You Don't Have to Pay Employees for 'Uncontrolled' On-Call Time

Under California law, you don't have to pay employees for on-call time unless you "control" how they spend that time. If you structure their responsibilities properly, you don't have to pay them for every hour they're on call. You can even pay them a flat fee for their on-call shifts.

The key is the amount of freedom you give the employees to choose how they spend their time while waiting for your call. The more time they can spend on personal activities, the better.

Recent case: MedStaff pays its personnel a flat fee for being on-call and available for medical assignments. They must have access to a phone and are required to respond to calls within "a reasonable time."

Several employees sued MedStaff for allegedly violating the Fair Labor Standards Act (FLSA) and California wage-and-hour laws. But the federal trial court that heard the case noted that employees were free to engage in a variety of personal activities while on call. They could run personal errands, do household chores, go to doctors' appointments and even attend weddings.

The court dismissed the case before trial, reasoning that the facts showed the on-call system only minimally interfered with employees' personal activities, and the employees had agreed to the arrangement. (*Henry v. MedStaff*, No. SA CV 05-603, CD CA, 2007)

Who 'Controls' On-Call Time?

Two factors determine whether you or employees control on-call time. You may elect not to pay it if:

1. Employees agree to the on-call arrangement.
2. Employees are free to engage in personal activities while on call. The more freedom the employee has, the more likely you don't have to pay by the hour for all on-call time. Factors affecting that freedom include:

- Must employees be on premises?
- Are there geographical restrictions?
- How frequently are employees called?
- Must employees be instantly available?
- Can employees trade on-call shifts?
- Can employees use a pager?
- Do employees on call actually spend time on personal activities?