

# Five Tips to Minimize Liability for Off-the-Clock Work

Federal and state law require employers to compensate nonexempt employees for all hours worked. "Hours worked" is not limited to the time during which an employee may be regularly scheduled, but also includes all time the employer knows, or has reason to know, that a nonexempt employee is performing work, including "off-the-clock" work.

Technology has made it easier for employees to perform off-the-clock work, and employers may be required to compensate nonexempt employees for time spent at home checking and responding to emails or performing other work-related activities. Off-the-clock work represents a potential liability for employers, who may be faced with expensive litigation by employees seeking to recover compensation for work performed. Employers should act to mitigate this risk through unambiguous policies and practices that clearly set out the employer's expectations regarding working time. Below are five tips to help employers minimize their liability:

1. **Review and Update Your Written Policy.** Ensure that your wage and hour policy clearly communicates expectations regarding hours worked, off-the-clock work and timekeeping procedures. For example, are nonexempt employees allowed to perform work at home? If so, how should they record their time? This is especially important for those employees who may have off-site access to email and other employer-based electronic systems.
2. **Train Employees on Working Time Policies.** Train employees on how and when to record working time. Ensure that supervisors know that work performed outside of the office may be compensable (including time spent performing work on electronic devices) even if the work was not authorized.
3. **Require Employees to Verify the Accuracy of Their Time Records.** Have employees certify with each pay period that their time records are accurate. Ensure that employees know to promptly report any discrepancies to a manager, supervisor or human resources. The process to notify the company of incorrect wages should also be detailed in the employee handbook. Thoroughly review and respond to any employee complaints about inaccurate time records or pay.

## POSTED:

Jun 17, 2015

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4. **Clearly Communicate Wage and Hour Policies Regarding Employees on Leave.** Prohibit employees on leave from performing any work, and ensure that supervisors and coworkers refrain from requesting or requiring employees to complete assignments or perform other kinds of work while they are on leave.
5. **Evaluate the Need for Access to Electronic Systems by Nonexempt Employees.** Consider whether nonexempt employees have a need for off-site access to electronic systems. By limiting access, employers can minimize the risk that nonexempt employees perform off-the-clock work outside of normal working hours.

If you have any questions about working time policies and practices, please contact [Rob Driscoll](#), [Katie Triska](#) or your Reinhart attorney.

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