



## Paying Employees Correctly

The issue of overtime pay continues to haunt resellers as difficult economic times cause employees to look closely at their employment compensation. The rule for outside salespeople is easy they are exempt employees that are not entitled to overtime compensation. It is the remainder of your work force that causes problems. The Fair Labor Standards Act (FLSA) distinguishes between exempt and nonexempt employees, as well as employer obligations to properly compensate such employees for hours worked. Under the FLSA, nonexempt employees must be paid for all hours worked in a week and must receive overtime pay for all hours worked in excess of 40 hours in a one-week period and in California, an eight hour day. Resellers have grappled with meeting these requirements and otherwise complying with the various wage payment laws. To avoid landing in hot water, employers should tread carefully when determining payment for nonexempt employees.

If a technician is waiting for his or her next call and has nothing to do in the meantime, do you pay him? "Waiting time," during which the employee is not productive due to lack of work or assignments, but is still required to remain in the workplace while waiting for work or assignments, is considered compensable time. Of course, an employee that is given the option to go home and return after a certain number of hours, but chooses to wait at the workplace instead, is not entitled to compensation for such waiting time.

Are mandatory company meetings and seminars compensable? If time in the workplace is spent attending a mandatory lecture, training program or other meeting (including a mandatory social event), such time must be counted as "compensable time". This is particularly true if the mandatory meeting involves material directly related to the employee's job and is performed for the benefit of the employer. However, if the meeting were voluntary (e.g., a team building exercise occurring outside of work hours), rather than mandatory, hours spent attending such a meeting would not be compensable.

Your technicians are required to submit a call report every evening of their calls during the day. Employees must also be compensated for "off-the-clock" time, which includes time spent working before or after the employee's scheduled shift or during a scheduled work break (e.g., lunch), even if the work is performed from home, and even if the work simply consists of responding to work-related emails from home.

When do technicians dispatched from home go "on the clock"? Although employees are not entitled to compensation for ordinary travel between the home and the workplace, they are entitled to compensation for "work travel." Employees must be compensated for travel time spent in excess of ordinary travel to the office when dispatched from home.

Every reseller should pay special attention to the compensable time issues described above. Resellers should continually ensure their exempt and nonexempt employee classifications are accurate and up-to-date. Employers also should develop and implement compensable time policies and work rules that require employees to report all hours worked. Such policies and work rules also should include disciplinary provisions for employees who fail to report hours worked, or who fail to obtain appropriate permission from their supervisors prior to performing work outside of their scheduled shifts. Compensable time issues often spell disaster for even the most well meaning reseller. Accordingly, employers must stay informed and remain focused on ensuring compliance with the relevant wage payment laws. C



### About Bob Goldberg

RSPA Attorney  
Schoenberg, Finkel, Newman & Rosenberg, LLC.

Bob is a recognized authority in the area of trade regulation, antitrust, franchising, distribution channels, contract relations, and complex litigation. He advises several major corporations and numerous trade organizations including the Business Technology Association, Association of Independent Mailing Equipment Dealers, North American Retail Dealers Association and others. He has served as an Assistant Attorney General in the Antitrust Division as well as a staff attorney on the FTC.

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