



Special Note for Illinois Employers Regarding Tracking Hours

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Tracking of hours for salaried/exempt employees has always been a questionable practice. In fact, the U.S. Department of Labor ("US DOL") could arguably use such tracking as a factor suggesting that the individuals are really nonexempt and were misclassified. That is problematic because a determination that an individual is misclassified can create back pay obligations not just for that person, but for other employees in the same or similar job classifications in which the employer is claiming there are exempt positions.

In Illinois, however, under the regulations issued by the Illinois Department of Labor, "[r]egardless of an employee's status" as exempt from overtime, "every employer" is required to make and keep records (for three years) concerning "the hours worked each day in each work week" for all of their employees.

While this is unlikely to become an issue for the most senior executives, for any position that is subject to challenge about eligibility for overtime, it is a very good idea for employers to maintain such records. The fact that Illinois law requires these records would be a good defense to a US DOL argument, but if an employer does not have such records and the position is later found to be non-exempt, the employer may not be able to contest the amount of back pay claimed by misclassified employees.

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