

Common wage and hour mistakes

Under the federal Fair Labor Standards Act (FLSA), non-exempt employees must be paid at least the minimum wage for all hours worked, and overtime at a rate of not less than time-and-a-half the employee's regular rate of pay for any hours worked beyond 40 in a given workweek.



Employers who fail to pay non-exempt employees for all hours worked put themselves at risk of an employee complaint and a formal Department of Labor investigation. And they often widen in scope from the initial complainant to encompass all similarly situated employees at a given company, resulting in mounting fines, penalties and legal fees.

Here are a few situations as outlined by the U.S. Department of Labor:

Waiting Time: In some circumstances, waiting time must be paid and is counted toward hours worked subject to overtime. The distinctions here are fine, but important. Under the FLSA, if an employee is waiting to be engaged, that is, waiting to start work, then the wage clock is not yet ticking. However, if the employee has been “engaged to wait,” the clock is in fact running. Examples of this would be an executive assistant reading a book while waiting for dictation or a firefighter playing cards waiting for an alarm.

On-Call Time: Similarly, an employee who is required to remain on call on the employer's premises is working while "on call." If the employee can remain on call at home or leave work where he or she can be reached, this time typically will not count as hours worked. However, if the employee's freedom is constrained by being on call, this time may need to be compensated.

Rest/Meal Periods: Rest and meal periods can be another area of confusion. Rest breaks must be counted as hours worked for purposes of minimum wage and overtime requirements under federal law. These breaks include short periods (usually 20 minutes or fewer) that employees are allowed to spend away from the work site for any reason—for example, smoke breaks, restroom breaks, and breaks to make personal phone calls or to get coffee or soft drinks.

Bona fide meal periods (typically at least 30 minutes) are generally not considered work time under federal law, so long as the employee is completely relieved from duty during the meal period. An employee is not completely relieved from duty if he or she is required to perform any duties or do any work (active or inactive) while eating.

Travel: Travel time can be tricky when it comes to counting hours. Under the FLSA, ordinary travel to and from work does not count as hours worked. However, time spent traveling to and returning from a special one-day assignment in another city generally does count as hours worked (minus any time the employee would normally spend commuting to the regular work site). Travel that is a regular part of the employee's job, such as going to different job sites, is also considered compensable work time. Travel that keeps an employee away from home

overnight may also count as hours worked, with special rules limiting how much time can be counted outside of regular working hours.