

When to pay for 'on call' hours? Ignorance of law isn't an excuse

Whether or not to pay employees for on-call time comes down to one question: How many restrictions are you putting on the employees' personal time?

The EEOC says on-call time becomes compensable under the Fair Labor Standards Act (FLSA) "when the on-call conditions are so restrictive or the calls to duty so frequent that the employee cannot effectively use on-call time for personal purposes."

Recent case: A Minnesota hospital required its on-call emergency medical technicians (EMTs) to remain at home or in the area and be "in a state of readiness" to report to their ambulances within six minutes of being called. The EMTs weren't paid for this on-call time.

The U.S. Department of Labor investigated and found that the hospital violated the FLSA. *Result:* The hospital had to pay more than \$77,000 in back wages and overtime to 21 EMTs. The DOL didn't care for the hospital's argument that it was unaware of the on-call law.

"Ignorance of the law is not an excuse," said Jose Medina, director of the DOL's Wage and Hour Division in Minneapolis. "Employers are legally obligated to ensure that those they hire are properly compensated for their full work periods."

Medina explained that, "Generally, an on-call employee who is not required to remain on the employers' premises, and who is free to enjoy uninterrupted leisure time for personal activities, is not working and does not need to be compensated while on call. That was not the case with these EMT workers." (*Sanford Regional Hospital*, 2011)

On call vs. on the clock

"An employee who is required to remain on call on the employer's premises is working while 'on call.' An employee who is required to remain on call at home, or who is allowed to leave a message where he/she can be reached, is not working (in most cases) while on call. Additional constraints on the employee's freedom could require this time to be compensated."

— U.S. Department of Labor