

DOL TO CONSIDER RULE ON PORTABLE ELECTRONIC DEVICES OUTSIDE OF WORKING HOURS

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Perhaps in anticipation of the greater number of non-exempt employees as a result of the proposed increase in salary for [exempt employees](#), the Department of Labor (DOL) has announced that it will be seeking public input on the question of employees' use of portable technology outside their workplace and normal working hours. This was introduced as a part of the DOL's Spring 2015 regulatory agenda and it is anticipated that they will issue this public request for information by the end of the month. The DOL predicts that 21.4 million employees are currently exempt and may be affected by the new rule. That means that you will be required to track all of your employees and their hours worked and compensate them for the use of those electronic devices unless it is "*de minimis*." However, that term is not defined, so perhaps the DOL is trying to determine what the threshold will be in dealing with this extremely prevalent and significant issue. If every email, text and voicemail reviewed by your non-exempt employees is working time, every employer will have to establish protocols for tracking hours worked outside of the workplace and working times. In the alternative, some employers may choose to bar their employees from reviewing emails outside of working time to minimize overtime liability. Regardless of the change to the overtime exemptions, employers will have to develop a strategy for dealing with the issue of capturing or preventing working time on portable electronic devices outside of normal working hours.

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