

Wage & Hour Insights

Guidance & Solutions for Employers



Wage & Hour Law On Campus - Your Webinar Questions Answered

By [Bill Pokorny](#) on October 06, 2011



Last Wednesday, my partner [Ed Druck](#) and I hosted a webinar on wage and hour law for colleges and universities. (For those who missed it, you can check out the [recording](#).) We had a great turnout and a wonderfully responsive audience. We were thrilled to receive nearly 50 questions, but could only get to a handful of them during the webinar. Over the next several weeks, we will try to answer a number of them here on the blog. If we don't get to yours, please feel free to [contact me](#) or [Ed](#).

For those of you outside the realm of higher education, worry not: this will be worthwhile reading for you too, as the issues raised by our webinar audience apply to a wide range of employers.

To kick off the Q&A, let's start with a question we got from several of you about on-call time:

Q. Our Resident Advisors are treated as employees and paid through the payroll. During certain hours they are required to be accessible by phone, but not necessarily in their rooms. From midnight to 8:00 a.m., they are required to be in the dorm and available to maintain order or respond to calls from students. However, most of this time is spent on personal activities or sleeping. Do we have to pay for this time? If so, can we pay a lower "on call" rate of say \$1 per hour?

A. Under the Fair Labor Standards Act, the key issue in determining whether an employee is "working" while on call is whether the employee is "engaged to wait" or "waiting to be engaged." Generally speaking, if an employee is required to be in the building during certain hours and is not free to leave, then even if the employee spends the time sleeping or reading a magazine the time is considered work time. There is an exception to this rule for employees with shifts of at least 24 hours - in that case, an employer can, by agreement with the employee, deduct no more than 8 hours for sleeping time. However, that circumstance generally will not apply to RAs.

On the other hand, if an employee merely has to be available to respond to a call by cell phone, or to report to a worksite within a reasonable period of time, but is otherwise legitimately free to go about his or her personal activities, then the time will not be considered work time. Of course, any time

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spent actually responding to calls that do come in would be considered work time and would have to be compensated as such.

Exactly where this line is drawn can be fuzzy. For example, if an employee is expected to report to work within 15 minutes of receiving an emergency call, that short response time may severely limit the employee's ability to go about his or her personal activities, and may result in the on-call time being considered work time. Exactly how long the response time would need to be, however, will depend upon various factors such as location and commuting distances.

So, in the situation described, the employee RA who merely has to carry a cell phone and answer calls if they come in would likely fall into the "waiting to be engaged" category, and that time would not need to be paid (at least for purposes of the FLSA). On the other hand, an RA who is required to be in the dorm to respond to emergencies or student needs during certain set hours is not free to go about his or her business, and would likely be considered to be "working" during those hours even if most of the time is spent asleep or watching TV.

For any "on call" time that would be considered work time under the FLSA, the employee is entitled to receive at least the minimum wage and overtime for any hours worked over 40 in the workweek. However, you can agree with the employee will be compensated for "on call" time at a lower rate than other work time, so long as the rate is still at least the minimum wage. For example, if an employee usually earns \$15 per hour, you could agree to pay only the minimum wage for any "on call" time. And you can always agree to compensate employees for "on call" time that is not considered work time.

Check back with us next week for answers to more of your questions! Thanks again to all who attended!

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