



# Wage and Hour Lawsuits

## Tips for Protecting Your Organization with a Time and Attendance System

### Summary

From employee class action suits to increased scrutiny by the Department of Labor, wage-and-hour lawsuits pose a growing threat to U.S. employers. Although most organizations understand the importance of maintaining accurate records through a reliable time and attendance system, there are specific system features and characteristics that help “bulletproof” wage-and-hour recordkeeping in the face of labor-related litigation. Does the system encourage accurate time tracking? Record all edits? Offer convenient access to both managers and employees? Automatically identify potential errors and alert the right people? These types of time and attendance system features support sound, accurate recordkeeping, reducing the risk of financial costs associated with wage-and-hour litigation.

## Wage-and-Hour Litigation on the Rise

It's a fact: today's employers face an increased risk of wage-and-hour legal claims.

According to law firm Seyfarth Shaw LLP, wage-and-hour lawsuits have increased by more than 400 percent since 2000. In their Annual Workplace Class Action Litigation Report, they identified three specific litigation threats facing employers.

### Employee Class Action Suits

Employee class action filings on wage-and-hour issues increased noticeably in the past year. A corporate counsel survey revealed that workplace litigation—specifically in the wage-and-hour category—“remains one of the chief exposures driving corporate legal budget expenditures [and] causes the most concern for their companies.”

### Fair Labor Standards Act (FLSA) Litigation

FLSA filings are on the rise, recently outpacing employment discrimination claims. The firm suggests this trend will continue in the coming years, surpassing its current rate.

### Government Compliance Enforcement

Since 2009, the Wage and Hour division (WHD) of the Department of Labor has undertaken an aggressive FLSA enforcement initiative, including the targeting of specific industries. This is expected to intensify as WHD partners with other federal, state and local agencies and employee and community-based organizations.<sup>1</sup>

The combination of these three trends means employers will continue to shoulder a mounting risk of wage-and-hour litigation in the coming years.

## The Problem with Time and Attendance Systems

Most employers understand maintaining watertight, FLSA-compliant records on non-exempt employees can be the best way to combat wage-and-hour claims. For a majority of employers, the records required by FLSA can be managed with a time and attendance system. But employers need to be aware that some systems may open them to increased litigation risk. These systems are hampered by:

- Old or outdated technology, limiting an employer's ability to identify system abuses and manage risks.
- Clunky, confusing or difficult-to-use interfaces that can be cited as evidence of an employer's intent to discourage accurate time reporting.
- Non-automated benefit accrual and pay rules, which can affect employee eligibility for medical leave or overtime pay, providing grounds for a legal claim.
- An inability to track administrative changes to employee time records, another way for plaintiffs to suggest a company's “intent” to inaccurately capture—and compensate for—hours worked.<sup>2</sup>
- An inability to manage and report employee status changes required by the Affordable Care Act.



If unaddressed, these system issues can buoy a plaintiff's claim, exposing employers to growing legal expenditures and settlement costs.

## Bulletproof Timekeeping: Anatomy of a Trustworthy Time and Attendance System

How can an organization begin bulletproofing its time and attendance system?

First, your time and attendance system must work seamlessly for three stakeholders: employees, supervisors and administrators. This means the system must be honed to meet the needs of each stakeholder without sacrificing functionality for the others. This allows the system to serve as a vehicle for improving management and employee relations, making time tracking and pay policy enforcement transparent and accessible through self-service options.

Second, the system needs key features to shore up recordkeeping efforts and protect against potential wage-and-hour issues. A good place to start is by employing a system with these eight litigation-protection characteristics.

### Updated Technology

A time and attendance system needs to be automated and offer reliable record storage. The emergence of cloud-based time and attendance systems allows for easy automation, rapid and error-free software updates, reliable and secure online data storage, and 24/7 access.

### User-Friendly Interface

A straightforward, intuitive and user-friendly interface encourages accurate time reporting by employees and discourages potential abuse by employees and supervisors.

### Convenient System Access

System access must be convenient for all employees, supervisors and administrators. Employees need ready access to personal data, benefit accrual information and confidential leave requests. Managers require easy employee scheduling and leave approval, and administrators benefit from simple, streamlined time card approval and payroll initiation.

