

# **TIME YOU DO NOT HAVE TO PAY FOR**

## **Wage & Hour Rules You Should Know**

Most employers are familiar with the basic “rules of the game” when it comes to employee rights under the **Fair Labor Standards Act (FLSA)**.

Generally speaking, employees classified as “non-exempt” are entitled to receive pay at the rate of 1.5 times their regular hourly rate for each hour worked in excess of forty (40) hours in the work week. Seems simple enough; Define the work week and count the hours, if the total hours worked exceed forty, then multiply the hours worked over forty times 1.5 and multiply that result by the employee’s hourly rate.

*Where it gets a little tricky is in understanding what hours are considered “compensable” under FLSA rules.*

The following are a few important potential exceptions with which you may want to be familiar:

### Travel time

Travel time is not considered work time unless the following conditions are met:

- ✘ Employees who drive vehicles that contain essential tools or equipment of the employer from their homes to work sites may be working while traveling.
- ✘ Travel from home to a customer’s site in response to an emergency call after the regular workday is work time.
- ✘ When an employee who normally works at one location is sent out of town on a single-day trip, time spent traveling is work time.
- ✘ An employee who travels away from home overnight is not working when he or she is a passenger on an airplane, train, boat, bus or automobile outside of the employee’s regular work hours; however, any time the employee spends traveling as a passenger on a weekend will be counted as work time if the travel cuts across the hours that the employee would normally work during the week.
- ✘ All travel compensable by contract, custom or practice must be counted as work time, regardless of the previous limitations on counting travel as work time.

### Training time

Training time is not considered work time when the following rules are met:

- ✘ Attendance is voluntary
- ✘ No productive work is performed during the training
- ✘ The training is not directed toward making the employee more proficient in the individual’s present job
- ✘ Attendance is outside regular work hours

However, If any of these rules are not met, the time is considered work time and it is compensable.

### On-call time

On-call time is not considered work time if the employee can use the time spent on call primarily for his or her own benefit. If, however, an employee is required to wait at the employer's premises or at a particular location other than the employee's home, all of the waiting time must be counted as work time.

### **SUMMARY**

Time not worked does not count toward the 40-hour threshold used to calculate overtime pay.

#### Easy example:

If an employee did not work on Labor Day this year, but did receive Holiday pay for that day, then those hours do not count towards the 40 hour work week. Even if the employee worked 40 hours Tuesday through Friday during that week, and was paid for 48 hours, the 8 hours of Holiday pay does not count towards overtime pay.

**Problems arise** when **employers** fail to recognize and count certain hours worked as compensable hours.

- ✘ For example, an employee who remains at his/her desk while eating lunch and regularly answers the telephone and refers callers is working. This time must be counted and paid as compensable hours worked because the employee has not been completely relieved from duty.

**The costs for failure to comply with the FLSA can be significant.** Any employer who violates minimum wage or unpaid overtime compensation laws may be liable for both the shortfall and liquidated damages, which means double the damages. The government can perform a two year "look back" for unpaid overtime, three years if they believe the failure to pay was intentional.

- ✘ If you are uncertain about your obligations under the FLSA, ***we encourage you to check with STREAMLINE CXO Human Resources for guidance.***
- ✘ Also, if you are unsure about the exempt status of a particular position, ***STREAMLINE CXO can offer to you our "Exempt Status Checklist"***, a brief questionnaire which will assist you in determining the correct exempt status for your employee.