

Blackberrys, pagers and PDA's: FLSA in the 21st Century

How work is performed has changed significantly in the last 20 years. Employees access email, answer their cell phones and pagers, and communicate with customers, co-workers and supervisors electronically outside the standard work day. This can be a normal part of doing business for some departments, especially where operations are 24/7 or they require employees to be on-call.

Employees whose positions are exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) are paid a salary for all the work performed and need not receive additional compensation. For those departments who have exempt employees on-call, most do provide additional pay for the work and time involved.

However, employees whose positions are non-exempt and eligible for overtime are a different matter. Non-exempt employees must be paid time and a half for all hours worked over 40 in the work week. This includes all time the employer has reason to know or "suffers or permits" the employee to work whether the employer has permission or not. Non-exempt employees are required to enter the exact number of hours worked each day on their electronic timesheet. So how does the use of all the modern communication devices impact the number of hours worked?

Let's say your employee's normal work schedule is 8:30 to 5:00 Monday through Friday. On Saturday, he/she checks email and replies. The time spent on this task is 25 minutes. This time must be included on the timesheet as work time. In the event your employee has already worked 40 hours, then the additional 25 minutes will be paid as overtime.

Here is another example. You call your employee on a work related issue on their cell phone after their scheduled work hours. The conversation lasts less than 5 minutes. This time is considered minimal and need not be recorded on the timesheet. However, if multiple calls are made and the cumulative time is greater than 15 minutes, the time must be recorded. If the total hours worked, including the time spent on phone calls exceeds 40 in any work week, then the employee must be paid overtime.

How can supervisors avoid paying overtime? Here are some tips:

- Limit electronic communication with non-exempt employees outside of normal work hours to those situations that are critical.
- Supervisors can adjust work schedules to limit overtime payments.
- Remind employees that all overtime must be approved by you in advance.

For more information on FLSA please go to the Classification and Compensation homepage and click on "Overtime and Compensatory Guidelines" or call the Compensation Team at 3-2600.