



Bring Your Own Device

Avoid Potential FLSA Wage-and-Hour Pitfalls

Summary

At first glance, Bring-Your-Own-Device (BYOD) programs seem win-win: employees are given the flexibility to purchase the consumer devices (such as smartphones, tablets, laptops and more) best suited to their work and personal needs, and employers save thousands in overhead. But BYOD also opens employers to potential wage-and-hour issues—not due to the device itself, but due to the at-work-at-all-times flexibility BYOD promotes. Employers can protect themselves from Fair Labor Standards Act (FLSA) complaints in three steps: encouraging employees to report all time worked, setting clear policies on working outside of normal scheduled hours, and ensuring minimum wage is maintained despite device expenses and fees.

The Rise of Bring-Your-Own-Device

According to Gartner, Inc., an IT research and advisory company, BYOD is a “technology strategy that allows employees and other users to choose a personally-selected and purchased device to access a company’s applications and data.”¹ Because employees are able to select devices that best suit their work style and responsibilities—and use the device for both business and personal use—employees report increased work satisfaction.²

The benefit to employers is significant as well and hits just the right note: BYOD programs reduce or avoid device-related overhead. Even organizations that offer device subsidies—that is, a contribution of a certain amount toward employees’ device purchases or no-interest loans—show overhead savings. Additionally, devices create a more mobile workforce,³ a major advantage to employers in industries where flexibility is beneficial or employees seek more customizable work arrangements that include working outside the office.

The benefits of BYOD are so advantageous that a global survey of CIOs conducted by Gartner reveals that 38 percent of companies plan to stop providing devices to employees by 2016.⁴ But search online for BYOD implementation advice and dozens of articles reveal potential issues employers need to be aware of when establishing a BYOD program.

BYOD: The Wage-and-Hour Pitfalls

What do organizations need to be aware of? Among the issues experts warn employers to consider, including device privacy and data security, the very thing that makes BYOD so attractive—its unique flexibility—can also open employers to potential FLSA claims from non-exempt employees.

Under FLSA, employers must pay at least minimum wage to non-exempt employees for all hours the employee is “suffered or permitted” to work by the employer. In addition, FLSA obligates employers to pay overtime for hours worked over 40 per week by non-exempt employees.⁵

In BYOD situations, this can include hours worked outside an employee’s normal schedule, including time spent on devices responding to emails or working on projects, regardless of whether the employee is in the office, car, at home or even on vacation.

“With the advent of smartphones, tablets, and other mobile devices like laptops and netbooks,” writes Warren Buliox, associate at Gonzalez Saggio & Harlan LLP, “the work space has evolved to become increasingly fluid and less confined to the four walls of an office building.”⁶



BYOD & FLSA: Building a Wage-and-Hour Compliant Program

How can employers take advantage of BYOD while protecting themselves from FLSA non-compliance? The following steps set many employers on the right track.

- **Require employees to record all time spent working whether during normal business hours or outside the office.**⁷ This should be recorded as part of your BYOD policy or overall company policy since it ensures employees are being correctly compensated for their time under FLSA.
- **Limit “off-the-clock” work with policies that clearly delineate what is acceptable after-hours work.**⁸ These can include guidelines such as no remote working outside of normally scheduled hours or no remote working during unpaid leave. However, it is important to log all hours worked. Otherwise, in the face of wage-and-hour litigation, an employer may be seen as discouraging accurate time tracking.
- **Use a mobile app that supports company policies with configurations for non-exempt employees who use punch restrictions.** Configure your time and attendance system to support your work policies. For instance, if your policy clearly includes no remote working outside of scheduled hours, a time and attendance app featuring punch restrictions will prevent an employee from punching in or out except during scheduled work hours. Supervisor intervention is required to record time outside of scheduled hours.
- **Ensure that fees and expenses associated with an employee’s device do not reduce the hourly pay rate below minimum wage.**⁹ Since FLSA mandates minimum wage, employers can be non-compliant if employees pay device fees or expenses that, if subtracted from their hourly rate, put them below minimum wage. To ensure minimum wage compliance, employers can institute a policy that reimburses employees for device fees or pay an hourly rate that keeps employees at or above minimum wage after device fees.

The Future of Business and Technology

Clearly BYOD is a growing trend for many organizations due to the significant advantages it offers to both employers and employees. Lower overhead, a more mobile workforce and satisfied employees will be enough to convince an increasing number of employers to implement their own BYOD programs. With appropriate planning and policy-building, any organization can avoid the wage-and-hour pitfalls inherent in BYOD programs to readily reap the benefits of employee-selected technology.



About Attendance on Demand, Inc.

Attendance on Demand supports the labor management needs of thousands of companies and more than a half million employees across North America. Launched in 2006, Attendance on Demand is a rapidly deployed, cloud-based solution that minimizes a company's risk and technology investment while providing advanced features for securely managing labor data—calculating pay rules, scheduling employees, budgeting labor, and automating recordkeeping for labor law compliance. With standard uptime over the industry average of 99.995% and above average customer retention rates, Attendance on Demand removes the worry of maintaining expensive infrastructure. An extensive North American distribution network helps organizations use Attendance on Demand to reduce labor expenses and improve decision-making.

References

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