

# Can't stop employee from working off the clock? Fire him for willful misconduct

Letting employees work off the clock can create quite a mess. For one thing, it leaves employers exposed to large class-action overtime lawsuits, which can wind up costing hundreds of thousands of dollars in back pay and legal fees.

What can employers do when employees insist on clocking out and continuing to work? Warn them—and then discipline them. If you terminate employees for refusing to listen, they won't be eligible for unemployment compensation and you will also protect your company from an overtime lawsuit.

**Recent case:** Johnson, who worked for Macy's, often clocked out but continued working. When he was caught removing expired food from the store, he explained that he considered the food compensation for the unpaid hours.

Macy's explained that he was not allowed to work off the clock, but paid him for the estimated time he had done so in the past. But Johnson continued to clock out and then keep working. He was fired and applied for unemployment benefits.

Macy's objected, arguing Johnson had been warned and then purposely broke the rule against working off the clock. It argued this was willful misconduct.

The court agreed and said he was ineligible for unemployment benefits. (*Pragoo v. Macy's*, No. A12-0308, Court of Appeals of Minnesota, 2012)

**Final note:** Macy's handled this case right. It paid Johnson for the time he spent working off the clock, cutting off potential liability for unpaid wages. Then it fired him when he wouldn't comply.