

HR QUESTION ? of the month



What is the risk of using a generic schedule of work hours?

Question: Are we at risk if employees' timecards are consistently showing a "generic" schedule of 8am - 5pm with an hour lunch? Even if the employee is entering the time themselves manually onto a timesheet?

Answer: The employer is at risk of a potential wage and hour violation if the generic schedule reflected in the employee's time cards does not represent the actual hours worked and the break times of individual employees. As you may be aware, employers need to keep accurate records of non-exempt employee hours worked to ensure they are paid properly for all hours worked and in accordance with the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA) and state law. Although there is no requirement for any particular system (such as a time clock or manually written time sheet), an employer should have some kind of reliable time-keeping system to document when non-exempt employees begin and end their shifts and take meal and any other unpaid break periods as well.

As a general matter and best practice, non-exempt employees -- and not their supervisors -- should record time in and out when beginning and ending work, as well as for any unpaid meal or rest periods and then record the time when they resume work when such break is completed (as opposed to having a system of where it is automatically done for them via a generic schedule, or not done at all). Whatever method an employer uses, the hours worked should be accurately recorded, and to this end it is not advisable that the employer have pre-filled or generic time records for their employees as this may not result in an accurate accounting of hours actually worked.

Note that even if an employee does not comply with the employer's policies for keeping accurate time records, while the employer can discipline the employee consistent with company policy and past practice (i.e. warnings, write ups, etc.), the employee must be paid for all hours worked and applicable overtime. Ultimately, the burden is on the employer to prove that it has maintained accurate and reliable time records in the face of any federal or state audit or a claim by an employee for unpaid wages. For this reason, we would advise against using generic time records. Employees also should be reminded of your timekeeping policies and the importance of employees recording their own time and doing so honestly and accurately. Managers or employees should be reminded that anyone who violates these policies will be subject to discipline, up to and including termination.

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