

Paying for home work

Does answering cell phones and e-mail constitute work time?

The number of businesses displaying signs asking their customers to end cell phone calls at service counters indicates how intertwined modern personal, social and professional lives have become.



Alicia Williams

Inevitably, employers begin to wonder how they know which time amid this cacophony of activity is compensable “work time” under the Fair Labor Standards Act for non-exempt employees. How should employers pay employees who carry company cell phones and answer that cell phone during the evening? How should employers pay employees who use a company laptop computer or other type of electronic device at home?

Under the Fair Labor Standards Act, employers must compensate non-exempt employees for all time worked. But employers are not required to pay non-exempt employees for “preliminary ... or postliminary ... activities.” As one court explained: “(In) order for (non-exempt employees) to prevail under the FLSA (on a claim they should be paid for their pre-work or post-work activities), they must demonstrate that (such activities): constitute work under the FLSA and (are) integral and indispensable part(s) of their duties.”

Federal regulations also limit the time for which employers must compensate employees through a “de minimus” test — that is, whether or not something is so inconsequential the FLSA doesn’t apply.

As the United States Supreme Court explained: “(If) the amount of time spent in uncompensated activities amounts to a mere trifle, it is not compensable.” Courts determine whether an activity is “a mere trifle” by considering “the practical administrative difficulty of recording the additional

time, the aggregate amount of compensable time and the regularity of the additional work.”

Difficult questions arise when employers try to determine how to pay employees for answering business phone calls or business e-mails at home.

Some of these situations might be considered “de minimus” under the FLSA. For example, if an employee answers a business call at home only occasionally and those calls last for very short periods of time (less than six minutes), that time qualifies as “de minimus” and the employer likely won’t be required to pay the employee for the time spent on such short calls.

On the other hand, if an employee regularly answers a company cell phone at home or if each business call lasts for a significant amount of time (20 minutes or more), the employer must compensate the employee for such a significant amount of work time.

Similarly, if an employee answers business e-mails only occasionally and such activity involves only a couple minutes, that time likely is de minimus and therefore not compensable under the FLSA. But if an employee receives and reads many business e-mails at home, adding up to a considerable amount of time, the employee must be compensated.

Alicia Williams is an associate attorney with Bechtel & Santo, a Grand Junction law firm that emphasizes employment law services for businesses. Bechtel & Santo will cover this issue and other employment law matters, including those related to Facebook accounts, at the Western Colorado Human Resource Association spring conference and employment law update. The event is scheduled for April 20 at Two Rivers Convention Center in Grand Junction. Reach Williams at 683-5888. For more information about the WCHRA, log on to www.wchra.org.

