The Shame Game: U.S. Department of Labor Smartphone App Will Allow Public to Effortlessly Scrutinize Business Employment Practices

Article By:

Charles B. Palmer

The United States Department of Labor (DOL) recently launched a contest to find a new smartphone app that will allow the general public to effortlessly search for and scrutinize businesses and employers that have faced DOL citations. Dubbed the DOL Fair Labor Data Challenge, the contest seeks app entries that integrate information from consumer ratings websites, location tracking services, DOL Wage & Hour Division (WHD) citation data, and Occupational Safety & Health Administration (OSHA) citation data, into one software platform. In addition, the contest also encourages app developers to include other features in their respective app entries, such as information from state health boards and various licensing agencies.

The DOL Fair Labor Data Challenge is part of the DOL's plan to amplify its enforcement efforts through increased public awareness and ease of access to citation data. Consumers and job applicants will soon be able to search for and publicly shame employers that hold one or more citations in the DOL database, all by just using their smartphones.

In light of the DOL app's potential to effectively gather, package, and disseminate citation data, an employer should proactively:

- Inspect its DOL citation record and ensure its accuracy;

- Push for corrections where a record is faulty;

- Review any citation information that is already in the public domain; and

- Be aware of the effects that published citations could have on its public image and reputation.

Going forward, before acting on any DOL citation notice, an employer should:

- Recognize that if the DOL issues a citation, the method(s) and tactic(s) the employer uses in response to the charge may ultimately affect its bottom line to a greater extent than it would in the past;

- Factor into its analysis the possibility that citations may bring unforeseen and hidden penalties such as a negative public image and a tarnished reputation;

- Carefully weigh whether it should challenge a citation; and

- Understand that the app, by virtue of providing easy access to citation data for public consumption, will complicate customer relations and employee recruiting efforts.

Historically, employers often settled DOL citations in order to avoid the costs of litigation, not because they agreed with the government's position. As technology continues to progress and information becomes easier to gather, package, and disseminate, employers need to constantly be on the lookout for potentially damaging information in the public domain. The cost-benefit analysis involved with challenging a government citation is changing, and employers, particularly those who depend on their positive public image, must consider this shame game when deciding the proper response. The app will likely report historical data from yesterday and today, not just tomorrow. Thus, employers should consult with counsel for advice on the best practices for dealing with DOL citations and the subsequent public release of citation information.

Douglas Yang also contributed to this article.

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