

Client Alert

You Wanna Sue Your Employer for Overtime? The Labor Department Has an App for That!

May 17, 2011

On May 9, 2011, the U.S. Department of Labor (DOL) announced a free smartphone application designed to help employees independently track hours worked. In what is apparently a regulatory "first," the app is being co-marketed with Apple and available on iTunes. The app allows users to enter hours worked either manually or automatically using a timer, and to both view and e-mail reports of time worked. The app also includes a prominent "contact us" button, with links that allow users to easily call or send an e-mail to the DOL's Wage & Hour Division. The app only permits recordation of basic overtime calculations, and does not handle items such as tips, commissions, bonuses, deductions, holiday pay, or shift differentials. Nothing in the app requires correlation of information recorded against the employer's timekeeping system.

In addition to providing valuable information for a Wage Hour division investigation, the app gives employees (and plaintiffs' lawyers) the ability to create contemporaneous records of time worked. In cases where employer time records are alleged to be incomplete, such records can give plaintiffs a significant boost in proving damages, particularly in collective and class actions. As lower courts continue to struggle over the proper interpretation of the Supreme Court's 1946 decision in *Anderson v. Mt. Clemens Property*, the accuracy of employee recollections of hours worked has become an increasingly important issue in litigating these cases. For employers, this initiative reinforces the importance of making sure accurate timekeeping records are maintained for all non-exempt employees.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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