

Do I have to pay for that time?

What Employers Should Know About Compensable Hours Worked Under The Fair Labor Standards Act

As a business owner, you know that life doesn't always run according to schedule. Neither does your business. Employees sometimes work beyond their scheduled shifts to finish cleaning or to complete paperwork. Sometimes they arrive early to prepare the store for opening. When employees must complete required online training, that time factors into your scheduling as well. Determining what counts as work time and what does not is a critical component of your budgeting, your payroll, and of your compliance with federal labor law.

The U.S. Department of Labor, Wage and Hour Division, enforces the Fair Labor Standards Act, the federal law that provides minimum wage, overtime, child labor, and recordkeeping requirements for covered employers in the U.S. Determining compensation due to your employees under the FLSA depends upon the accurate tracking of compensable time, or what the law refers to as "hours worked."

WHD finds violations of the FLSA at businesses nationwide, a large percentage of which result from the business owners failing to pay employees properly for hours worked. When such violations are disclosed, employers pay back wages to employees, and risk exposure to additional damages and penalties. The costs of non-compliance can mount up quickly.

Some of the most frequent problem areas identified with regard to hours worked include:

- 1) Failure to record and to pay for hours spent completing required training;
- 2) Failure to record and to pay for hours worked before and after scheduled shifts;
- 3) Failure to pay for hours worked when employees work through meal periods; and
- 4) Failure to record and to pay for hours spent in travel between store locations.

"Hours Worked" Principles:

In general, "hours worked" includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work (except for certain breaks), from the beginning of the first work activity to the end of the last work activity of the workday. The workday may therefore be longer than the employee's scheduled shift and it may start before the employee "clocks in."

Even work that is not approved in advance, or even requested by the employer, if allowed, must be paid for. By statutory definition the term "employ" includes "to suffer or permit to work." For example, an employee may voluntarily continue to work past the end of a shift to cover for an employee on the next shift who has not yet shown up. The reason does not matter. Such hours, both pre-shift and post-shift, are work time and are compensable.

Generally, if the employer allows the work to be performed, it must be paid for. The work wasn't scheduled? It still must be recorded and paid for. The time wasn't approved in advance? The answer is the same - it still must be recorded and paid for.

Questions on this topic often arise in the following situations:

1) Do I have to pay my employees for training time?

When your employees participate in required training, whether on site or online, that time must be recorded, and paid for. They also must be paid for any time spent in training while they shadow experienced employees, or do anything else related to their current jobs.

In order for time spent during training programs, meetings, lectures, and similar activities *not* to be counted as hours worked, it must meet ***all four of the following criteria***: it must be outside of normal hours; it must be voluntary; it must not be job related; and no other work is concurrently performed. Time spent completing online training, even when completed away from the worksite, must be counted as work time unless *all of these criteria* are met. Online courses are often job related and are often not voluntary.

2) I have an employee who is very slow, and takes an extra half hour to close the store every night. Do I have to pay for that time?

Yes. Work not requested but suffered or permitted to be performed is work time that must be paid for by the employer. For example, an employee may voluntarily continue to work past the end of a shift to finish an assigned task, to finish cleaning the store, or to cover for an employee on the next shift who has not yet shown up. Or, similarly, an employee may show up early, before the scheduled shift begins, to begin food prep so that the store can open on time. The reason does not matter. The hours, both pre-shift and post-shift, are work time and are compensable.

2) Do I have to pay my employees for the time they spend on breaks?

Rest periods of short duration, usually 20 minutes or less, are common in industry (and promote the efficiency of the employee) and are customarily paid for as working time. These short periods must be counted as hours worked.

Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals in order for that time not to be compensable. The employee is not relieved if he/she is required to perform any duties, whether active or inactive, while eating. For example, an employee whose break is interrupted to wait on a customer is not relieved from duty.

3) What about travel time?

Time spent in travel as part of an employee s work activity, like traveling from job site to job site during the workday, is work time and must be counted as hours worked. If an employee drives from one store location to another during the workday, that time must be recorded and paid for.

The FLSA requires that covered, non-exempt employees must be paid at least the federal minimum wage of \$7.25 per hour for all hours worked, plus time and one-half their regular rates, including commissions, bonuses and incentive pay, for hours worked beyond 40 per week. Employers are also required to maintain accurate time and payroll records. The amount employees should receive cannot be determined without knowing the number of hours worked.

For additional information on the requirements of the FLSA, visit the U. S. Department of Labor Wage and Hour Division s website at www.dol.gov/whd, or call 866-4US-WAGE (866-487-9243). Your state may have

additional or different statutes or regulations. □ To find your state labor department's contact information, visit www.dol.gov/whd/contacts/state_of.htm.

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