### Time Clock Integration

Physical and virtual time clocks must seamlessly integrate with the time and attendance system. Biometric time clocks discourage system abuse and prevent "buddy punching" by coworkers. Physical clocks with touchscreens offer an easy-to-use, intuitive interface. Virtual time clocks allow workers to log hours via Web or mobile interface, making time capture easier for traveling employees or organizations with multiple locations.



## Customizable Setup and Reporting

Your time and attendance system must be specifically configured to your organization's pay rules, attendance policies, leave accrual calculations and seniority-based benefits. Integration with an existing HR and payroll system allows for easy two-way data communication. Reporting features can include drill-down functionality, customizable report generation and easy report sharing among team members or departments.

## Mobile Access

Mobile access to your time and attendance system offers flexibility and convenience for employees when traveling, taking planned or unplanned sick leave or vacation time, tracking leave for medical appointments or issues, and more. This encourages to-the-minute accuracy and shifts responsibility for time tracking onto the shoulders of the worker by eliminating any perceived barriers to logging time.

## Notifications and Alerts

Systems featuring automated notifications and alerts (either in the system portal or directly at the time clock) encourage responsiveness to time and attendance issues and errors. A supervisor alerted to an employee's unplanned absence can immediately review the team's schedule and make that shift available to other employees to compensate. An employee notified of a missing punch on a timecard can correct the information in time for payroll processing without the involvement of the supervisor or administrative personnel.

## Tracked Changes

A trustworthy system catches and records all edits and changes to time and attendance information by employees, supervisors or administrators to ensure data is not incorrectly altered.



<b>Trustworthy Time and Attendance Checklist</b>		<b>Employees</b>	<b>Managers</b>	<b>Organization</b>
<b>Technology</b>	Fully automated system	✓	✓	✓
	Reliable centralized file storage			✓
	Anywhere, anytime access to archived records		✓	✓
<b>Interface</b>	Straightforward, user-friendly interface	✓	✓	✓
<b>Access</b>	Access to personal data, benefit information and leave requests	✓	✓	
	Easy schedule review for employees and consistent leave approval process	✓	✓	✓
	Simple time card approval and payroll initiation		✓	✓
<b>Timeclocks</b>	Physical time clocks integrate seamlessly into system	✓	✓	✓
	Virtual time clocks offer convenient web or mobile access	✓	✓	✓
<b>Setup and Reporting</b>	Organization-specific system configuration		✓	✓
	Bi-directional data exchange with HR and payroll systems			✓
	Customized report generation and easy report sharing		✓	✓
	Drill-down reporting functionality		✓	✓
<b>Mobile</b>	24/7 mobile system access	✓	✓	
<b>Alerts</b>	Identifies potential errors or issues	✓	✓	✓
<b>Changes</b>	Tracks and records all edits			✓



## Conclusion

As the risk of labor-related legal claims continues to rise, employers must rely on a trustworthy time and attendance system to encourage accurate recordkeeping, track changes, report data and automate benefit accrual. This helps to counter wage-and-hour claims and demonstrates good intent on behalf of the organization. Identifying the weaknesses in an existing time and attendance system—and understanding what constitutes a trustworthy system—helps organizations “bulletproof” their recordkeeping process and mitigates potential legal costs.

## About Attendance on Demand, Inc.

Attendance on Demand supports the labor management needs of thousands of companies and more than a half million employees across North America. Launched in 2006, Attendance on Demand is a rapidly deployed, cloud-based solution that minimizes a company’s risk and technology investment while providing advanced features for securely managing labor data—calculating pay rules, scheduling employees, budgeting labor, and automating recordkeeping for labor law compliance. With standard uptime over the industry average of 99.995% and above average customer retention rates, Attendance on Demand removes the worry of maintaining expensive infrastructure. An extensive North American distribution network helps organizations use Attendance on Demand to reduce labor expenses and improve decision-making.

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- <sup>1</sup> Seyfarth Shaw LLP. “Annual Workplace Class Action Litigation Report: 2014 Edition.” Workplaceclassaction.com. Web. 2014. Accessed 14 Jul 2014. <http://www.workplaceclassaction.com/files/2014/01/Chapters-1-2.pdf>
- <sup>2</sup> Disselkamp, Lisa. “Timekeeping Systems May Hold Key to FLSA Litigation.” NatLawReview.com. Web. 24 Jan 2011. Accessed 14 Jul 2014. <http://www.natlawreview.com/article/timekeeping-systems-may-hold-key-to-flsa-litigation>



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