

# Record Keeping Requirements Under the Fair Labor Standards Act



By Christina Harris Schwinn

The Fair Labor Standards Act (“Act”) imposes a requirement on covered employers to maintain accurate records for each non-exempt worker employed by the employer. Generally speaking, a covered employer for purposes of the Act is an employer that has gross revenues of \$500,000 or more a year. Additionally, a covered employer includes any employer that receives Medicare reimbursements regardless of whether the employer’s gross revenues are \$500,000 or more per year.

A non-exempt employee is an employee to whom the employer is obligated to pay overtime for each hour worked in excess of 40 hours during a workweek under the Act. The Act imposes the record keeping requirements on the employer to maintain accurate records regarding non-exempt employees, not the employee. While an employer may require an employee to fill out a time sheet each day, it is the employer’s responsibility to ensure that accurate employee records are kept and that employee work time is actually recorded. The following is a list of

the basic records that a covered employer is required to maintain on each non-exempt employee under the Act:

1. Employee’s full name and social security number.
2. Address, including zip code.
3. Birth date, if younger than 19.
4. Sex and occupation.
5. Time and day of week when employee’s workweek begins.
6. Hours worked each day.
7. Total hours worked each workweek.
8. Basis on which the employee’s wages are paid (e.g., hourly).
9. Regular hourly pay rate.
10. Total daily or weekly straight-time earnings.
11. Total overtime earnings for the workweek.
12. All additions to or deductions from the employee’s wages.
13. Total wages paid each pay period.
14. Date of payment and the pay period covered by the payment.

For purposes of the Act, records should be maintained for a minimum of three years because of the look-back period. The look-back period for an unintentional violation of the Act is two years and three years for an intentional violation.

The Act imposes no requirements upon a covered employer regarding the type of timekeeping system

an employer must utilize in its workplace. Rather, the records may be kept in either an electronic or paper format. However, if time records are kept electronically it is important to ensure that the records can be reproduced, upon request, in a paper format.

The United States Department of Labor (“DOL”) is the federal agency charged with responsibility for enforcing the Act. When a representative of the DOL requests wage and hour records, an employer is required to make its records available for inspection and review. Failure to do so could result in civil penalties. The DOL does not have to issue a subpoena for records when investigating a complaint by an employee that a complaining employee was not paid overtime in accordance with the Act. Demanding that the DOL investigator who is requesting records to first serve a subpoena before being entitled to inspect and review wage and hour records for non-exempt employees is a big mistake. Covered employers are required to make such records available upon request. Playing hard ball with a DOL investigator is rarely a good idea.

Whether covered by the Act, an employer generally is well served by maintaining accurate employment records as employees, both former

and active, can bring wage claims under state law. Defending employee claims alleging violations of the law are difficult to defend absent accurate records which support the employer’s defenses. Not only is an employer required to maintain records under the Act, government investigators, jurors and judges alike impose an expectation and standard on employers to maintain such records regardless of whether it is required under the law and penalize them for failing to do so.

*A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.*

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