How to Properly Compensate On-Call Employees

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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.

Last week's blog addressed the first consideration of whether time spent on-call is compensable.

Regarding the second consideration, an on-call employee may be compensated in one of three ways:

1. Engaged to Wait - the on-call employee must be paid for their on-call time regardless of whether they are working
2. Waiting to Be Engaged - the on-call employee shall be paid for only the time actually spent completing an assignment
3. As Agreed - the on-call employee shall be paid pursuant to their agreement with the employer

Regarding #3, if an employer requires an on-call employee to stay at home to receive calls, but the employee still has long periods of uninterrupted personal time, the employer and employee can agree on a reasonable number of hours to count as work. This agreement should consider both the actual time spent answering calls and the limitation on the employee's ability to freely use their time. Any such agreement shall take into account not only the actual time spent answering calls but also an allowance for the restriction of the employee's freedom to engage in personal activities during the on-call time period resulting from the duty to be available for calls.

Depending on the circumstances and agreement between the employer and employee concerning on-call time, an employee may have two separate hourly rates – one for their typical hourly work and one for their on-call time. If an employee works more than 40 hours in a week, including actual work, "engaged to wait" time, and any agreed-upon on-call hours, the employer must pay overtime. Time classified as "waiting to be engaged" is not included when calculating overtime. When an employee performs work at two different hourly rates, the employee's regular rate for a given week is the weighted average of the rates. Therefore, the employee's total earnings are computed to include their compensation during the designated workweek from all such rates, which are then divided by the total number of hours worked in all roles, thus establishing a weighed hourly average.

For example:

If an employee earns $20 per hour for the job wherein they first worked 20 hours and $30 per hour for the job wherein they then worked 30 hours: as straight time the employee would be paid $1,300 ($400 + $900) and they worked 50 hours for a weighed hourly average of $26.00. The 10 hours of overtime must be paid at the weighted overtime rate of $39.00 ($26.00 x 1.5). For the week, the employee would be paid $1390 ($400 [20 x $20] + $600 [20 x $30] + $390 [10 x $39.00]).

Need Help With On-Call Pay Compliance?

To ensure compliance with the law, it is important that employers understand how to properly compensate their on-call employees. If you have questions about compensating on-call employees or need assistance, please do not hesitate to contact the Wilentz Employment Law Team.

Attorney

- Meghan Chrisner-Keefe

Practice

- Employment Law