



That Little Smart Phone Might Cause a Big Wage and Hour Headache

By David Monks

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A smart phone is now as much a piece of your office life as a desk, laptop or employee handbook. Anyone can use their BlackBerry or iPhone to stay current on news and events, update social media status and check their email from any location with a signal.

For more and more people, that email checking usually includes a work email box. The potential dilemma: there are legal issues to consider when an employee uses technology to stay connected outside of work hours, even if the smart phone is not issued by the employer.

Recently, a police officer sued the City of Chicago on behalf of himself and others, seeking pay for time spent dealing with work-related phone calls, voice mails, emails, text messages and work orders via BlackBerry devices and similar "personal digital assistants." The officer contends that these activities entitle the group to an award of overtime compensation under the federal Fair Labor Standards Act (FLSA).

Today's Problems Meet Yesterday's Law

The idea of checking on work activities outside of work hours is neither a new phenomenon nor surprising. But the extreme proliferation of electronic communication devices into every part of our lives creates a new wrinkle and key issues that employers must address when it comes to smart phone use outside the workplace. The law (created 70 years ago) doesn't always relate to current real-life situations.

This issue won't be going away any time soon. Although there have been countless wage-and-hour claims on a variety of topics, there is no widely accepted legal definition about compensating for time spent on work projects after hours strictly using electronic communication. The fact is, even without a statute in place, employers need to begin looking at policies regulating and defining electronic communication use outside of work hours and what work constitutes "overtime."

Our Advice

One initial solution is to put in place procedures and systems that allow (and even require) non-exempt employees to keep accurate records of the time spent working using a mobile device. You may wish to create a special time sheet for this or a new online tracking code if your company uses a software-based or web-driven time management tool. Train employees to make a habit of submitting this record so that the activities can be counted along with their other work in order to compute wages.

Recently, the Department of Labor has gotten into the act and created an iPhone app that allows employees to keep their own time records. This is a powerful example of the ways technology can open the door for employees to be deceitful and manipulative in tracking time. It also seems clear that the DOL is doing this to help bolster wage-hour cases against employers.

Apps like this can be truly dangerous. There is a huge risk for mistakes and most employees have no expertise in what is considered to be work time under the FLSA (or applicable state law). This can lead to employees misreporting time that otherwise would not count as compensable hours worked.

Technology will continue to invade all parts of employee lives and further blur the line between work and personal time. Employers need to stay up to date on current information about potential impact of timesheet app entries in wage disputes.

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