



# Trustworthy Timekeeping

## How to Select a Litigation-Resistant Timekeeping System

### Executive Summary

Wage-and-hour litigation poses an increasing threat to employers in 2011 due to the trickle-down effect of employee-instigated class actions, more aggressive claim filing by plaintiff litigators, and an increase in government enforcement of Fair Labor Standards Act (FLSA) provisions. Although most employers maintain accurate wage-and-hour records through a reliable timekeeping system, there are some common system issues that increase an organization's chance of employment-related legal claims.

In order to ensure the trustworthiness of their timekeeping system, employers must look for specific characteristics including updated technology, a user-friendly interface, convenient system access for employees and managers, physical or virtual time clocks, customizable reporting and automatic error detection. Additionally, a trustworthy timekeeping system works seamlessly for employees, managers/administrators and the organization overall. With these features at work, employers can feel confident that their records are sound and accurate, reducing the risk of legal expenditures and settlement costs related to wage-and-hour litigation.



## How to Select a Litigation-Resistant Timekeeping System

### Employers Beware: Wage-and-Hour Litigation Is Increasing

It's a fact: employers face an increased risk of wage-and-hour legal claims in 2011. According to the *Annual Workplace Class Action Litigation Report: 2011 Edition*, law firm Seyfarth Shaw identified three reasons wage-and-hour and FLSA (Fair Labor Standards Act) enforcement litigation is on the rise:

1. **Employees and Economy.** A growing employee awareness of wage and hour issues coupled with a tough economy<sup>i</sup> is leading to a “trickle-down phenomenon” of employment-related class action settlements.<sup>ii</sup> The more claims made (and settlements received), the more other employees may be encouraged to make legal claims of their own.
2. **Aggressive Litigators.** Plaintiffs' lawyers are growing more aggressive in filing employment-related class actions. Strategies include targeting new industries and finding new ways to make wage-and-hour claims.<sup>iii</sup>
3. **Government Enforcement.** Over the last two years, the Department of Labor has increased the number of investigators on staff<sup>v</sup> in part to focus on enforcing FLSA provisions, namely the appropriate classification of non-exempt employees.<sup>v, vi</sup>

The combination of employee awareness and economic pressure, aggressive plaintiff litigation and increased government enforcement means employers shoulder a mounting risk of wage-and-hour litigation in 2011.

### Timekeeping System Issues

Most employers understand that maintaining watertight, FLSA-compliant records on non-exempt employees can be the surest solution to combat wage-and-hour claims. In most cases, the records an employer is required to maintain under FLSA can be managed with a trustworthy timekeeping system. But what common problems plague timekeeping systems, opening employers to litigation risk?

- Old or outdated technology allows employers to overlook system abuses and under-manage risks.
- Hard-to-use systems can be cited as evidence of an employer's intent to discourage accurate time reporting.
- Timekeeping systems with outdated (or non-automated) benefit accrual and pay rules can threaten Family Medical Leave Act (FMLA) eligibility or overtime earnings, giving an employee grounds to make a claim.
- Systems that don't appropriately track and record administrative changes to employee time records can also be used to suggest an employer's “intent” to inaccurately represent a worker's time.<sup>vii</sup>

If unaddressed, these timekeeping problems can buoy a plaintiff's case, opening an employer to growing legal expenditures and settlement costs.



## Anatomy of a Trustworthy Timekeeping System

So, what are the components of a trustworthy timekeeping system? What can employers look for when choosing a new system or assessing a current one to shore up their record-keeping efforts? Here's a list of features to consider when searching for a litigation-resistant timekeeping system:

**Updated Technology** — A trustworthy timekeeping system must be fully automated and offer reliable record storage. Recently, the emergence of cloud-based timekeeping systems allows for easy automation, reliable online storage and anywhere, anytime access to online records.

**User-Friendly Interface** — A straightforward, user-friendly interface encourages accurate time reporting and discourages potential abuse.

