



SHOULD HOURLY WORKERS RECEIVE COMPENSATION FOR MOBILE ENGAGEMENT?



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The world is becoming more mobile than ever—especially the work world. But with the introduction of new technology comes uncertainties and legal considerations around the way your employees will engage with it. Despite the fact that 83% of American workers own smartphones that they keep within eye contact at work, the question still remains:

Should non-exempt workers be compensated for using your company's mobile app outside of work hours?

Here's the thing—we at Emplify are not legal experts. We're mobile employee engagement experts. So if you have specific concerns, be sure to consult the professionals. At the same time, we work with organizations like yours on a regular basis, and we've compiled a list of tips and best practices to help you navigate the waters.

History

In 1938, the US government enacted the Fair Labor Standards Act (FLSA) into law. In the wake of economic recession, the FLSA established basic employment guidelines like minimum wage, no child labor, and overtime. Specifically, it stipulated that non-exempt employees (e.g. hourly, line workers, etc.) be paid time and a half for all hours worked over 40 in a given week—something very much still in practice today. But the FLSA was written for a world landscape vastly different than the one today.

Times have changed, and we need to address our evolving, technological world—specifically one trending toward mobile employee engagement.

Mobile App Usage by Hourly Employees

With the current rise of mobile employment apps, businesses will naturally raise questions around what constitutes payable overtime for non-exempt employees. (e.g. “Should an entry-level marketing assistant be paid overtime for receiving and taking action on a push notification from a manager outside their normal working hours?”) Employment law can be perplexing and precarious to those unfamiliar with it, but it doesn't have to be.

Continuous Workday

The FLSA follows the continuous workday principle, which states that employees are paid for the period of time between commencement and completion on the same workday of their principal activities. So in the same way that time spent traveling to and from work is not expensable, participating in work-related activities (like accessing the company's mobile app) that are preliminary (before) or postliminary (after) to the principal workday aren't payable overtime hours either.

De Minimis

Some time spent outside the continuous workday is too trivial to merit consideration—a quick phone call, an email, a brief conversation. Courts typically deem this time “de minimis” and generally determine it based on three factors:

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

There is no clear-cut, bright line test for determining de minimis time, but courts have considered **anything less than ten minutes** to fall in this category of ineligibility for overtime compensation.

Terms to Know

Continuous workday — the period of time between the commencement and completion on the same workday of an employee's principal activities.

Principal activities — activities that are integral and indispensable to the employee's contracted role.

Preliminary activities — activities that take place before commencement of principal activities (e.g. commute to work).

Postliminary activities — activities that take place after the completion of principal activities (e.g. commute home).

Tips and Best Practices for Increasing Engagement

We don't give legal advice. But these tips and suggestions can still help you steer clear of violating the FLSA when communicating to non-exempt workers:

- **Ensure that employees know what's required and expected of them.** Reviewing notifications and logging in to the mobile application shouldn't have to interrupt family dinner. As the employer, you can even go so far as to only send content during normal work hours.
- **Craft all messages and activities to be short and sweet** (kept well under the 10 minute de minimis work time limit). That's the beauty of mobile apps—rarely does a task require more than that. *In fact, analytics from the Emplify Mobile App Studio show that average session time is about 35 seconds, proving that quick, efficient, real-time content is the true differentiator of apps.*
- **Utilize features like app user groups to target (or avoid) specific recipients.** Feeling uneasy about sending communications to hourly workers after quitting time? Avoid the problem entirely by placing exempt and non-exempt workers into two separate app user groups so you only send to salaried employees after hours.

WHAT

WHO

WHEN

Audience *Who is this message for?***Current** [Users in Categories](#)**Categories** *Assign this message a category for filtering*

General & Administration



Product & Engineering



Marketing

**NEXT** *When should this message be delivered?*

App user groups allow you to segment employees into various categories (like exempt or non-exempt) so you can keep messages more controlled and relevant.

The Future of Tech at Work

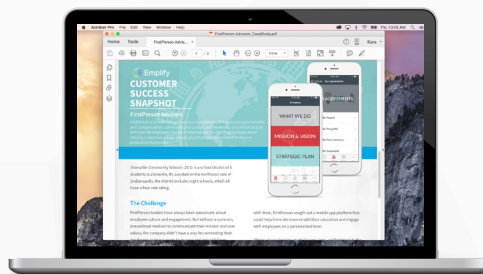
The Department of Labor has yet to account for our evolving, mobile-first world. But until it does, these safeguards will ensure that you can reap the vast benefits of operating a company mobile platform while simultaneously protecting and caring for your employees.

Visit emplify.com for more helpful employee engagement resources.



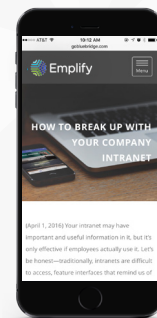
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