

Determining – Scheduling Employee On-Call and Standby Time

A recent California Supreme Court decision could affect how many employers are scheduling and paying for on-call or “standby” time. Many California employers require their employees to perform standby or on-call work, where they are required to be available to perform work if needed.

Non-exempt employees must be paid for standby time when the time is “controlled” rather than “uncontrolled.” Whether the standby time is controlled depends on the situation.

Controlled Time

Controlled standby means that an employee is required to remain on-call, on either the employer’s premises, or so close to it that the employee cannot use the time for their own purpose. For example, an IT employee must remain available for 2 hours every Saturday morning and answer all calls and emails within five minutes of receiving them. Controlled standby time must be added to regular time worked to determine if overtime compensation is due. Controlled standby time may be compensated at a different rate than is paid for other work by the same employee, so long as the employee is paid at least minimum wage.

Uncontrolled Time

Uncontrolled standby generally means that an employee is not required to remain on the employer’s premises, and is merely required to carry a cell phone or pager. Uncontrolled standby time may be spent for the employee’s own purposes. An employer may require that an employee on uncontrolled standby must remain no further away from the employer’s business than a twenty-minute response time. Employees on uncontrolled standby time need only be paid for the actual hours they work. For example, for the time they spend taking work related calls, or if they have to be called back in to the office to perform work. They do not need to be paid for any of time they are waiting and able to do other things.

The California Department of Labor Standards (DLSE) considers the following standards to determine if on call time is compensable: (1) geographical restrictions on the employees’ movements; (2) required response time; (3) the nature of the employment; and (4) the extent the employer’s policy impacts personal activities during on call time.

Recently, the California Supreme Court ruled that employees who were required to stay at a worksite while on standby should be compensated for all their hours, including sleep time.

In the decision, the state’s highest court determined that security guards, who were obligated to stay in trailers on worksites in case they were needed, were entitled to be paid for all their time, even if they spent it watching TV, scouring the Internet or dozing.

This case could have potential impact for other professions, such as live-in domestic workers, agricultural employees and private contractors, who patrol parks, fight fires or clean up after environmental disasters.

Employers should review their policies and procedures on how they are compensating employees who are on standby to ensure they are not at risk for potential lawsuits or settlements for unpaid wages

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