**Convenient System Access** — Access to the timekeeping system must be convenient for both employees and managers/administrators. Employees need ready access to personal data, benefit information, and leave requests, while managers require easy employee scheduling and straightforward leave approval, time card approval, and payroll initiation.

**Physical and Virtual Time Clocks** — Physical, location-specific time clocks must seamlessly integrate into the timekeeping system. Biometric time clocks discourage system abuse by using an individual's hand or finger template to clock in or out, preventing "buddy punching" by coworkers. Virtual time clocks let workers log hours via web or mobile interface, making time capture easier for traveling employees or organizations with multiple locations.

**Customizable Setup and Reporting** — A timekeeping system must be specifically configured to an organization's pay rules, attendance policies, leave accrual and seniority-based benefits. Integration with an existing HR and/or payroll system allows for easy two-way data communication. Reporting features must include drill-down functionality, customizable report generation and simple report sharing.

**Error Detection and Change Recording** — A trustworthy system will catch potential errors and record changes. Organizations must look for system that reports time card and scheduling exceptions, flags errors, and tracks all management changes to employee time records.



## Three Timekeeping Audiences: Employee, Manager and Organization

Additionally, a litigation-resistant timekeeping system will work seamlessly for three audiences: the employee, the manager and the organization overall. This means a system's features and functionality must be honed to meet the needs of each audience without sacrificing functionality for the others. The timekeeping system can serve as a vehicle for improving management and employee relations by making time tracking and pay policy enforcement transparent and available through self-service options.

Trustworthy Timekeeping System Checklist		Employees	Managers	Organization
Technology	Fully automated system	✓	✓	✓
	Reliable centralized file storage			✓
	Anywhere, anytime access to archived records		✓	✓
Interface	Straightforward, user-friendly interface	✓	✓	✓
Access	Access to personal data, benefit information and leave requests	✓	✓	
	Easy scheduling and straightforward leave approval	✓	✓	✓
	Simple time card approval and payroll initiation		✓	✓
Timeclocks	Physical time clocks integrate seamlessly into system	✓	✓	✓
	Virtual time clocks offer convenient web or mobile access	✓	✓	✓
Setup and Reporting	Organization-specific system configuration		✓	✓
	Bi-directional data exchange with HR and payroll systems			✓
	Customized report generation and easy report sharing		✓	✓
	Drill-down reporting functionality		✓	✓
Errors and Changes	Flags time card/scheduling exceptions and errors	✓	✓	
	Tracks management changes to employee records	✓		✓



## Reducing Legal Risk with Trustworthy Timekeeping

Faced with increasing wage-and-hour class action claims, aggressive plaintiff litigators and labor-related government enforcement in 2011, employers will rely more and more on trustworthy timekeeping systems to ensure fully compliant recordkeeping. This requires employers to understand the potential pitfalls of an ill-suited timekeeping system, as well as the features and functions that help mitigate timekeeping issues for more litigation-resistant recordkeeping.

<sup>i</sup> Seyfarth Shaw LLP. *Annual Workplace Class Action Litigation Report: 2011 Edition*, p. 1.

<sup>ii</sup> *ibid*, p. 3.

<sup>iii</sup> Seyfarth Shaw LLP. *Annual Workplace Class Action Litigation Report, 2011 Edition*, p. 5.

<sup>iv</sup> *ibid*, p. 3.

<sup>v</sup> U.S. Department of Labor. *FY 2011 Department of Labor Budget in Brief*, p. 44.

<sup>vi</sup> To learn more about FLSA-enforcement litigation risk, see Attendance On Demand's white paper, **Playing By The Rules: Avoiding Wage-And-Hour Litigation with FLSA Compliance** at [www.attendanceondemand.com/about/resources/](http://www.attendanceondemand.com/about/resources/).

<sup>vii</sup> Lisa Disselkamp, "Timekeeping Systems May Hold Key to FLSA Litigation," *National Law Review*, January 24, 2011 (<http://www.natlawreview.com/article/timekeeping-systems-may-hold-key-to-flsa-litigation>).