

Wage and Hour Compliance Challenges From the Increased Use of Technology in the Workplace

Minimizing Risks Involving "Hidden Work," On-Call Scheduling,
Meal Breaks, Defining "Work," "Continuous Workday Rule", and More

THURSDAY, JUNE 1, 2017

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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A Matter of Time: Managing Wage Hour Risks in a Digitally Connected World

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Addicted to Technology?

phub·bing /'fəbiNG/

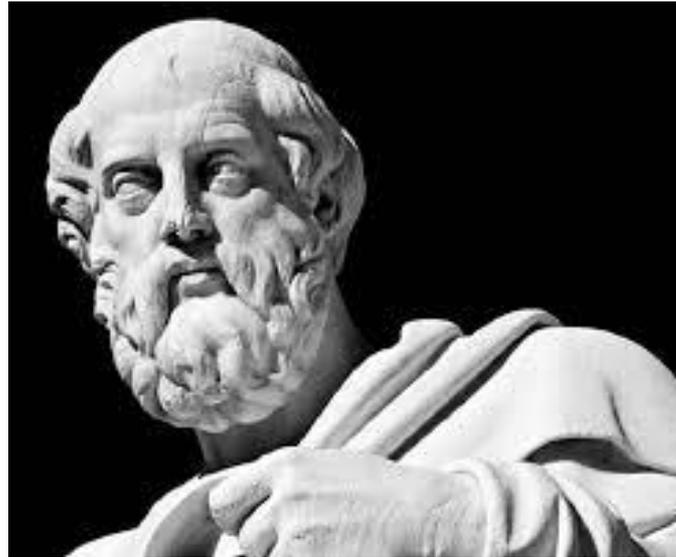
the practice of ignoring one's companion or companions in order to pay attention to one's phone or other mobile device.



What is Work?

- ◆ FLSA does not define “work.”
- ◆ Early Supreme Court decisions establish a broad definition of work.
- ◆ Portal-to-Portal Act of 1947 excludes certain activity from the scope of compensable work.

The “De Minimis Rule”



De minimis non curat lex
“the law does not take account of trifles”

The “De Minimis Rule”

- ◆ Three factors:

1. The practical administrative difficulty of recording the additional time;
2. The size of the claim in the aggregate;
3. Whether the employees performed the work on a regular basis.

On Call Time

- ◆ Can an employee use the on-call time effectively for his or her own purposes?
- ◆ How significant are the restrictions?
 - Excessive geographical restrictions;
 - Frequency of calls;
 - Fixed time limit for responses;
 - Ability to trade on-call responsibilities;
 - Ability to engage in personal activities during call-in time.



On-Call Shifts



The screenshot shows a web browser window displaying a news article. At the top, there is a dark blue navigation bar with white text for 'OUR OFFICE', 'MEDIA CENTER', 'DIVISIONS', 'RESOURCES', and 'INITIATIVE'. Below the navigation bar is a breadcrumb trail: 'Home » Media Center » Press Releases » December 20th 2016'. The main heading of the article is 'A.G. Schneiderman Announces Agreements With Six Major Retailers To Stop On-Call Shift Scheduling'. Below the heading is a sub-headline: 'Disney, Aeropostale, David's Tea & Other Retailers Agree To Cease Burdensome Scheduling Practice Following Multistate Investigation; Agreements Will Benefit An Estimated 50,000 Workers Nationwide'. A paragraph of text follows: 'These Are Latest In Series Of Groundbreaking National Agreements Secured By NY AG's Office To End On-Call Scheduling At Major Retailers'. The main body of text begins with 'NEW YORK - Attorney General Eric T. Schneiderman, along with attorneys general from seven other states and the District of Columbia, announced that six major retailers have agreed to stop using on-call shift scheduling following an inquiry by the multi-state coalition of AGs. An'. The browser's status bar at the bottom right shows a magnification level of 150%.

