



## **The Department of Labor's (DOL) New Audit Focus Heading Into 2020!**

November 1, 2019

### **Working Off the Clock**

Working off the clock labor is that which is unpaid or not contributing to [overtime pay](#), and is usually illegal.

The United States [Fair Labor Standards Act](#) (FLSA), is legislation designed to protect workers in most states. The FLSA articulates that employees be paid overtime for more than 40 hours a week. Due to the integration of the FLSA in most state labor law, U.S. employee rights are protected insofar that they must be paid the minimum wage, as well as overtime, and the same compensatory or insurance benefits as other workers in the same role.

### **Common Types of Off -The-Clock Work**

Unpaid preparation is classified as "pre-work" act such as truck warming, loading, transferring of equipment or worksite preparation, are scenarios where a worker is at times off-the-clock. Similarly, unpaid work post-shift, like finishing, cleaning, and returning equipment is off-the-clock.

When an employee is instructed to rework a project without pay. The act of awaiting work when the job is not yet available. Assignments or time that an employer has allowed an employee to wait to perform a task, thus counted as work and will be paid. If an employee is working on a project and not completed, might take home and work from there without counting the hours. Returning work-related phone calls at home after the shift has ended.

If the employee must stay late to finish helping the customer, it must be paid for that time even though shift is ended. If an employee makes the decision to arrive at work early and begin working on the computer, reading emails, working off-the-clock has taken place. An employee might "clock out," yet continue working by finishing documents, making phone calls, or cleaning; all of which must be compensated under FLSA.

## **What Does This Mean for Employers?**

Employers may find that they must limit employee access to technology to control overtime. Shift control is key to limiting overtime. Employees should be clocked in during work. Altering shift times is a common way of working off-the-clock, as well as working during lunch breaks. Making sure that employees are informed of break and lunchtimes reduces off-the-clock work errors. Taking the responsibility to ensure that employees are working at times clearly set by policies, as well as training supervisors, and limiting access to technology are recommendations to meeting workplace best practices under FLSA.

Supervisors play a critical role because employees will most likely ask them whether after-hours work should be recorded on a time card. Sometimes employees are happy to work a little extra because they like their job or receive some side perks, but when something goes wrong, and they're not so happy, they start calling attorneys. Employers never know when a relationship will deteriorate in the future, so compliance is essential. When an employee becomes unhappy at work or is terminated, that is when generally see a lawsuit filed.

## **What Should Employers Do to Mitigate Off the Clock Work and Avoid FLSA Violations?**

- Do not allow non-exempt employees to remotely access their work email account.
- If an employee is given access to their work email at home, ensure that the employee is paid for their time in reviewing and responding to emails.
- Educate managers about text messaging or emailing non-exempt employees when they are off the clock.
- Speak with non-exempt employees to ensure that they are not receiving text messages or emails when they are off the clock.
- Do not allow employees to take lunch at their assigned work area (extreme but some companies do it). If an employee feels obligated to answer the phone or an email during their lunch break (even if they don't actually do so), the employee may be entitled to payment for that time.
- If employees routinely arrive before their scheduled start time, it does not necessarily mean they must be paid for that time.

## **Next Step Recommendation**

Employers should ensure compliance of off the clock work by including a strict policy in the Employee Handbook or stand-alone policies. Moreover, along with other highlights of employee policies in orientation, off the clock work should be one of those highlights. The most effective effort is employee and Employer Training.

***For more information about the impact of Workplace Compliance Regulations, please subscribe to my website at [www.hrcompliance.biz](http://www.hrcompliance.biz) and receive updated compliance alerts & monthly newsletters, webinar notices, and information on compliance resources!***

