

Here's a quick primer on employee compensation laws

By Steve Zach

Wisconsin municipal utilities are governed by the Fair Labor Standards Act (FLSA) and the Wisconsin Fair Employment Act (WFEA) which require them to pay their employees for all hours worked at least at the minimum wage rate.

"Hours worked" generally includes all time an employee is required to be on duty, on utility premises or at a prescribed workplace, and all times when an employee is "suffered or permitted" to work for the utility. Work performed off utility premises must generally be compensated.

Specific issues utilities face in determining what constitutes "time worked" for which employees must be compensated include:

Meal and Rest Periods

Utilities are not required to provide meal periods for employees over the age of 18. Rest periods or breaks ranging up to 30 minutes in length are hours worked and must be paid. A meal period is not required to be paid if it is at least 30 minutes in length, the employee is completely relieved of work duties, and the employee is allowed to leave the utility work site.

On-Call Time

An employee must be paid for on-call time if the employee is required to remain on-call and cannot use the time effectively for personal purposes. The fact that an employee must carry a paging device, stay within a geographic range, and be able to arrive at work within a specified time generally does not mean that the on-call time is compensable. Specific facts will determine

whether the employee can use the on-call time effectively for personal purposes. Some utilities provide for on-call pay even if they are not required to do so under FLSA and can set the reimbursement schedule at any level. Even if on-call time is compensable under FLSA, a utility may establish a lower wage rate for such time as long as it is at least the minimum wage for all on-call hours.

Training and Seminar Time

Training and seminar time must meet all of the following criteria in order to be non-compensable: attendance is outside of the employee's regular working hours; attendance is voluntary; the training or seminar is not directly related to the employee's job; and the employee does not perform any productive work during such attendance. Otherwise, utility-related training is compensable time. However, employees who on their own initiative attend independent schooling after utility work hours are generally not compensated for those hours, even if the courses are related to their jobs and the utility pays the tuition.

Travel Time

Travel from home to work at the beginning of the day and from work to home at the end of the day is not compensable work time. Travel that occurs within an employee's workday is generally always considered work time, but there may be exceptions if an employee is working remotely and travels to the office during the work day. When an employee takes a one-day assignment outside of the employee's normal work location, all travel time is considered time worked, but the employee's normal commuting time may be deducted from the travel

time on that day. Travel that keeps an employee away from home overnight is compensable under Wisconsin law, even though FLSA only requires that the travel time which cuts across the employee's regular work day be compensated. Any work performed while traveling is considered work time. An employee who is required to drive a vehicle is considered working while driving. A utility may count as hours worked either the time spent driving or the time it would take to use public transportation if an employee is offered public transportation, but drives his or her personal vehicle instead.

Email/Phone Calls/Texts at Home

Time employees spend outside of normal work hours checking and responding to email or engaged in similar remote activities is generally compensable work time, unless that activity only takes less than a few minutes, in which it is considered de minimus and not compensable. Other factors in determining whether such activities involve non-compensable de minimus time are the practical difficulty of tracking the time, the amount of overall time spent, and whether the work is performed on a regular basis.

As seen, the determination of whether an employee's time is compensable time worked often requires examination of the specific facts of the situation in light of the general criteria set forth here. ●



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