

'Downtime' pay: When to pay for travel, rest, on-call time

It's a deceptively simple concept: You have to pay nonexempt employees for every hour they work. But employers often trip over interpretation of that law when it comes to exceptions such as rest breaks, travel time, on-call hours and other quirks.

These rules stem from the so-called portal-to-portal section of the U.S. Fair Labor Standards Act (FLSA), which relieves you of the obligation to pay for workers' time spent in nonproductive activities, such as driving to the office.

First, follow this basic principle: Pay employees for the time that they are on duty. If they're engaged in their regular work, even if it's before or after their normal shift, that counts as work time. And if you know that they're doing the work, you have to pay them for it, regardless of whether it's on their time sheet.

If the extra time would add up to overtime and you don't want to be paying time-and-a-half, enforce a policy that says no one can start work before the shift begins and cleanup must be done before the shift ends.

But just because an employee is on the premises, that doesn't automatically mean he should be on the clock. Instead, the law says workers must be paid when engaged in "principal work activities." For example, changing into a uniform isn't considered work time, unless you require workers to wear the uniform and you don't allow them to wear it off the premises.

REST, MEAL BREAKS. Federal law doesn't require you to provide rest or meal breaks for workers. But some states do. California, for example, requires a 10-minute rest period for every four-hour block of time.

If you do offer breaks, the FLSA is clear about when you have to pay. Coffee breaks or other rest periods lasting less than 20 minutes are considered working time.

But meal breaks of 30 minutes or more are unpaid time, as long as the employee is completely relieved of her duties during the time. If she's answering phones between bites of salad, you'll have to fork over the green.

ON-CALL TIME. Whether on-call time is considered working time depends on how free the employee is to pursue his own activities. If the worker, for example, must stay at home and check his computer every 20 minutes, chances are that he can't do much else, and you'll have to pay for the whole time he's on call.

But if on-call workers aren't confined to a particular place, but are only required to leave word where they can be reached, the hours spent on call aren't considered working time.

TRAVEL AND TRAINING. You don't have to pay hourly workers for their daily commute. But if an employee travels from job site to job site during the day, that travel time is on the clock.

If your employee is flying to another city for a day trip, the drive to and from the airport is considered the same as the daily commute, meaning it doesn't count as work time. But the other travel time that day is work time.

During extended trips, any travel time during normal working hours is work time, regardless of the day of the week.

Also, a training meeting during the workday is work time. If the worker voluntarily chooses to attend training outside normal work hours, it isn't work time.

SLEEPING ON THE JOB. For workers with lengthy shifts, even sleeping can be considered work time. When an employee is on duty for less than 24 hours, any sleeping time counts as work time.

If a shift extends for more than 24 hours, you can consider sleep breaks of up to eight hours a day as not working time, that is, as long as you provide an adequate place for workers to sleep without interruption. Interruptions count as work time, and if the employee doesn't get at least five hours of shut-eye, you pay for the entire time.

OTHER ACTIVITIES. Among the other activities that count as work time under the federal law:

- Waiting for or receiving medical care at work or at the employer's direction during the regular workday.
- Time spent in grievance conferences during work hours. (Check union agreements and past practices.)
- Charitable and civic work done at the work site during working hours, or done at the employer's direction.

Lunch breaks: A sample policy

Federal law doesn't require meal breaks for most workers, but some state laws do. The following sample policy from a small manufacturer offers one way to distinguish between paid and unpaid lunch breaks:

We eat lunch any time between 12 p.m. and 2 p.m. For lunch time, we offer full-day employees two alternatives:

- You can clock out for lunch and take a full hour. This gives you time to go out if you want to. When you finish your lunch hour, you clock back in.
- If you work a full day, you can take one-half hour for lunch, eat in the shop and not clock out.

People who work part days will not be paid for lunch. You should eat before coming, or punch in when you have finished eating and are ready to work.

Source: The Book of Company Policies, Special Report N278, National Institute of Business Management. For more information call (800) 543-2055 or visit www.nibm.net.