours worked. As more healthcare organizations update older timekeeping systems in favor of newer time and attendance software, with features marketed as controlling labor costs and keeping productivity levels high, they are presented with the opportunity to customize the software's settings and functions to better meet their needs.

Although such software can be a very useful tool, organizations must be aware of how their use of customized settings, and even facially neutral features, could "short" employees of their earned pay. Hospitals and other institutions "primarily engaged in the care of the sick, the aged, or the mentally ill" are covered employers under the federal Fair Labor Standards Act (FLSA)[1] and therefore must comply with its minimum wage[2] and overtime requirements.[3] Many states and localities have their own labor laws, as well.[4] In the wake of stiff penalties and threats of class action lawsuits for violations of these wage-and-hour laws, organizations should make compliance a high priority.

Because violations of these federal, state, and local requirements can occur in numerous ways, it is important that an organization maintain a multifaceted approach to compliance in this area. As part of that approach, an organization's awareness of the unique risks created by the use of certain timekeeping software features will go a long way in ensuring its compliance with applicable wage and hour laws. To manage those risks, the compliance department should work closely with other departmental stakeholders during the initial setup of new time and attendance software, as well to establish a protocol for the regular auditing and monitoring of its use.

Awareness of risks

The compliance department should familiarize itself with the risks related to the use of timekeeping software; have a seat at the table during the configuration and implementation phase for any new timekeeping software and subsequent updates to it; and, as part of its auditing and monitoring protocol, adopt procedures for the review of their use to spot suspicious patterns. The following timekeeping software features are often susceptible to inappropriate use when not carefully configured and managed.

Editing functionality

Timekeeping software that allow leaders to have unfettered editing privileges creates greater vulnerability for an organization. Consider configuring the system to generate a prompt that requires leaders to document a reason for each change to an employee's timecard being made by a leader. Such prompts could allow for the use of drop-down menus or custom explanations for the change. Their use would serve to discourage leaders from making inappropriate modifications to timecards, create a record for both the leader and the organization to use when responding to questions or complaints by employees, and better position the organization to catch potential wage-and-hour violations early on during an audit.

Automatic break deductions

Some timekeeping software allows employers to create automatic break rules so that rest and meal breaks will be automatically deducted from employees' hours worked after a prescribed amount of time. Before using this feature, organizations should ensure that the state and local wage-and-hour laws permit unpaid rest and meal breaks, but also that it is permitted by the state and local wage-and-hour laws applicable to its employees who work remotely in other states. Organizations should also configure a manual override to the automatic break deduction that is simple for employees to use when they have actually worked through the break or had their break interrupted. An override process that is overly cumbersome or that requires a supervisor's entry, review, or approval may result in employees' unwillingness or inability to follow it.

Rounding

The federal Department of Labor (DoL) regulations allow an employer to round employee time to the nearest quarter hour, with the presumption that the arrangement averages out to result in employees being fully compensated for all time worked.[5] Before electronic timekeeping, this type of rounding allowed employers that computed time cards by hand to forgo the arduous task of calculating employee time by the minute. With the capability of timekeeping software today to track and compute employee time automatically down to the millisecond, however, there is no real need for employers to use rounding.

The fact that the use of rounding rules remains a popular feature in timekeeping software, despite the lack of any apparent necessity, suggests that employers may be using it in a manner that favors them in the aggregate. If that is the case, then employers should still be wary of using a rounding rule that appears facially neutral. Because rounding goes afoul when it is used in a manner that results, over time, in the failure to properly compensate employees for all time worked, it is possible that employees could claim the method used by their employer has resulted in their systemic wage loss over a period of time. Furthermore, the use of any unnecessary timekeeping feature always carries the risk its use could result in violations of wage-and-hour laws as a result of its inappropriate configuration by well-meaning but uninformed individuals. For these reasons, organizations should consider forgoing the use of any rounding features and instead configure their timekeeping software to track and pay by the minute.