

# Wage & Hour Insights

Guidance & Solutions for Employers



## Do We Have to Pay Employees for Checking E-Mail Outside of Work? [Wage & Hour FAQ]

By [Bill Pokorny](#) on August 05, 2011



**Q.** Our company provides remote access to e-mail for all employees, and some of our hourly employees carry iPhones and Blackberries with access to their work e-mail. Most non-exempt employees only work during regular business hours, but some will occasionally check and respond to e-mail after hours or on weekends. Do we need to pay employees for this time? If so, how do we track it?

**A.** Yes, employees need to be paid for time spent reading or responding to work-related e-mail. If this occurs only sporadically and the time involved is truly *de minimus* - for example, if the employee occasionally types out "Thanks" or "OK" in response to a short message - it may not be an issue. However, if you do not have any mechanism for employees to track and report this time, you may have no way to prove that the time spent was in fact minimal. When a disgruntled current or former employee files a complaint asserting that they worked an hour or two extra every week for three years, will you be able to prove otherwise?

There are several ways to address this problem. The safest approach from a wage and hour perspective, though perhaps not the most practical, is to limit remote e-mail access to exempt employees. If that is not possible, it is vital to adopt a policy requiring employees to report their time, and a realistic means for them to do so, either through manual timesheets, the company's timekeeping system, or some other means. Perhaps even more important than adopting policies is making sure that they are followed. Supervisors need to be trained to check employee time records against the work that they know (or should know) their employees are performing. HR or payroll should follow up and ensure that the supervisors are doing their jobs. If the policies are not followed,

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appropriate counseling and discipline should follow - both for any employees who fail to properly record their time, and any supervisors who fail to properly enforce the policy.

If you know that employees will regularly spend a certain amount of time per day checking e-mail outside of work, you can also adopt a policy providing a fixed amount of paid time outside of work for tasks like checking e-mail, in addition to the work time recorded for each day. For example, an employee who works 7.5 hours per day could be paid for an extra 15 minutes per day to cover any time spent outside of work checking e-mail. If the employee actually spends 15 minutes or less on e-mail, no additional pay will be due. However, any time worked in excess of the allotted 15 minutes would need to be paid, and the company would still need to provide a mechanism to report this time.

*Do you have a wage and hour question that you would like us to answer on this blog? If so, contact us! Leave a comment, or e-mail us at [wageandhourinsights@franczek.com](mailto:wageandhourinsights@franczek.com). (Please, general and hypothetical questions only as inquiries may be posted publicly. If you are an employer and need legal counsel, please contact the authors or any of our attorneys directly to discuss your situation.)*

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