



## TIPS ON AVOIDING WAGE AND HOUR LAWSUITS IN MASSACHUSETTS

### ***Tip #3: Conduct an Off-the-Clock Work Audit***

Even fair-minded employers, with sound policies, face “off-the-clock” claims. That is, employers have to defend against lawsuits in which employees argue that they worked hours for which their employers failed to pay them. Plaintiffs’ lawyers often assert these claims as class or collective actions. Your company may be vulnerable, but you can take steps that may mitigate the risk of off-the-clock claims, starting with an audit.

Off-the-clock claims come in various forms. Sometimes employees claim they performed work before or after the time recorded in their employers’ records. Other times, employees claim that they performed unpaid work during their shifts. Here are some common allegations:

- I sent or responded to work-related emails, phone calls, and/or text messages before or after hours that are not reflected in my pay.
- I spent time putting on or taking off safety equipment that the company made me wear, but I did not receive pay for that work time.
- I had to wait around before or after clocking in or out, but I did not receive pay for that work time.
- I worked through my meal break, but my supervisor or the company still made a deduction from my work time as though I took a break.
- I was not completely relieved of my work duties during my break, or there were restrictions on my freedom during my break, so I should have been paid during the whole break, but I was not.
- I was interrupted by work during my break, so I should have been paid during the whole break, but I was not.

In each of these cases, employees and their attorneys claim that the employers knew about the alleged uncompensated work time, or that they should have known about it. Defending against these claims can be difficult, because they involve disputes about employees’ ordinary conduct months or years earlier that—by definition—is not directly captured in employer records.

Eliminating the risk of off-the-clock claims may not be possible. But your company can mitigate the risk by reviewing its time keeping and payroll policies and practices. With guidance from a wage and hour lawyer, you can:

- Review your company’s written policies regarding work time and payment of wages. Even if lawful, such policies can sometimes be revised to make certain off-the-clock claims harder to assert.

- Review your time keeping procedures that employees, supervisors, and HR personnel follow so that you can identify any practices that might lead to inaccurate recording of work time.
- Audit a sample of actual time and pay records both for internal signs of inaccuracy and for inconsistency with other indicia of time spent working
- Audit your company's training practices regarding work time, breaks, and wage payment.

These steps can help a company ensure and improve the accuracy of its timekeeping before the company becomes a target of a costly suit. Moreover, if a company is sued, its diligent efforts to identify unpaid work can greatly strengthen its defenses.

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