

# Wage & Hour Insights

Guidance & Solutions for Employers



## The Myth of "Unauthorized" Overtime

By Bill Pokorny on August 10, 2011



Has something like this ever happened in your organization? You have a solid non-exempt employee working hard on a project. His supervisor is out of town and unreachable. In the supervisor's absence, to get the job done, he works a few hours of overtime. When the supervisor gets back, he asks if she will approve the extra time he has already worked. The supervisor says yes, but adds that if the employee had asked ahead of time she probably would have told him not to work overtime on this particular project. The employee responds apologetically and says that he won't put in for the overtime pay.

Your employee handbook says that overtime must be approved in advance, so end of story, right? Maybe, but maybe not.

Under the Fair Labor Standards Act, employees are entitled to pay for any time that they are "suffered or permitted" to work. In this case, the employee was given an assignment that he evidently concluded could not be completed during his regular work hours, and as a result worked additional time. Perhaps his conclusion was unreasonable, but under these circumstances it will be difficult at best to argue that the employee was not "suffered or permitted" to work the extra hours.

So what should you do when an employee informs you that they've worked "unauthorized" overtime? First, make sure that the employee records all of his or her time and is properly paid. Second, remind the employee of your policies. If overtime requires advance approval, make sure the employee understands this and is put on notice that working overtime in the future without such approval may result in discipline. If this is a first offense, it's OK to be diplomatic and understanding. Acknowledge the employee's dedication, but explain that the company is committed to ensuring that everyone is paid for all of their hours, and that it's management's responsibility to decide whether or not overtime hours will be worked. Finally, if this continues to be a problem, follow up with appropriate discipline.

Of course, for any of these steps to happen, someone in management has to be aware of the problem. If the supervisor simply accepts the employee's e-mail and does nothing to ensure that the employee is paid for his overtime, the employer has a problem. HR and payroll can't be everywhere,

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and they often won't know that an employee is working overtime unless the employee's time is properly recorded. Consequently, it is absolutely vital to train your supervisors on wage and hour law and your organization's policies. Make sure that they understand that employees must be compensated for all hours worked. If overtime is not going to be authorized, make sure that they set realistic expectations and do not pressure employees to "just get it done" by working off the clock. Make sure that supervisors regularly check employees' time records to ensure that all employees are properly reporting their time. If your company tracks overtime and labor costs as a measure of supervisor performance, make sure that this is done in a way that does not encourage supervisors to cut corners and tolerate "off the clock" work, and audit time records for signs of abuse like unrealistically low hours or frequent manual edits by the supervisor.

It is perfectly legal to require employees to obtain authorization before working overtime hours, and to counsel or discipline employees who fail to follow this policy. But denying pay for "unauthorized" overtime may well cost you far more in the long run than you will save in the short term.

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