Effective Timekeeping in the Workplace

Sarah Sawyer: Welcome to this week's OK at Work with myself, Sarah Sawyer, and my colleague Russell Berger, both attorneys at Offit Kurman. And today we are talking about time tracking for your hourly employees. So a lot of folks obviously have hourly workers who are paid by the amount of time that they work, and in order to pay them, you need to know how much time they worked, whether they worked overtime and keep track of those records.

And depending on how many employees you have, what type of business it is, it can really be difficult in some scenarios. Sometimes it's super easy and straightforward what people work, and you can have clocking in, clocking out, and people really know, what they're doing and it's a smooth process.

But sometimes it can be a little bit more difficult depending on the industry. What are some things that people need to be keeping in mind, Russell, when it comes to making sure that they are complying with the law and also meeting their business needs as it [00:01:00] relates to keeping track of these hours and pay for these hourly employees?

Russell Berger: Yeah. Well, the first thing to know that it's really important, not just because the law says you have to track hours accurately, but because if you don't, the exposure can really add up. So under the federal law, if you don't pay someone the minimum wage for hours worked or, whatever the overtime rate, whatever it might be the federal law says that can be doubled and also provides a mechanism to create a class as opposed to just one individual you might be dealing with on it.

State laws have different multipliers around that. Maryland, for example, has a treble damages provision. DC has a treble damages provision plus the wage, so it's really four X the unpaid wage. Maryland could become three X. There's different triggers for, when those multipliers will be in effect, but if you get it wrong, it can be really costly.

And, to your point, one of the areas where employers do get it wrong is in tracking time. And that should be one of the simpler aspects of this. So make sure you have a good [00:02:00] system, make sure that you have good rules around how the system is going to be executed on in practice.

And one Of the common issues that we see is people that have automated systems but don't provide ways for employees to make adjustments from the automated system. So for example, maybe an automated lunch of, 45 minutes every day the employee gets interrupted, so they don't actually take that lunch, and there really shouldn't be any lunch break given the way the rules work for tracking time.

And if That's the case, like you gotta have a way to adjust that system. You can't just say, "Well, maybe no one will notice." Even if you have an automated system, a systematized way to, Make exceptions to the automation is important.

Sarah Sawyer: Yeah, making sure that employees know that they should be making corrections to any records that maybe might be inaccurate, know what the process is if maybe they enter something incorrectly so that they can correct those records.

And another one that comes into play a lot too is break time and whether people are clocking in or out for their breaks. And whether it's a long [00:03:00] enough break like a 15-minute break, they're going to not be clocking out. And what used to be called the smoke break or stepping outside for something, using the restroom, those kinds of things.

Whereas like a more extended meal break, like 30 minutes or more where they're... and some of this varies by state so that's just kind of the general guidance. But, a longer uninterrupted meal break where they're really being relieved of their duties and they're going off and they're doing something and then coming back, or they're, sitting at their desk eating but not working, those types of things you might be able to clock out for.

And so those are things that need to be managed and making sure that people are clocking in and out, correctly and not, not clocking out forgetting clocked back in. Not clocking out for those big breaks, all those kinds of things. So-

Russell Berger: Yeah,

Sarah Sawyer: it complicates it.

Russell Berger: And I think one of the key practical points here is to make sure your managers understand how to manage employees that are punching the clock or, the virtual clock, digital clock, whatever it might be, the app.

You wanna make sure that they know what the right rules are 'cause oftentimes, the corporate heads or if you're big enough to have an HR [00:04:00] department, they all get it, and, would have a conversation with us and none of this would be controversial. But then it goes down to the field, and the managers do whatever they do when they're out in the field, or in the wherever. But it's beyond the control of central management. So you really wanna make sure that your people know what they're doing with that, know how to handle it, know who to go to if they have questions or they're unsure about how to handle something. Because that's where we see a lot of the breakdowns in the litigation is, the corporate policy was written just fine and HR would've interpreted it correctly, but, a manager or branch manager or whoever just kinda gets off track and then repeats the same systemic error over and over again, and it can lead to that, class type of exposure that, can really add up in terms of cost to an employer.

Sarah Sawyer: Yeah, and it's good to do a periodic audit and stuff also. If you see that, your records look almost too clean, like every employee is working identical hours every single day all of the time, that might be a red flag to look at it that humans are not [00:05:00] robots at this point, so most of the time that is a obvious sign, whether it be in litigation or if you're auditing your own records, if really, 50 employees all work to the minute exactly the same amount of time and take their breaks at exactly the same time every single day, right?

So-

Russell Berger: Yeah ...

Sarah Sawyer: good to keep an eye on those things. Well, thanks, Russell, and we'll see you next time.

Russell Berger: Thanks, Sarah.