Recordkeeping Rules Under The Fair Labor Standards Act

The federal Fair Labor Standards Act (“FLSA”) establishes the minimum wage, overtime, child labor standards, and equal pay requirements that affect more than 100 million full time and part time workers in the private and public sector. The FLSA also has rules relating to recordkeeping, requiring that employers keep records of wages, hours, and other personnel data for exempt as well as for non-exempt employees. Records of exempt employees need not be as detailed as records for non-exempt employees (records of hours worked are not necessary), but they should prove that the employee is exempt.

Although there is no required form for the records, the records must include accurate information about the employee and data about the hours worked and the wages earned. Here are some guidelines about the information that should be maintained in these records.

This checklist and the information contained herein are not intended to be an exhaustive or detailed list of requirements, do not constitute legal advice, and do not serve as a substitute for the advice of knowledgeable legal counsel. Its objective is to alert HR professionals about recordkeeping rules of which they should be aware for compliance and planning purposes.

✓ FLSA Recordkeeping Checklist

Recordkeeping for Non-Exempt Employees

☐ Employee’s full name, as used for Social Security purposes, and, on the same record, the employee’s identifying symbol or number if such is used in place of name on any time, work, or payroll records
☐ Home address, including zip code
☐ Social Security number
☐ Date of birth, if under 19
☐ Gender
☐ Position (occupation)
☐ Time and day on which each work week begins
☐ Regular hourly rate of pay, basis for payment (salary, hourly, commission) and exclusions
☐ Hours worked each workday and total hours worked each workweek
☐ Total daily or weekly straight time earnings or wages
☐ Total overtime compensation for each week
☐ Total additions to or deductions from wages paid in each pay period
☐ Total wages paid each pay period
☐ Date of payment of wages and pay period covered by payment

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Recordkeeping for Exempt Employees

☐ Personal information, including name, home address, occupation, gender, date of birth for workers under age 19, and the person’s Social Security number

☐ Time of day and day of week when the employee’s workweek begins

☐ Total wages paid each pay period

☐ Date of payment and the pay period covered by each payment

How Long Must the Records Be Preserved?

☐ Employers are required to preserve for at least three years payroll records, collective bargaining agreements, and sales and purchase records

☐ Records on which wage computations are based (including time cards and piecework tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages) should be retained for two years

Reporting

☐ The FLSA does not contain any specific reporting requirements, although the above referenced records must be open for inspection by the Wage and Hour Division’s representatives, who may ask the employer to make extensions, computations, or transcriptions

☐ The records may be kept at the place of employment or in a central records office

The Future

☐ Legislation introduced in the House of Representatives, H.R. 5107, The Employee Misclassification Prevention Act, would amend the FLSA to strengthen enforcement and penalties for misclassification of employees as independent contractors

☐ The bill would create new recordkeeping requirements, and would impose civil penalties for each employee misclassification or violation of the recordkeeping or notice provisions. Stay tuned.