Wage-and-Hour Implications for Telecommuting

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The practice of allowing employees to work from home – telecommuting – is a growing trend. After all, today’s technology allows employees to work from almost anywhere, and telecommuting can be beneficial for both employers and employees. For employers, telecommunicating can be a less expensive alternative to traditional brick and mortar locations. Employees like telecommuting because of the flexibility it provides.

Unfortunately, the grass isn’t totally greener on the other side. Although telecommuting has its benefits, it can cause additional headaches for employers, and among the biggest ones are the potential wage-and-hour implications which telecommuting creates.

The Fair Labor Standards Act (FLSA) and many state wage-and-hour laws require employers to record the time which non-exempt employees work, and those recordkeeping requirements apply equally to telecommuters as they do to traditional employees. Of course, when employees work from home or are otherwise offsite, it can be difficult for employers to track the actual hours the employee is working. That’s why an employer must adopt practices which ensure that time worked is being recorded properly.

Employers should create policies which restrict the number of hours a non-exempt employee can work in any given week without company approval, strictly monitor for compliance with that policy, and take effective disciplinary action against any employee who violates it. Failure to strictly enforce an overtime policy will result in the employer being required to compensate an employee for any overtime that the employee works. It also can quickly and unexpectedly add up to a major expense.

Employers, however, must be aware that such policies do not necessarily shield them from having to pay unexpected overtime wages. Under the FLSA, if an employer knows or has reason to know that an employee is working beyond his or her shift, those additional hours must be counted, regardless of the employee’s reason for working. This can be a problem in the telecommuting context because of the lack of direct, physical supervision over employees, but even though it can be difficult to know how many hours a telecommuting employee is working, the burden remains on the employer to prevent overtime work that it does not desire. That takes us full circle back to the importance of enforcing your policy and administering discipline for violations of it.
Another consideration for employers is the time spent traveling to and from an office, which could unexpectedly be compensable time for telecommuting employees. Generally, under the FLSA, employers are not required to compensate employees for the time they spend traveling to and from work. However, if the employee has already started his or her principle activity, then any travel time to and from another location where work is performed may be compensable.

For example, a telecommuting, hourly employee may begin his or her workday in the morning at home by responding to emails for an hour. The employee may then be required to report to an office for a monthly meeting. The travel time to and from the office would likely be compensable in this scenario. Depending on the length of the telecommuting employee’s commute, this could quickly become a costly expense for any employer.

Employers must be cognizant of these and other wage-and-hour issues when determining whether an employee should be permitted to telecommute. As we mentioned, the failure to comply with these wage-and-hour requirements can be costly. That’s just one reason why running your telecommuting practices by competent legal counsel before implementation is advised.

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