

# Accurate timekeeping: Pay attention to the Portal-to-Portal Act



An employer must know how many hours an employee worked during a pay period in order to calculate the person's paycheck. While this basic tenant of timekeeping sounds simple, it can prove quite tricky in reality. For example, should reading work-related emails on the commute into the office be compensated? How about the time spent putting on safety apparel before heading onto the work floor?

Employers need to develop a clear understanding of which tasks do or do not "count" and record them appropriately when tracking time. An amendment to the Fair Labor Standards Act (FLSA) known as the Portal-to-Portal Act offers guidance on determining whether or not an organization is required to pay workers for the time spent on certain activities occurring before or after their principal job.

## Understanding the Portal-to-Portal Act

At the heart of this FLSA amendment is that workers must be paid for their time performing their "principal" work activity and any time that is an "integral and indispensable part" of this principal work. Activities that are "preliminary to or postliminary to" their principal work do not require compensation.

Sometimes, these concepts prove relatively easy to apply. Most employers and employees would agree that the time spent driving to work each day is a preliminary task that should not be included in timekeeping because it is not a part of the job which the worker was hired to do.

As one would expect, however, plenty of scenarios rest in grayer territory. For instance, if a company institutes security screenings, should the time spent waiting in line be paid? Courts have differed in their opinion depending on the purpose of the screening and the nature of the employee's work.

## Spotting danger

Violating the Portal-to-Portal Act can result in costly lawsuits, especially if ruled that proper time-keeping measures would have triggered overtime pay because workers went beyond the 40-hour workweek. Thus, HR and legal/compliance departments need to work together to evaluate situations specific to their organization and track time accordingly.

The time to examine whether or not something may be questionable is *before* controversy arises. Companies may be able to spot potential Portal-to-Portal problems that should be investigated if the answer is "yes" to questions such as:

1. Are employees required to come in early and stay after their quitting time?
2. If employees aren't required to come in early or stay late, do they feel compelled to do so?
3. If employees don't feel compelled to come in early or stay late, do they routinely do so anyway?
4. Are employees required to change from their street clothes into protective clothes?

5. Do employees perform maintenance activities on their tools or machines either before they start work or after their workday ends?
6. Must employees call in from home or elsewhere for daily instructions?
7. Do employees spend time powering up equipment, logging into a computer network, or opening computer programs necessary to perform their principal activities?
8. Do employees answer business calls or return e-mails or texts prior to the beginning of their workday, while commuting, or after the end of their workday?

## **The future of the Portal-to-Portal Act**

Since its passage in 1947, the Portal-to-Portal Act has been brought up in many court cases. Defining what exactly constitutes one's principal work and what is necessary to perform it is not a one-size-fits-all endeavor. Variables such as industry, company, and even individual position affect interpretation.

Technology and remote work bring up a host of new issues in the 21<sup>st</sup> century. Questions abound around things such as booting up and logging into computer systems, performing data storage and security procedures, and responding to texts after business hours.

Likewise, actions taken in light of the COVID-19 pandemic may stir controversy. Should employees be paid for standing in line for daily health screenings or for performing mandated cleaning tasks?

While HR and legal departments continue to struggle with such issues, it is important to remember that the Portal-to-Portal Act does not affect time worked during the workday. It only determines if certain pre-work and post-work activities are compensable working time. Rather than worry about what is on or off the clock, employers may find it best to simply create realistic work schedules that factor in the time employees need to spend on important tasks that could stir debate if not included when timekeeping.