

What Is Working Time?

Pay Requirements for Employees Who May (or May Not) Be on Duty

by Kevin M. Doherty, Esq.

With the advent of e-mail, cell phones and Blackberries™, the line between work time and personal time seems to be getting blurrier and blurrier for all of us. For businesses with employees who are paid on an hourly basis and entitled to overtime compensation when they work more than forty hours in a workweek, figuring out what constitutes time worked – and keeping track of it – is a daily challenge. When a worker files a claim indicating that s/he was not paid for all time worked, it is not the worker who must produce documentation – it's the employer. It is therefore essential that employers understand which work-related activities count as time worked and keep careful records of all employee time that must be compensated.

When Does Work Start? When Does It End?

A lot of court time has been spent trying to pinpoint exactly when a workday begins and ends. There are no absolute rules, but generally speaking a “normal” commute to work (with no work-related errands or cell phone calls on the way) is not work time, and does not have to be paid. What about time spent changing into or out of the Company uniform? Usually, if the employee puts on or removes the uniform at home, s/he does not have to be paid for the time, but if the changing is done at the employer's premises, the time involved is work time and does have to be paid. What about those eager beavers who arrive before their scheduled shift begins or stay after it ends? If they are working, they must be paid. If they are socializing with co-workers and waiting for the plant doors to open, they generally do not have to be paid.

Meal and Rest Periods

There is no law that employees must be paid for meal breaks, but under most circumstances, they do have to be given the opportunity to take meal breaks during which they must be completely relieved for work duties. (An employee who works through lunch must be paid for the time.) Under New York law, most fulltime workers must be given at least one thirty-minute unpaid meal break per shift. A New York employee who begins work before 11:00 a.m. and continues to work past 7:00 p.m. is entitled to a second twenty-minute meal break. Meal or rest breaks of twenty minutes or less must be paid.

Time spent on unpaid meal breaks should be recorded. Be careful of time recording systems that automatically deduct one-half hour for lunch every day – unless employees sign off on their time records every week and have a valid method for reporting and correcting for deviations from the automatic deduction.

Also, New York has special break rules for truck and bus drivers. After such drivers have been continuously on the road for fourteen hours, including meal breaks, they cannot continue to drive, and must be given eight hours off duty. A break of less than one full hour is not counted as a break in continuous duty. Bus companies should keep these regulations in mind when making schedules.

Waiting and On-Call Time

Does an employee who is on-call or waiting for the second half of a split shift to start have to be paid for the time? The answer depends on whether or not the employee is free to put that time to productive personal use. Thus, the on-call employee who can stay at home and do as s/he pleases during on-call time is usually only on the clock during the time spent responding to a call, but the one who must remain on Company premises waiting for calls must generally be paid for the entire on-call period. Employees with split shifts typically do not have to be paid for an extended break period in which they are free to engage in personal activities.

Spread of Hours

New York employees with split shifts and/or working days that extend beyond ten hours in length may be entitled to an extra hour of pay at minimum wage. New York's "spread of hours" law provides that "an employee shall receive one hour's pay at the basic minimum hourly wage rate, in addition to the minimum wage required...in any day in which (a) the spread of hours exceeds ten hours; or (b) there is a split shift; or (c) both situations occur." New York courts are somewhat divided over whether this law applies to employees who earn substantially more than minimum wage. An employer whose hourly employees routinely put in long days or work split shifts should seek counsel, since an error with regard to spread of hours pay can be very costly.

Keeping Track of Time Worked – Action Plan

There are currently a record number of wage and hour based lawsuits, as well as time and payroll audits by the federal and New York State departments of labor, so it is very important that employers follow a couple of simple rules for their own protection.

- New York law requires that every employer notify employees in writing of the Company's policies on working hours and paid time off. Make sure your employee handbook or stand-alone employment policies also include clear instructions on how to record working time, seek authorization for overtime, and correct any errors in time records, pay or deductions from pay.
- Maintain thorough timekeeping and payroll records. Remember that the statute of limitations on back pay claims in New York is six years, and that the burden of proof is entirely on the employer in wage disputes with current and former employees.

With an understanding of what constitutes time worked under the law, and a careful approach to recordkeeping, you can protect your company against wage-related liability.

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