

The political change in Congress may halt or dim the prospects for any new employment legislation, but this has not stalled a number of new proposed regulations, informal directives and increased enforcement of government agencies. The National Labor Relations Board (NLRB), the Department of Labor (DOL), the Equal Employment Opportunity Commission (EEOC) and others are diligently committed to redefining the way employment laws are interpreted and enforced.

Department of Labor (DOL) launches “DOL-Timesheet” app



[Download App](#)

On May 9, 2011, in an effort to enable employees to easily and accurately track their hours worked, the DOL's Wage and Hour Division released a "DOL-Timesheet" app. While the app is currently only available on the iPhone, iPad Touch and iPad, the DOL has indicated that it is exploring updates that could enable similar versions for other smartphone platforms, such as Android and BlackBerry, and other pay features not currently provided for, such as tips, commissions, bonuses, deductions, holiday pay, pay for weekends, shift differentials and pay for regular days of rest.

At first glance, the DOL-Timesheet App may not appear to be much more than the contemporary technological equivalent of a pad of paper, pencil, and some simple math. But not only does the DOL-Timesheet app track an employee's hours and wages, it also

- contains a glossary of wage and hour terms;
- informs workers about their rights under the Fair Labor Standards Act (FLSA);
- is able to create a summary of work hours and gross pay which can be emailed as an attachment;
- contains easy-to-use links to contact the DOL's Wage and Hour Division via phone or email; and
- specifically instructs employees on how to file a wage violation complaint.

Key points:

- The Timesheet app demonstrates the DOL's commitment and aggressive approach to the enforcement of the FLSA.
- According to the DOL, an employee's personal time records are unlikely to supplant or surpass an employer's properly maintained time records. But in the absence of a well maintained and effective time-tracking system, an employee's personal time records will quickly rise in value in the court's eyes.

For potential Business Impact, please visit our website at www.tcormangement.com

Immigration and Customs Enforcement (ICE) to Issue 1000 Audit Notices

On June 15, 2011, The Department of Homeland Security's Immigration and Customs Enforcement (ICE) office has announced it will notify 1,000 employers across the country; the agency will audit their hiring records to determine compliance with employment eligibility verification laws. These Notices of Inspection (NOIs) often request not only I-9 documentation, but payroll records, copies of immigration filings, copies of Social Security Administration communications requesting corrections, information on independent contractors, and related information.

According to ICE, "The inspections will touch on employers of all sizes and in every state in the nation, with an emphasis on businesses related to critical infrastructure and key resources."

In February, ICE had investigated 1,000 employers. This latest action continues the upward trend of yearly audits, bringing the number of I-9 audits for fiscal year 2011 to more than 2,300. The agency conducted 2,196 audits in fiscal year 2010. So far in fiscal 2011, there have been 2338 employer audits, 157 criminal arrests of employers, and \$7.1 million in fines levied against employers.

For potential business impact, please visit our website at www.tcormangement.com

On the State Level

Governor Perry Signs Tort Reform Legislation

House Bill 274 dubbed "Loser Pays" applicable to civil cases takes effect September 1, 2011. The bill employs several mechanisms intended to make civil litigation in Texas more efficient and cost effective:

Early dismissal of actions

H.B. 274 requires the Texas Supreme Court to create rules for a new type of motion to dismiss that will allow trial courts to dismiss a lawsuit early in litigation if the suit has no basis in law or fact. H.B. 274 allows the prevailing party on a motion to dismiss to recover its costs and attorney fees.

Expedited civil actions

H.B. 274 requires the Texas Supreme Court to adopt rules that promote the prompt, efficient, and cost-effective resolution of civil cases where the amount in controversy is \$100,000 or less.

Allocation of litigation costs

H.B. 274 amends the Texas Civil Practice and Remedies Code, which governs the recovery of litigation costs in cases where a reasonable settlement offer was made and rejected. Under H.B. 274, if a plaintiff rejects a defendant's settlement offer and the plaintiff later obtains a judgment against the defendant for an amount less than 80% of the settlement offer, the defendant may recover its attorney fees from the plaintiff in an amount up to 100% of the plaintiff's total recovery. Conversely, if a defendant rejects a plaintiff's settlement offer and the plaintiff later obtains a judgment against the defendant for an amount greater than 120% of the settlement offer, the plaintiff may recover its attorney fees from the defendant in an amount up to 100% of the plaintiff's total recovery.

Governor Perry Signs Legislation Permitting Concealed Guns on Employer's Property

On June 17, 2011, Governor Perry signed Senate Bill 321 into law, which permits properly licensed employees to keep a concealed firearm and ammunition locked in their cars while their vehicles are parked in their employers' parking lots, parking garages, or other parking areas. In a heated battle over competing rights – an employer's private property rights vs. its employees' right to bear arms, the guns have won. The new law takes effect September 1, 2011.

The new law applies to both public and private employers, except for school districts, charter schools and private schools. The statute does not apply (a) to employees utilizing vehicles owned or leased by their employers, (b) on property owned by a third party subject to a valid mineral lease prohibiting the possession of firearms, or (c) on any property where the possession of a firearm or ammunition is otherwise prohibited by state or federal law.

The new statute acknowledges an employer's right to prohibit employees from carrying a firearm on its "premises," but adopts the Texas Penal Code's narrow definition of premises—"a building or a portion of a building." This definition of "premises" does not encompass all of the employer's property, such as private or public driveways, streets, sidewalks, walkways, parking lots, parking garages, or other parking areas.

For potential business impact, please visit our website at www.tcormanagement.com

“As a business owner or manager, Human Resource management and compliance can be an overwhelming challenge, and a mis-step in this area can be very costly for your business and in some cases for you personally. Given all of this, it's not surprising that the analysis firm Gartner Group has found that HR ranks number one among outsourced business processes. At TCOR we understand the challenge and continue to seek to serve and support our clients at the highest level. If you need additional information, support, or service on the topics of this newsletter or any other HR issue, please contact us. Additionally, you can visit our website for more information on TCOR's HR support and services.”



Ross Dudney, PHR
TCOR HR Advisor
361-597-2919
361-319-2825 cell