

Hourly employees and off-site e-mail access: What are the wage-and-hour rules?

Q. Several of our nonexempt, hourly employees have requested access to their office e-mail from their iPhones, BlackBerrys and other similar devices. We are inclined to allow this access, but want the employees who receive access to sign express waivers to the effect that they will not be “on-the-clock” when receiving, reviewing or sending e-mails while away from the workplace. Can we legally require such a waiver?

A. First, although you did not say so, I assume that the nonexempt employees will be receiving, reviewing and sending business-related e-mails. You should make sure you have a written electronics communications policy that specifies that your company’s e-mail system and server are to be used for bona fide work-related purposes only.

You are anticipating that the employees will be accessing their company e-mail accounts during hours that they are not regularly scheduled to work. Under the [Fair Labor Standards Act](#), the nonexempt employees will most likely be deemed to be engaging in actual work when they access or send these business-related e-mails through your server and system.

Therefore, they are entitled to be compensated for this “work time,” which must be included when you account for their regular hours and overtime hours. This business-related time cannot be deemed “off-the-clock” by a waiver or otherwise.

All is not lost, however. An employer that desires to allow nonexempt employees access to e-mail and other company computer applications during nonscheduled hours can require employees to sign an agreement and acknowledgment of a company rule that restricts the employee from using, during off hours, the company’s computer services and office e-mail for *business-related reasons*.

That is, personal use will be allowed, although such use is normally contrary to customary electronic communication policies of companies.

The agreement and rule must also provide that if the employee is directed by a supervisor, or otherwise receives permission from a supervisor, to use the office e-mail after scheduled hours for work-related matters, the employee must accurately record all time spent performing those business-related activities, as well as any time spent performing follow-up work resulting from the activity.