



Understanding Hours Worked

An Attendance on Demand Primer

Summary

The Fair Labor Standards Act (FLSA) hinges on the concept of “hours worked,” not “hours paid.” Meeting FLSA obligations (and avoiding wage-and-hour litigation) requires employers to fully understand what does and does not constitute hours worked, ensuring workers receive appropriate pay for their employment. This paper explores key definitions, issues and exceptions surrounding the concept of hours worked and how a time and attendance system can help employers keep an accurate record of hours worked.

What Constitutes Hours Worked?

“Hours worked” is defined as the time taken to perform activities required by the employer during the work day (the period between the start and end of an employee’s principle activities). But it is important to remember that potentially all time an employee spends performing job-related responsibilities can be considered hours worked, regardless of whether it falls during or outside of the work day.

Meal Periods

Typically, lunches or meal periods are standard times of non-compensation during a work day. However, in order to qualify as non-compensable time, a meal period must meet specific criteria regarding time, activity and location.

Criteria for Non-Compensable Meal Periods

Length of time	No less than 30 minutes
Activity	Employee must be free of all job duties
Location	Employee can leave desk or work area (but can remain at worksite)

Meetings

Meetings constitute hours worked unless the meeting is not related to the employee’s job, occurs outside of the work day, and attendance is by choice of the employee.

Travel

Determining whether travel time is non-compensable depends on the activity, purpose and length of time.

Type of Travel	Compensable?
Commuting from home to worksite	No.
Out-of-town travel for one day	Yes, except time to commute from home to airport (or other transportation) and meal times.
Overnight travel during typical work hours	Yes, if during employee’s normal work time (even on non-working day such as a weekend day).
Overnight travel outside of typical work hours	No, unless the employee actively performs “integral and indispensable” job activities while traveling.
Emergency or on-call travel	Yes, if employees have finished their shifts but are called back and must travel a significant distance.



On-Call Hours

If on-call or stand-by hours require an employee to remain at or near the worksite, the time will qualify as hours worked.

Training and Internships

Generally, if an employee is being trained on activities directly related to his or her job, training time is considered hours worked.

Unpaid internships have come under scrutiny of the Department of Labor (DOL) as many internship programs are arranged so that interns effectively “act” as unpaid labor. Consequently, the DOL has established specific criteria an internship must meet to be considered unpaid. (To learn more about the criteria for paid and unpaid internships, download the *Managing Internships* white paper at www.attendanceondemand.com/)

Medical Treatment

Time spent for medical treatment during a work day is only considered hours worked if the employee is seeking treatment at the request or instruction of the employer.

Outside the Work Day

Work that is not required but still benefits the employer (work that the employer “suffers or permits”) also constitutes hours worked. This obligates an employer to compensate an employee for the time spent on extra work, including starting early or working late, taking work home or working on weekends, and working during lunch or other unpaid break.

Whether or not work performed outside of the work day must be compensated depends on the nature of the activity. Generally, if the task is done in preparation of or in conclusion to the employee’s main duties and occurs prior to the beginning or following the end of the work day, it requires no compensation. However, if tasks considered “integral and indispensable” to the employee’s principal activities are performed outside the work day, the time falls under hours worked and must be compensated.

Starting Early, Staying Late

Generally, if employees are arriving early or staying after their shift by request of the employer or to perform central job responsibilities, the time is compensable.

Working from Home

If an employee performs work at home, whether after their shift or over the weekend, the time constitutes hours worked.



Working During Meal Periods

Any work performed during a meal period is considered compensable. Employers actively monitoring labor costs will be aware of two key issues: (1) making sure employees do not return early from a meal period (potentially shortchanging the 30-minute minimum time requirement, making the break compensable) and (2) ensuring no work is being performed during the meal period that would constitute the time as hours worked.

Using a Time and Attendance System to Manage Hours Worked

Effective labor management means knowing when and where work is performed and instituting policies that protect the organization and its employees from exploitation. Common compensable activities such as working during lunch, coming in early or staying late, compounded by frequency and participation, can severely impact a company's labor budget. Therefore, managers and supervisors must be given tools and policies to ensure employees do not perform work when the company does not want it performed.

Employing a time and attendance system is an important tool in a manager's arsenal when it comes to limiting "extra" hours worked.

- ***Employees can track all worked hours.***

Tracking hours must be an easy, straightforward task for employees, otherwise employers could find themselves a target for wage-and-hour audits where a difficult time-tracking system could be seen as "discouraging" accurate time-tracking. When employees accurately report hours worked, compensation is error-free, but more importantly, it establishes a larger picture of the organization's labor trends. Time and attendance systems with Web access give employees the ability to track time whenever and wherever — a helpful feature for a mobile workforce (such as field sales working in different time zones).

- ***Managers can identify budget-draining trends.***

Accurate time-tracking means managers can identify trends (such as overtime, arriving early and working from home) that are overtaxing the organization's labor budgets. Time and attendance systems featuring real-time reporting give managers the ability to see current conditions and reinforce policies that limit compensable time outside of the work day (instead of waiting for the pay period to end and examining trends retrospectively).

- ***Meal periods and breaks are accurately tracked***

Not only can meal periods turn into compensable time if work is performed, many meal periods and breaks are regulated by law. Time and attendance systems can ensure workers are taking appropriate breaks as regulated and establish for the employer a record of compliance.

- ***Time and attendance system provides a foundation for work policies.***

Because it is a tool for both employees and managers, a time and attendance system serves as a foundation around which unbiased work policies can be built, tracked and enforced.



Conclusion

Understanding what constitutes hours worked ensures employers understand their compensation obligations. Employing a time and attendance system helps employers effectively manage their labor budgets by encouraging accurate time-tracking, identifying labor trends, ensuring breaks and meal periods are taken by law, and establishing work policies that protect the organization and its employees.

Legal disclaimer: This document simplifies a complex Act as it is understood by Attendance on Demand, Inc. It is not to be taken as legal advice. For further information about FLSA compliance, please contact the U.S. Department of Labor at www.dol.gov or 1-866-4-USWAGE.

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

Shoskin, Jeffrey. Frost Todd Brown LLC. "Federal Wage-Hour Law Overview." 2012.
Chamberlain, Kaufman and Jones. FLSA Home Page. "FLSA Overtime." Web. Accessed 23 Oct 2012.
<<http://www.flsa.com/overtime.html>>

