

Do I Need to Pay My On-Call Employee?

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On-call employees are a convenient way to ensure business needs are met while the office is closed or during weekends and holidays. It is important to ensure employers understand the legal implications and obligations of scheduling on-call employees, which includes two primary considerations: whether the time spent on call is compensable and if so, the proper calculation of the compensation.

A properly classified exempt employee paid a salary does not have to receive additional compensation for on-call time. A non-exempt and/or hourly employee may be entitled to compensation for on-call time.

When an employee is unable or not permitted to perform personal activities during on-call time, it is considered “engaged to wait” and is compensable. When an employee is not required to remain at their place of work and is free to engage in their own pursuits during on-call time, as long as the employee remains reachable by phone or another communication method so the employer can contact them if needed, it is considered “waiting to be engaged” and is not compensable. However, once the employee receives an on-call assignment, the time actually spent completing the assignment shall be counted as hours worked and thus is compensable.

Factors Determining Compensable Off-Premises On-Call Time

Four factors are considered to determine whether an employee’s off-premises on-call time is so restricted that it interferes with personal pursuits and therefore is compensable:

- Whether the employee may carry a phone or other portable communication device and leave home;
- The frequency of calls and the nature of the employer’s demands;
- The employee’s ability to maintain a flexible on-call schedule and switch on-call shifts; and
- Whether the employee actually engaged in personal activities during on-call time.

If the totality of these factors reveal burdensome on-call policies and significant interference with the employee’s personal life, then the on-call time is compensable. To learn about compensating on-call employees, please keep an eye out for next week’s blog.

To ensure compliance with the law, it is important that employers properly consider all factors impacting their on-call employees. If you have questions about designating on-call employees or need assistance, please do not hesitate to contact the [Wilentz Employment Law Team](#).

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