

Strategies for Avoiding Off-the-Clock Work While Working Remotely

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Employees are working from home at unprecedented numbers due to the Covid-19 pandemic. Working remotely is an abrupt change for nonexempt (hourly) employees who would typically clock-in and -out at the worksite under the direction of a supervisor. Such a major, unplanned operational shift can create challenges for employers wishing to remain compliant with wage and hour laws, including maintaining accurate time tracking and reporting by hourly employees. Further, employers in some states are required to provide meal and rest breaks to employees, even when they are working from home. Below, I discuss strategies for evaluating compliance of nonexempt employees who perform primarily computer-based work.

Employees will benefit from clear messaging from their supervisors regarding expectations around work activities and timing. Many companies are utilizing virtual meeting applications (e.g., Zoom, Skype, Google Hangouts, FaceTime) to host meetings and maintain connections among employees. Supervisors can use these applications to share information with employees, through either a live connection or a recorded message. Supervisors can conduct these meetings, similar to a typical in-person kickoff or start-of-the-day meeting at a worksite, virtually and use them to communicate clearly their expectations regarding work activities, time tracking, and time reporting to employees.

Employers can further help guide employees by creating detailed schedules with specific time segments allocated to different activities, including, if applicable, meal and rest breaks. These detailed schedules can be distributed through a shared calendar program, such as Outlook or Google, and can help to eliminate ambiguity about expectations concerning remote work.

In terms of tracking employee work time, numerous cloud-based programs enable employees to report their work time retrospectively (i.e., after the fact at the end of the workday). However, it may be advisable to require more detailed and frequent time entries. For example, employees can use a “timer function” to indicate when they start and end an activity. Other self-report methods support time entry by activity code,

a practice commonly used by attorneys and consultants. Tracking work at this level of detail and frequency will not only increase the accuracy of the data collected, but may also create employee accountability that can result in increased productivity and awareness of workflow.

The implementation of any new human resource policies, programs, and/or procedures will require initial training and assistance. Training protocols should include specific instructions regarding how to use new remote-based work reporting tools, as well as guidelines concerning which activities should and should not be reported as (compensable) "work." Employee compliance with new time-reporting guidelines should be integrated into existing performance-evaluation measures, and compensation should be used to motivate such compliance. Other, more immediate incentives, such as prizes and rewards, can also help motivate compliance.

If acquiring new programs and instructing employees to self-report time worked on a more frequent basis are impractical, employers may consider alternative methods to track how employees spend their time remotely. Technology allows for a range of tracking options, from keyboard strokes and computer log-in monitoring to company cell phone usage. It may be possible to analyze these data by time and duration to draw conclusions regarding employees' remote work time.

Alternatively, companies with a substantive preexisting remote workforce may provide their employees with "thin client" computers. Unlike traditional computers, thin clients provide a gateway to the company server—employees must be logged in in order to work. This function allows the employer to monitor the content and duration of employees' work. Access to a company server can be limited or denied, if necessary.

Software specifically designed for businesses that involve customer service by phone is available to maintain an ongoing stream of incoming and active calls, which are automatically routed to available employees. A supervisor can monitor this stream live to assess productivity. A program with this capability can be used to track the work of employees on an ongoing basis, and metrics are used to evaluate response times and customer satisfaction. This level of clarity regarding performance can be beneficial for both employers and employees, because it eliminates uncertainty and creates an immediate, visible link between effort and outcome.

Instant message programs are another way to check in with employees and determine whether they are at their computers. Some programs will automatically change an employee's status from "available" to "away" when an employee is inactive for a certain duration, which a supervisor can use to determine when an employee is present. In addition, depending on the type of work being performed, it may make sense to have "work teams" that are constantly connected via instant messaging during work hours. Companies may use this method to provide employees with immediate access to their supervisors and coworkers in order to send and receive information. This level of connection can be beneficial for morale and help remote employees to feel less isolated, which may have a positive impact on work quality and efficiency.



More passive methods, such as reviewing time stamps of emails and other messages to ensure that communication is not occurring “after hours,” can be effective. However, analyzing this type of information on a daily basis can create an administrative burden for the reviewer. Alternatively, periodic audits in which a supervisor can check timestamps at specific time intervals, such as once a week, may be useful. In some circumstances, it may also be possible to limit email access to specific time periods, which can help avoid after hours messaging.

In sum, numerous approaches exist to manage hourly employees working remotely. Many of these approaches, some of which were described above, leverage current technology. Should employers find evidence of off-the-clock work, they should act promptly to redirect employee behavior. Some employees, especially in certain geographical locations, have been working remotely for quite a while. However, given the greatly increased likelihood that the need for hourly employees to work remotely may last for quite some time, it may be worthwhile for employers to reevaluate current practices to reduce potential violations and maximize compliance with employment laws.

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