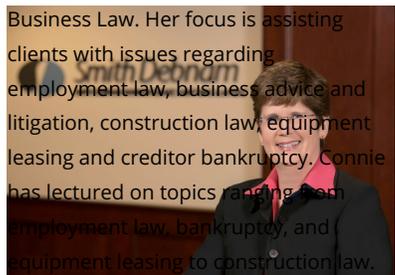


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ABOUT THE AUTHOR

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Department of Labor Issues Guidance On Recordkeeping For Remote Workers

August 31, 2020 | by

The federal Fair Labor Standards Act (“FLSA”) codifies the employment relationship as it relates to the payment of wages. The United States Department of Labor (“DOL”) administers the FLSA through its Wage and Hour Division. In that capacity, the DOL issues various forms of guidance that serve to clarify the FLSA’s provisions.

With many employees working remotely in response to COVID-19, away from any worksite or premises controlled by their employers, the DOL recently issued a Field Assistance Bulletin (“Bulletin”) to guide employers on their obligations under FLSA to track and pay employees for hours of compensable work accurately. The Bulletin notes that the Bureau of Labor Statistics estimated in 2019 that roughly 24 percent of working Americans performed some work at home on an average day. These arrangements have dramatically increased in 2020, with many economists predicting the practice of remote working will remain well into the future.

The Bulletin recognizes the long-standing FLSA requirement that if an employer knows or has reason to believe that compensable work is being performed, regardless of whether the work was authorized or requested by the employer, the time must be counted as hours worked, and the employee must be compensated for such work. A “best practice” for ensuring compliance with the law means requiring non-exempt employees to record and report the hours and minutes accurately that they work each day, regardless of:

- Where the work occurred
- When the work occurred
- Whether or not the time worked is part of the employee's regular schedule
- Paying for all such hours, even if not pre-authorized or requested by the employer

That being said, the Bulletin confirms that if an employer has a time-reporting procedure in place and an employee fails to report unscheduled hours through such a procedure, the employer is not required to undergo impractical efforts to investigate unreported hours of work nor compensate for those hours. However, merely providing a rule prohibiting unauthorized work is not sufficient. Employers have the power to enforce their rules and time reporting procedures, and they should make every effort to do so. However, an employer should never prevent or discourage its employees from accurately reporting the time they have worked, regardless of whether the time was preapproved, as the courts have consistently held that such a practice will not waive or limit an employee's right to be compensated for such time.

For employees who are working remotely, the Bulletin notes that the employer should have actual knowledge of the employee's regularly scheduled hours, and it may also have actual knowledge of hours worked through "employee reports or other notifications." While remote work may introduce logistical challenges to time tracking, employers are responsible for providing processes and training that ensure prompt and accurate reporting of hours worked by all employees. Employee certification that time records are correct and complete is a crucial component of a "best practice" timekeeping system. Time records should be reviewed by management as promptly as possible after submission for any issues, including with respect to unauthorized work. Employers should immediately investigate and remediate any problems to prevent ongoing concerns about such practices.

The main takeaway from this Bulletin is the importance of employers having appropriate processes and procedures in place for maintenance of employees' timekeeping records, wherever the work may be performed, along with the effective and consistent enforcement of those procedures.

If you have questions about this Field Assistance Bulletin or any other employment-related matter, please call [Connie Carrigan](tel:9192502119) at (919) 250-2119 or e-mail at ccarrigan@smithdebnamlaw.com.

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