

Show Me The Money! Wage and Hour Requirements Applied to COVID-19 Testing Time

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September 29, 2021



Recently, several of our clients have asked us whether they are required to compensate their employees for time spent going for the COVID-19 test.

Fortunately, the United States Department of Labor ("USDOL") has issued some guidance for employees on this topic in a section of its website related to COVID-19 and

the Fair Labor Standards Act ("FLSA").

When asked, "[i]f my employer requires COVID-19 testing **during the workday**, do I need to be paid for the time spent undergoing the test," (emphasis supplied) the USDOL opined:

Yes, under the FLSA, your employer is required to pay you for time spent waiting for and receiving medical attention at their direction or on their premises **during normal working hours**. Other laws may offer greater protections for workers, and employers must comply with all applicable federal, state, and local laws. (emphasis supplied)

But what about when the "employer is requiring [an employee] to undergo COVID-19 testing on [the employee's] day off before [the employee] can return to the job site?" Does the employee "need to be paid for the time spent undergoing the testing?" The USDOL responded to this FAQ with a very lawyer-like answer:

It depends, under the FLSA, your employer is required to pay you for all hours that you work, including for time on your vacation day if the task you are required to perform is necessary for the work you are paid to do. For many employees, undergoing COVID-19 testing may be compensable because the testing is necessary for them to perform their jobs safely and effectively during the pandemic. For example, if a grocery store cashier who has significant interaction with the general public is required by her employer to undergo a COVID-19 test on her day off, such time is likely compensable because it is integral and indispensable to her work during the pandemic. Other laws may offer greater protections for workers, and employers must comply with all applicable federal, state, and local laws. (emphasis supplied)

The most conservative and risk-averse approach would be to compensate your employees for their time spent undergoing COVID-19 testing, whether the testing is being done during regular work time or not. However, since particular facts may dictate the appropriate answer when the COVID-19 testing is being performed on an

employee's day off, for example, you should consult your attorney before making the call.

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