“Pre-Shift” Does Not Mean “Before-Shift”: Are Your Pre-Shift Meetings Violating The FLSA?

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The popular workplace practice of holding a “pre-shift” meeting to set the tone of the workday and communicate important announcements can be very beneficial and may even boost workplace morale. But don’t be fooled by this common “pre-shift” misnomer. If your meetings are not accurately recorded as worktime when computing non-exempt employees’ wages, you may be violating the law and exposing your company to liability.

“Pre-Shift” Meetings Could Run Afoul Of FLSA

Under the Fair Labor Standards Act (FLSA), employees must be paid for every hour they are “suffered” or “permitted” to work. Activities that occur before the official time a shift begins are compensable if they include tasks the worker is employed to perform or are an “integral and indispensable part of” the job.

This can include rolling silverware, reviewing proper dealing procedures, retrieving a cash bank, collecting a supply cart, logging onto a cash register, or handing off a section to the employee scheduled for the following shift. Several court cases have found that time spent setting up a work station, attending a “roll-call” with management, reviewing policies, and receiving section assignments are all activities warranting compensation.

While most companies are vigilant about avoiding off-the-clock work, there still exist those rogue managers who demand employees arrive early for their shifts, or whose personal philosophy can be best captured by the statement: “What’s the big deal over just 10 or 15 minutes?” Those 10 or 15 minutes add up, especially when you have hundreds or thousands of workers arriving early for their shift. Even a few affected employees could lead to massive liability.

It is essential that your managers, supervisors, and department heads understand that just because a meeting is described as “pre-shift” does not mean the activity falls outside of what is considered compensable worktime. f management holds a meeting that concerns work, employees must be paid for this time. Just because employees all congregate around the time clock while waiting to clock in (especially if the employer restricts when clock-in is allowed) does not mean they are up for grabs for management to just “pull them into a quick meeting” without being paid.

Confusion Over *De Minimis* Rule

Companies sometimes believe pre-shift meetings are not compensable if they only take a few minutes. This may stem from a misreading of the *de minimis* rule, which is concerned with the practical administrative difficulty of recording small amounts of time for payroll purposes. Companies should not be misled, however; under the FLSA, there is no amount of time – no matter how small – that an employer may arbitrarily ignore when counting hours worked.

Some courts have started to view the *de minimis* rule as outdated, an antiquated holdover from a time when timekeeping was manual and inexact. The U.S. Supreme Court even hinted that the *de minimis* exception will have no place as a defense in future FLSA cases. In the 2014 *Sandifer v. U.S. Steel Corp.* decision, the Court said the rule "did not fit comfortably" with the case before it, and opined there was no clear reason to disregard a small amount of time when calculating compensation.

In this day and age of the exact, "to-the-second" time clock, it is not surprising that courts are trending away from such an exception. You should ensure your managers do not assume 10 minutes, or even smaller amounts of time, will escape the attention of the courts or a government investigator, particularly if the time is devoted to an activity initiated by the company or appropriated for your benefit.

Employers using a timeclock system that automatically adjusts employees' actual clock-in times to the scheduled start of the shift should proceed with caution. For instance, if an employee clocks in at 8:55 a.m. but the system automatically modifies the clock-in time to 9:00 a.m. – the employee's scheduled start time – even when the employee actually started working at 8:55 a.m., you should be wary of wage and hour danger.

What would happen if the manager routinely holds a mandatory "pre-shift" meeting from 8:55 a.m. to 9:00 a.m. every day? The manager may believe nothing is wrong because the employee is technically "clocked in." However, this activity could expose the company to liability because the system causes five minutes of compensable time to be ignored.

5 Best Practices

To avoid potential violations, you should consider implementing these five best practices:

1. Instruct managers that employees are not to be required or permitted to perform work prior to clocking in; all worktime should be accurately recorded.
2. Make sure the start of shift meetings are properly recorded and accounted for when calculating the employee's legally required wages. Consider keeping logs of the date, time, and length of each mandatory pre-shift meeting, and routinely reconcile these logs with employee time logs.
3. Investigate all claims of "pre-shift" work. For example, if you hear employees talking about their pre-shift meeting, you should clarify whether the employee was compensated for that meeting or whether it was off-the-clock. Obviously, if it's the latter, step in and correct the situation.

4. Add handbook policies stating the company will never permit any employee to work without being compensated, and any employee who feels they are being asked or allowed to work off-the-clock should immediately report the matter to human resources.
5. Review your timeclock policies and practices and consider them in light of the current legal standards regarding pre-shift meetings. Adjust your policies and train your managers as necessary to comply with these lessons.

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