



Remote Timekeeping Enforcement Guidance Requires Affirmative Employer Action

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Keeping track of time worked remotely by non-exempt staff presents unique practical and legal compliance issues. With the school year underway, the U.S. Department of Labor issued timely [enforcement guidance for remote timekeeping](#).

Simply issuing a directive to non-exempt staff to record all time worked does not meet the compliance obligation. That's because an employer has an obligation to compensate employees for performing work that it knew about or, through the exercise of reasonable diligence, should have known about – even if the employer did not request or schedule the work. In short, employers are required to ensure that work is not performed that they do not wish to be performed. “The employer bears the burden of preventing work when it is not desired, and ‘the mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.’”

The guidance goes on to confirm that an employer is not required to pay for work it did not know about and had no reason to know about.

Reasonable diligence regarding unscheduled hours of work can be met by establishing a reasonable process for an employee to report uncompensated work time. If an employee fails to report unscheduled work hours through such a procedure, the employer is generally not required to investigate further to uncover unreported hours. So, for example, an employer is not required to

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routinely examine computer and phone records to determine if employees worked beyond hours they reported.

This enforcement guidance reminds employers about establishing, publishing, and periodically reminding non-exempt employees of a procedure for reporting unscheduled hours of work to make sure they are paid. It also confirms the need to have timekeeping software or an alternate approach if remote employees are on and off the clock throughout the work day. If an employee undertakes unauthorized work, pay them for it and then coach them about the proper way to handle such a situation in the future. Even if you ultimately discipline them for performing unauthorized work, always pay them for it.