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Working: Labor Dept. app could reduce overtime disputes

By Vickie Elmer, Published: May 22, 2011

For years, operators of restaurants, stores, hotels and other establishments have had battles with their hourly workers about compensation for extra time spent doing their jobs. Overtime pay - or the lack of it - is the largest wage and hourly issue, drawing thousands of complaints each year.

Now the U.S. Labor Department has a new tool that could help both sides sort out time and pay disputes: an iPhone app workers can use to log their work hours.

The app, which is available in Spanish and English, will allow workers to add comments, then e-mail a summary to their boss or themselves. The app "will help empower workers to understand and stand up for their rights when employers have denied their hard-earned pay," Labor Secretary Hilda L. Solis said in a statement announcing it in early May.

Given the financial implications, experts say, resolving such overtime disputes is in business owners' best interest, too.

Every year, approximately 220,000 workers collect back wages or other unpaid overtime when the Labor Department intervenes. Last year, nearly 6,800 wage and hour lawsuits were filed - about 700 more than the year before, according to the Labor Department. In fiscal 2010, employers paid \$176 million in back wages and in the last five years, they gave 1.2 million workers more than \$925 million in back pay and overtime.

If workers are using a wage or time app, they need to understand some discrepancies are inevitable and agree to discuss them with their employers and quickly, said Tammy McCutchen, an attorney with Littler Mendelson who worked for the Labor Department from 2001 to 2004 in the Bush administration. Sometimes the employee simply forgets to "clock out" and her record shows extra hours as a result. Or he may have worked at home and not informed his boss of the hours. Employers also are allowed under the Fair Labor Standards Act to round time to the nearest 15 minutes - and workers may not know that, McCutchen said.

"Too often, employers are simply unaware that work is occurring," she said, noting there have been many lawsuits over the question: What is work?

Diane Seltzer, a D.C. labor attorney who represents management and workers, said the new app could make it much easier for workers to keep accurate records of hours worked. "A lot of time records are sketchy or shoddy," making workers' claims of unpaid overtime difficult to prove, she said.

Once employers realize a worker is using an app or a calendar to track the hours, there may be less "slipping things under the rug" and more honesty, said Seltzer.

Tips - Here are some tips for workers and employers on wage basics:

- Unless a union or other contract provides for different terms, overtime pay is due any time an hourly employee works more than 40 hours in a week. Even if you work 14 hours in one day, you generally earn overtime only if you exceed 40 hours that week.
- Minimum wage varies by location: In D.C. it's \$8.25 an hour; in Maryland and Virginia it's \$7.25. Federal rules allow employers to pay students under age 20 a training wage of \$4.25 an hour for their first 90 days. Some cities also have "living wage" ordinances that may raise minimums.
- If you track your hours, do it every week. And make sure you understand your employer's policies on working beyond your normal shift or days - and get supervisor approval if your workload requires extra hours.
- Small businesses that need help with wage information may want to contact their local chamber of commerce or a human resources consultant or labor lawyer.
- Small businesses may want to use the Labor Department wage app as their system for tracking hours, as long as they make it available to everyone - not just those with an iPhone, said Littler Mendelson's Tammy McCutchen.

-- V.E.