

Do you have to pay remote, non-exempt employees for work time you didn't know about?

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It depends. Although, fortunately, the Department of Labor (DOL) has issued guidance to help employers handle this often-misunderstood scenario, which got even trickier for those businesses that were unexpectedly thrust into managing a remote workforce when Covid-19 hit.

The general rule is that employers have to pay non-exempt employees for all hours worked, even work that wasn't requested or was done off-site or after hours. "Hours worked" includes not just the work the employer actually knows about, but also work that it "has reason to believe" has been performed.

But the latter concept has always been somewhat amorphous. What sort of work should a company have "reason to believe" has been performed? Employers generally have to exercise reasonable diligence in learning about employees working unscheduled hours, but does that mean that someone from HR must, for example, comb through non-payroll records to see when an employee accessed the employer's network or used their work email outside the scheduled workday?

Fortunately, the DOL's guidance outlines a far more streamlined, straightforward approach for employers to follow, which is summarized below:

- Have a policy that prohibits non-exempt employees from working unscheduled hours without written permission from their immediate supervisor or HR.
- Create a reasonable, easy-to-use process for employees to report *all* their work time, including unscheduled, remote, unpermitted, or off-the-clock work time.
- Pay those employees for all that time.
- Make your non-exempt employees and managers aware of this policy.
- Consider counseling or disciplining employees who violate the policy, but don't forget #3. You still have to pay them!

If you have questions crafting or implementing these policies (or the benefits of doing so), please contact Jeremy Farrell or 412-594-3938.