

How to Avoid Common Hours Worked Miscalculations

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If you are a manager or business owner who employs non-exempt workers, you know that calculating hours worked can be complicated. Under the federal Fair Labor Standards Act (FLSA), non-exempt employees must be paid at least the minimum wage for all hours worked, and overtime at a rate of not less than time-and-a-half the employee's regular rate of pay for any hours worked beyond 40 in a given workweek. Wages may also be regulated by state law. When both the FLSA and a state law apply, the law setting the higher standards (i.e., the law most favorable to the employee) must be observed.

Employers who fail to pay non-exempt employees for all hours worked put themselves at risk of an employee complaint and a formal Department of Labor investigation. These investigations are becoming far more common. Furthermore, they frequently widen in scope from the initial complainant to encompass all similarly situated employees at a given company, which can result in mounting fines, penalties, and legal fees.

One way to avoid this risk is to understand which work-related activities performed by employees count as work time subject to the FLSA minimum wage and overtime requirements. Let's take a look at a few situations as outlined by the U.S. Department of Labor:

Waiting Time:

In some circumstances, waiting time must be paid and is counted toward hours worked subject to overtime pay. The distinctions here are fine, but important. Under the FLSA, if an employee is "waiting to be engaged," that is, waiting for work to do, then the wage clock is not yet ticking. However, if the employee has been "engaged to wait," the clock is in fact running. Examples of

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being "engaged to wait" include an executive assistant reading a book while waiting for dictation or a firefighter playing cards waiting for an alarm.

On-Call Time:

Similarly, an employee who is required to remain on call on the employer's premises is working while "on call." If the employee can remain on call at home or leave work where he or she can be reached, this time typically will not count as hours worked. However, if the employee's freedom is constrained by being on call (i.e., the employee is required to remain on the employer's premises or so close to them that he/she can't use the time effectively for his/her own purposes while on call), this time may need to be compensated.

Rest and Meal Periods:

Rest and meal period requirements can also cause confusion. While the FLSA does not require employers to provide rest breaks or meal periods for non-exempt employees (with the exception of break time for nursing mothers), employers that do provide rest or meal breaks must follow certain rules. Rest breaks must be counted as **hours worked** for purposes of minimum wage and overtime under federal law. These breaks include short periods, usually 20 minutes or fewer, that employees are allowed to spend away from the work site for any reason (for example: smoke breaks, restroom breaks, breaks to make calls, or to get coffee.) Bona fide meal periods (typically at least 30 minutes) are generally not considered work time, as long as the employee is completely relieved from duty during that period. If he or she must perform any work while eating (whether it is active or inactive), the time may need to be compensated.

Keep in mind that many states require that employers provide meal periods and rest breaks (either paid or unpaid), and some even specify a particular time when breaks or meal periods must be given. Remember that where both the FLSA and a state labor law apply, the employee is entitled to the most beneficial provisions of each law.

Travel:

Computing travel time for purposes of counting hours worked can be tricky. Ordinary travel to and from work does not count as hours worked under federal law. However, travel to a special one-day assignment in another location generally **does** count as hours worked (minus the employee's normal commute time). Similarly, travel that is a regular part of the employee's job, such as going to different job sites, is considered compensable work time. Travel away from home overnight also counts as hours worked, with special rules limiting how much time can be

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counted outside of regular working hours.

The bottom line is, employers must carefully monitor all of the time employees are engaged in work-related activities. Visit the official [U.S. Department of Labor website](#) for more information on the FLSA and be sure to check with your state labor department for additional requirements that may apply.

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