

Auditing Your Wage and Hour Data

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Why is a thorough understanding of your wage and hour database important?

- Helps prepare for litigation and/or regulatory audits
 - Wage and hour data can be voluminous, intricate, and confusing
- Critical for determining the existence and extent of any violations
 - Identifying possible violations requires:
 - Accurate data and calculations
 - Examining all data sources that could be used in a regulatory audit or litigation
- Assists compliance efforts and reduces future exposure
 - Patterns in wage and hour data may shed light on causes and remedies

How should you audit your wage and hour data?

- Assess accuracy and consistency
 - Regular rate of pay and overtime calculations
 - Hours worked—different data sources may imply different estimates
- Analyze the data and identify potential violations
- Examine patterns and key sources of potential violations



Assessing the accuracy of regular rate of pay and overtime calculations

- To determine appropriate overtime payments, employers must correctly calculate an employee's regular rate of pay
- In calculating the regular rate of pay, employers sometimes fail to account for
 - Length of the work week: regular rate of pay must be calculated over seven consecutive 24-hour periods
 - Bonuses and incentives (productivity, safety, longevity, etc.)
 - Shift, day, or geographic differentials
 - Fair value of goods or lodging in certain circumstances
- Other considerations
 - On-call pay
 - Piece work
 - Commissions and/or salary for non-exempt employees
 - Employees with multiple hourly rates

Automated systems

- Even when relying on automated payroll systems that account for these factors, employers need to ensure calculations are correct
- Recent Wal-Mart settlement with DOL
 - Discovered violations during an internal audit
 - Involved failure to properly calculate overtime using a computerized system
 - Bi-weekly vs. weekly basis
 - Incentive bonuses and other earned income
 - Avoided fines and penalties

Accuracy of payroll calculations depends upon the accuracy of the underlying data

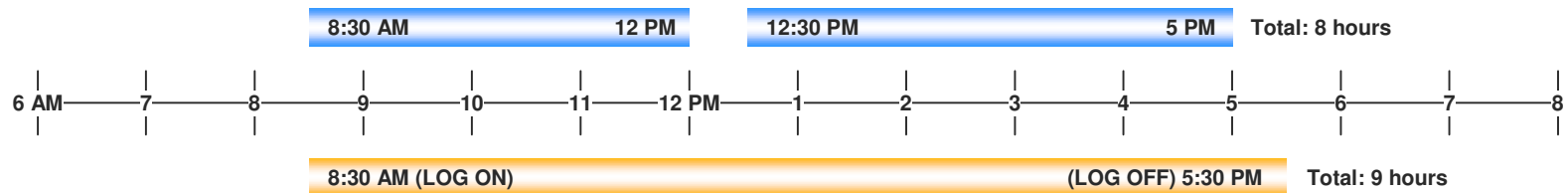
Establishing total hours worked

- Timekeeping records may not be consistent with other time-stamped data that could be used to establish when an employee worked
 - Discrepancies may be used to support claims of time-shaving, off-the-clock work, etc.
- Example: timekeeping vs. computer usage records

Timekeeping



Computer



Statistical sampling may be necessary if there are multiple time-stamped data sources

Many different data sources could be used in wage and hour litigation to establish total hours worked

- Timekeeping
- Security
- Computer usage
- Phone
- Email
- Production/inventory tracking software
- Cash register
- Computer-based training systems
- Parking lot records



Identifying possible violations

- Identifying possible violations may require interpreting the data
- Example: a shift with no break?

Date	Time	Type	Shift	Notes
27-Mar	8:15 AM	In		
27-Mar	4:45 PM	Out	8.5	

- Is this evidence of an employee failing to clock a break or a missed break violation?
- Interpretation may depend upon consistency with other data sets and patterns in the data

Identify possible violations: managerial edits

- Timekeeping data may reflect both employee and employer actions
- Example: managerial edits to account for lunch break

Date	Time	Type	Shift	Notes
27-Mar	8:15 AM	In		
27-Mar	12:15 PM	Out	4	Entered by manager
27-Mar	12:45 PM	In		Entered by manager
27-Mar	4:45 PM	Out	4	

- Is this evidence of an employee failing to clock a break or employer time-shaving?
- Interpretation may depend on
 - Quality of documentation
 - Consistency with other data sets
- Automatic rules may actually make this distinction more difficult

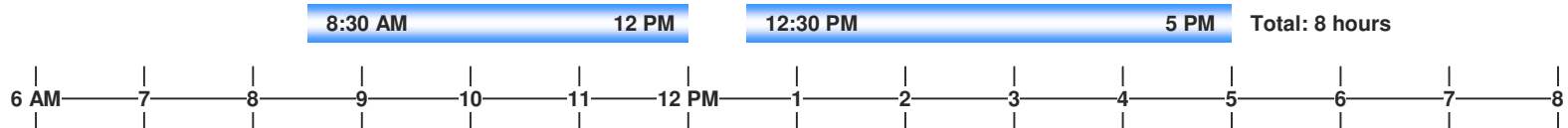
Defending managerial edits

- Some systems do not require managers to provide an explanation for changes
- Without sufficient documentation, employers may not be able to explain or defend managerial alterations—especially if the number of records and edits is large and/or time has passed since the edits were entered

Identify possible violations: using other data sources

- Example: timekeeping and cash register data

Timekeeping



Cash register



\$: Cash register transactions

- Recorded transactions during a meal break may be interpreted as a violation—especially if the manager or computer system entered employee’s meal break
- Auditing time-stamped data can point to ways to automate the process of avoiding violations; e.g., locking people out of a cash register when they have punched out of the timekeeping system

Examining patterns of violations

- Analyzing patterns of apparent violations is an important component of compliance efforts
- Apparent violations may be confined or concentrated
 - In specific divisions/departments of the organization
 - Among a subset of employees
 - During particular time periods/events
- Understanding violation patterns can
 - Assist in interpreting the data—employee vs. employer actions
 - Help direct and guide compliance efforts
 - Help narrow the scope of future litigation

Analyzing patterns in wage and hour data: examples

Problem	Pattern	Possible implications
Off-the-clock work	<ul style="list-style-type: none"> • A significant number of apparent violations were generated by a relatively small number of employees • The employees had colleagues with few or no violations, despite the fact they all worked the same shift, had the same manager, etc. 	<ul style="list-style-type: none"> • Certain employees were not keeping accurate time records • Scope of potential litigation may be limited
Off-the-clock work	<ul style="list-style-type: none"> • Many of the apparent violations were generated by employees rotating through one particular department 	<ul style="list-style-type: none"> • Violations may be manager- or department-specific • Scope of potential litigation may be limited

Analyzing patterns in wage and hour data: examples

Example	Pattern	Possible implications
Missed meal breaks	<ul style="list-style-type: none">• Frequency of apparent violations and managerial edits are correlated with sales levels or certain time periods	<ul style="list-style-type: none">• Violations could be either employee or manager driven• Management needs to emphasize better adherence to policy/record keeping, especially during busy periods
Off-the-clock work/overtime	<ul style="list-style-type: none">• Managerial edits consistently reduced total hours worked to under 40 hours	<ul style="list-style-type: none">• May be evidence of time shaving• Violations may be manager- or location-specific

A thorough understanding of your data is an important part of any wage and hour compliance effort

- Preparing for litigation and/or regulatory audits
- Determining the extent of any violations
- Providing directions for remediation and reducing future exposure

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