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Home » Media Center » Press Releases » December 20th 2016

A.G. Schneiderman Announces Agreements With Six Major Retailers To Stop On-Call Shift Scheduling

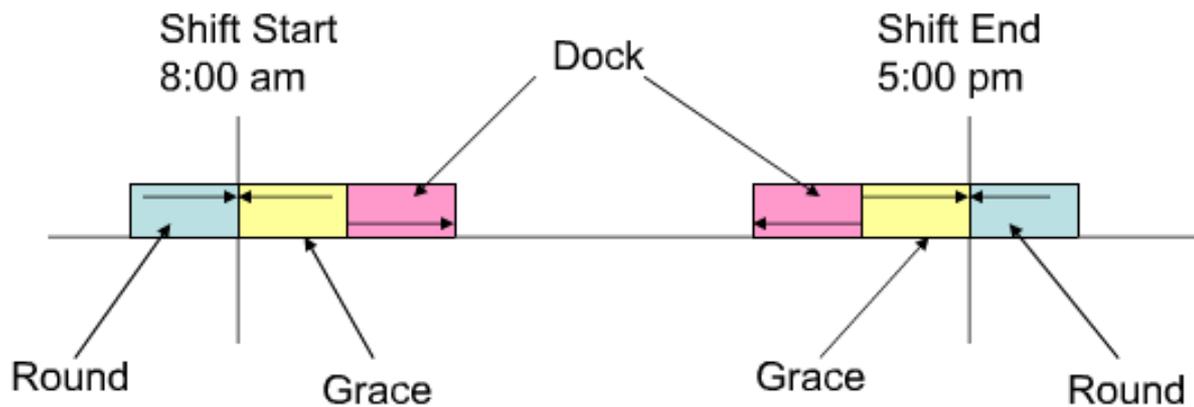
Disney, Aeropostale, David's Tea & Other Retailers Agree To Cease Burdensome Scheduling Practice Following Multistate Investigation; Agreements Will Benefit An Estimated 50,000 Workers Nationwide

These Are Latest In Series Of Groundbreaking National Agreements Secured By NY AG's Office To End On-Call Scheduling At Major Retailers

NEW YORK - Attorney General Eric T. Schneiderman, along with attorneys general from seven other states and the District of Columbia, announced that six major retailers have agreed to stop using on-call shift scheduling following an inquiry by the multi-state coalition of AGs. An

150%

Rounding



Rounding must be facially neutral; and neutral as applied.

“Continuous Workday Rule”

- Normal commuting time is not compensable.

But ...



- Once the workday has begun, all travel that occurs between the beginning and end of the work day is part of the continuous workday, and must be included in hours worked.

Hidden “Work”

- Employer must have actual or constructive knowledge that “work” is being performed.
- Is mere access to information that work is performed enough?



Meal Periods

- ◆ DOL regulations require employees to be “completely relieved from duty.”
- ◆ Courts apply “predominant benefit” test.



Administrative Exemption

Requires exercise of discretion and independent judgment with respect to matters of significance.



Reducing Exposure to Wage and Hour Risks Resulting from Use of Technology

- ◆ Implement clear policies requiring employees to record all hours worked, wherever performed.
- ◆ Require employees to verify each week in writing that all time spent working in and outside the office has been recorded.
- ◆ Consider prohibiting non-exempt employees from performing work outside the office and discipline employees who violate the policy.
- ◆ If non-exempt employees work from home, make clear work performed at home does not need to be performed immediately before or after the workday.

Reducing Exposure to Wage and Hour Risks Resulting from Use of Technology

- ◆ Consider only providing smartphones to non-exempt employees and configure computer systems to prohibit non-exempt employees from accessing company servers or e-mail after regular work hours.
- ◆ Train employees and managers regarding the need for an uninterrupted meal period.
- ◆ Limit restrictions for employees who are on-call or consider providing compensation for on-call time, but at lower hourly rate.

THANK YOU

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