

# ON CALL POLICIES & PAY

By Lindsay Dressler



On-call policies & pay are a hot topic, especially for law enforcement & first responders. Is your on-call policy up-to-date & legally compliant?



## Summary

Wages are governed by the Fair Labor Standards Act (FLSA). The FLSA outlines when & how employees must be compensated for “hours worked.” If handled correctly, on-call time is generally not hours worked & does not require compensation. However, if your on-call policy places too many restrictions on your on-call employees’ activities, their on-call time may become compensable “hours worked” under the FLSA. In addition, even when compensation is not legally required for your employees’ on-call time, some agencies choose to provide on-call pay for the purposes of recruiting, retention & operational needs.



## When is an Employee Considered On-Call?

An employee who is designated to be available if called upon by their agency during hours that are outside of their normally defined work schedule is “on-call.”

## When Can Time Spent On-Call Cross Over Into Compensable Hours Worked?

Whether employees must be paid for their on-call time depends on whether they are “waiting to be engaged” or are “engaged to wait.”

This is not a black and white line, so draft your on-call policies with caution. Think of it as a spectrum & ensure your on-call employees are firmly on the “waiting to engage” end.

Engaged to Wait

Waiting to Engage



Employee entitled to be paid for their time

Employee not entitled to be paid for their time (although you may choose to pay them)

## **Engaged to Wait (Paid Waiting Time)**

An “on-call” employee who is required to remain on your agency’s premises, or so close that he cannot use the time effectively for his own purposes, is likely working & therefore entitled to pay.

## **Waiting to Engage/Stand-by (Unpaid Waiting Time)**

An “on-call” employee who can use his time more freely & is not performing a specific assigned task while waiting, is waiting to engage & is likely not entitled to pay.

## **Factors Used in Determining Whether On-Call Time Should be Paid Waiting Time**

The primary factor in determining whether “Waiting Time” while on call is compensable is the degree of control the employer exercises, specifically:

- **Geographic Limitations/Proximity to Workplace**
- **Restrictions on Movements** - is the employee tethered to a specific location?
- **Response Time** - Generally should not be less than 45 minutes, although there is no bright-line rule.
- **Work Uniform/Equipment Requirements** - Is the employee required to remain in uniform, in a marked vehicle, etc.
- **Frequency of Calls**



## **Questions About On-Call Policies & Pay?**

As always, ICRMP encourages you to regularly review all your policies with your agency’s attorney. However, the ICRMP Risk Management Team is here to lend a hand with drafting & reviewing policy language.

**Contact Lindsay Dressler with additional questions.**