

DOL clarifies employers' obligation to pay nonexempts' overtime



Tracking nonexempts'

working time when they're working remotely is a real problem. While you can have remote workers sign [telecommuting agreements](#) detailing their regular working hours, those agreements won't save you if they don't spell out the procedure nonexempts must use to request to work overtime.

The Department of Labor first dealt with telecommuting issues through [FAQs](#). It's now issued a more authoritative [Field Assistance Bulletin](#), which clarifies your duties to nonexempts and your obligation to pay those who work unauthorized overtime.

You don't know what you don't know

Under the Fair Labor Standards Act, if you actually know employees worked overtime, you're on the hook to pay for it. That's an easy one.

The FLSA also imposes another standard: constructive knowledge. In other words, if you knew *or should have known* employees were working overtime, you're on the hook for it.

For example, [a bank employee](#) was able to at least state a case for unpaid overtime because the computer program she used to generate reports and spreadsheets was loaded onto her home computer, not her work computer.

But the flip side is also true. The FLSA stops short of requiring you to pay for work you didn't know about *and* had no reason to know about.

What's reasonable

According to the DOL, you bear the initial burden of setting up a reasonable system for employees to report their overtime work, whether or not the overtime work is authorized. Once the system is in place, you won't be on the hook for unpaid overtime if employees don't use your system.

The DOL doesn't suggest any particular system for you to use, only that you exercise reasonable diligence over it. *DOL*: One way an employer may generally satisfy its obligation to exercise reasonable diligence to acquire knowledge regarding employees' unscheduled hours of work is by establishing a reasonable process for employees to report uncompensated working time.

For example, a federal appeals court [ruled](#) Chicago police officers couldn't recover unpaid overtime related to their after-hours use of Blackberries, because the Chicago PD had a system for police officers to report their overtime hours, they just didn't use it.

The DOL does, however, specify what is unreasonable:

- Making the system difficult to use
- Not training employees on how to use it
- Implicitly or overtly discouraging or impeding employees from accurately reporting their working time.

What you can do

You should amend your telecommuting agreement to specify that nonexempts must seek their manager's written approval before working overtime. Include a form they can email to their managers to request it. You can also put a reminder on their time sheets about seeking permission.

Then ensure they understand the procedure for requesting overtime. Don't train just once. Keep training by keeping their attention on the reminder on your time sheets.

And don't forget to train your managers.