

# The Risk of Not Keeping Adequate Payroll Records

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If employers do not keep detailed payroll records, they run the risk of losing overtime claims under the Fair Labor Standards Act (FLSA). An employer recently lost just such a case in the U.S. Fifth Circuit Court of Appeal.

In *U.S. Department of Labor v. Five Star Automatic Fire Protection, L.L.C.*, the Department of Labor brought suit alleging that the company engaged in a regular practice of having its employees arrive to work 15-30 minutes before their shift without clocking in, as well as failing to compensate for required travel time between locations after hours.

Calling the employer's records "bare bones timesheets," and noting that they contained "numerous evidentiary gaps," the Fifth Circuit held the usual employee burden of proof did not apply. The Court, relying on Supreme Court precedent, found when there are inadequate records, employees or the Department of Labor only have to prove that there is a "just and reasonable inference" that the work was performed based on the available records. If the employer fails to prove otherwise, a court may find a violation and award damages, even if the calculation is not exact, because the lack of evidence was its fault.

Although only six employees (less than 12% of the workforce) testified, the Court found an FLSA violation and awarded back wages for the unpaid overtime.

This rule applies to all employers affected by the FLSA. Importantly, as the Court notes, when an employer keeps adequate records, this burden of proof on the employer will be different. The purpose of the rule when there are inadequate records, however, is to prevent employers benefitting from their "failure to keep required payroll records, thereby making the best evidence of damages unavailable."

Employers should therefore ensure they maintain quality record-keeping standards under the FLSA, and if possible, improve record-keeping practices above the minimum required to avoid liability. For assistance in determining if your records meet the appropriate standard, or if you have questions, please contact us.

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*We acknowledge the assistance of Law Clerk **Andrew Albritton** in the crafting of this client alert*

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