



## Reducing an Employee's Wages for Non-Productive Hours

Meetings, trainings, travel, and even on-call time can and will be incurred at some point in your businesses quest to deliver optimum service. This often leaves employers asking themselves two important questions: (1) Am I required to pay an employee for time spent training? And (2) If so, how much?

### On-Call Employment

An employee "engaged to wait" is generally considered to be working under the Federal Labor Standards Act (FLSA), and therefore entitled to compensation. Alternatively, an employee who is simply "waiting to be engaged" is generally not considered to be working. While the distinction may be obvious in some cases, in others it is not easy to determine whether an employee is "on the clock" for the purpose of calculating the number of hours worked. Thus, it is important to examine the nature of the time spent waiting. One good test is to consider the control you have if someone did not tend to an on-call task. For example, if you have an employee who answers emergency phone calls during times the business is closed, are they subject to discipline if they do not answer the phone? Are they required to refrain from engaging in any activities that may impair their ability to perform their duties, such as alcohol consumption? Do they have to respond within a certain time frame? Or, are these tasks executed at the discretion of the employee?

Another issue is communication during an employee's off time. When an employee is off the clock, they have no obligation to reach back to you or communicate with the practice. Although it may be difficult, it is important you realize that as a business owner you may have an "always on" mentality; but your employees may not.

In short, the more constraints an employee has, the more likely it is that the 'on-call' time is compensable. Should you find that you do in fact need to compensate your staff for their time spent "waiting to be engaged," you do have the option to pay the waiting time at a reduced rate, which will be explored further in this article. (See *Non-productive Work & Reduced Wages*)

### Meetings and Trainings

For voluntary meetings/training: You do not have to pay for anything. If a meeting, training, course, lecture is voluntary for an employee, they can attend at their own discretion and incur those costs on their own. You could offer to compensate for certain things if you'd like, as a way to encourage employees to attend events or earn certifications, but you can in no way imply that if an employee *does* voluntarily attend training or meetings they will be treated better, or differently in general. Therefore, it could be easiest to avoid any offerings altogether. However, if you do offer to compensate or reimburse expenses, it's a best practice to outline the details in a memo or office posting so that it's clear the event is voluntary, and the expenses paid are only given as a courtesy to employees.

The FLSA requires that **employees be compensated for all training or meeting time**, unless ALL four of the following standards are met:

1. Attendance is voluntary
2. It is outside normal office hours



3. The training/meeting is not directly related to the employee's job
4. The employee does not perform any productive work

Unless all four of these are met, you must compensate the employee for those hours worked.

**For mandatory meetings/training:** If the meeting does not pass the above stipulations, the employee will need to be paid for the time spent at the meeting or training. Additionally, the employee must be reimbursed for expenses regarding the travel to this event. (See *Travel Time*) Usually, meal and rest breaks are built into events. Just like at your office, rest breaks are on the clock, while meal breaks are not (unless the employee is not free during the meal break, for example if a speaker is lecturing through lunch). **In addition, you will need to compensate your employee for overtime if the time spent in training leads to the employee working more than 40 hours that week, or 8 hours in a day depending on your state.** (See *Non-productive Wages & Overtime*)

Like on-call time, meetings and trainings are considered non-directly productive work, meaning it may be compensated at a reduced rate. (See *Non-productive Work & Reduced Wages*)

## Travel Time

All time spent traveling for mandatory work events, including trainings, meetings, seminars, etc., must be compensated. Additional reimbursements regarding travel time are:

- **Mileage (currently 54.5 cents per mile in 2018).** Mileage will be calculated from the office or the employee's home to the designated location. This can be calculated by using Google maps or some other GPS mapping resource—typically the easiest way to calculate this is to have the employee come to the office first, then head to their location so you can guarantee that travel time and mileage is accurate.
- **Parking fees.** Fees regarding parking of personal vehicles is subject to reimbursement. You may designate a stipend that restricts spending to an allotted dollar amount. Additionally, all employee should be made aware that receipt verifications are required for all reimbursements.
- **Public transportation (including Uber/Lyft/taxi/rideshare services).** Public transportation is subject to reimbursement. If you are not compensating mileage for employees using their own car, then you will need to compensate for transportation via public transportation. Like all reimbursements, employees should be made aware that they are responsible for receipt verifications for all reimbursements.

Like meetings and trainings, travel time is non-directly productive work meaning it may be compensated at a reduced rate. (See *Non-productive Work & Reduced Wages*)

## Non-Productive Work and Reduced Wages

**You are able to pay an employee at a reduced rate for non-productive work, including trainings, meetings, travel time, and on-call time. The only stipulation is that you cannot go below the federal (and state, if applicable) minimum wage rate.** Additionally, to implement a reduced, non-productive wage, you must ensure you have a detailed policy outlining: the wage, qualifying eligibility of meetings and trainings, and how overtime is computed—this should be outlined in the employee handbook or a standalone policy, at the very least. Lastly, like any hours worked, reduced rates should always be clearly recorded as such.



## Non-Productive Wages and Overtime

If the employee incurs overtime while under the lower rate of pay, the overtime must be paid out at the employee's normal overtime rate, or at a weighted average/blended rate—the overtime rate cannot be calculated using only the reduced “meeting and training” rate of pay. While weighted/blended rate overtime calculations can sometimes be quite intricate, the general rule is that an employee must be paid at a rate of not less than 1.5 times the weighted average of all non-overtime hours that contributed to that workweek. Because all hours contribute to overtime, the blended rate ensures that all hours are taken into consideration, and ensures employers are not strategically only scheduling trainings and meetings at the end of the day or workweek.

Implementing a reduced non-productive wage is very complex. It's imperative that you take the proper steps to outline a detailed policy that protects you from future employment claims. For assistance implementing a non-productive reduced wage, contact an employment law attorney or HR professional.