



‘On-Call’ – ‘Engaged to Wait’ or ‘Waiting to be Engaged’?©

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How should you compensate non-exempt employees for ‘on-call’ time? Do you know the difference between ‘waiting to be engaged’ and ‘engaged to wait’ as defined by the Department of Labor Hours and Wage Division (“DOL”)? According to the DOL regulations an ‘on-call’ employee who is required to remain on the employer’s premises or so close in proximity that he/she cannot use the time effectively for his/her own purposes is working while ‘on call.’ Hmm, do you think you there is a pay issue that needs attention? Your practice must take care in administering ‘on-call’ time to avoid wage and hour compliance issues.

Let’s look a little farther into the criteria of how much freedom an ‘on-call’ employee has to live his/her personal life without restriction as to going where he/she wants and in doing what he/she wants, during the wait time.

- **Geography** - How far can an ‘on-call’ employee stray from the jobsite? The more constraints he/she has, the more likely it is that ‘on-call’ time is compensable.
- **Response Time** - How quickly must an ‘on-call’ employee respond? That frequently impacts how far away he/she can be. The less time allowed, it is compensable while the longer time allowed, it is not.
- **Uniqueness** - How many of the practice’s employees are skilled to perform the needed work? If there’s a pool of employees available, and employees can trade off the ‘on-call’ responsibility, there’s less evidence that any one of them is restricted personally.

The degree to which you restrict the employee’s freedom while ‘on-call’ will impact your pay obligation.

How does your practice define and document ‘on-call’ time for non-exempt (hourly) employees? Do you require the employee to be on the premise? Do you require the employee to respond to the phone call immediately and be within 30 minutes of the practice? Do you permit the employee to use his/her wait time freely and is not assigned to performing a specific task? If your employee must carry a pager or cell phone while relieved of his/her specific duty and is not required to wait near the worksite, is that time compensated? And should that employee be paid overtime for all hours worked in excess of 40 in any given workweek, to include ‘on-call’ time?

Generally, the need for ‘on-call’ scheduling is in response to your practice’s needs, such as an emergency surgery for an animal that was being monitored or coverage for a shift. Examples of ‘engaged to wait’ time (the time spent is predominantly for the employer's benefit) that are compensable hours:

- You require your employee to remain on the premises after his/her shift has ended in anticipation of a non-scheduled procedure. Whether or not the non-scheduled procedure occurred, the employee's hours from when his/her shift ended to either the procedure/clean up has been completed or the procedure has been cancelled, are to be compensated.
- You require your employee, once he/she has completed his/her work schedule and has left the premises to be 'on-call' for shift coverage by responding to the phone call immediately and returning to the practice within 30 minutes thereby placing constraints on the employee's freedom. Whether or not the employee is called and returns back to the practice, the hours from when his/her shift ended until the end of the scheduled coverage shift are to be compensated.

If your practice defines 'on-call' as an employee who is able to use his/her time freely and is not performing a specific assigned task, that employee is 'waiting to be engaged'. Examples of 'waiting to be engaged' in which no compensation is required:

- The 'on-call' employee does not have to remain on the employer's premises, may engage in their own personal pursuits, and only have to leave word with the employer about where they may be reached, if needed. Therefore, being off duty, his/her 'waiting to be engaged' time is not compensated.
- The 'on-call' employee who is relieved of his/her duties (scheduled work is complete for the day) is required to carry a paging device or cell phone but is not required to wait near or at the practice. Since the carrying of the paging device/cell phone does not constrain the employee's personal time, the employee's 'waiting to be engaged' status time is unpaid.
- The practice's employee is scheduled to work from 7am-11am, then is completely relieved of all duties but is scheduled to work again 5pm-8pm. The idle time from 11am until 5pm ('waiting to be engaged') is not working time, does not restrict personal pursuits and hours are not compensated.

The practice may wish to consider paying an incentive or small stipend for the perceived inconvenience or burden to that individual who is 'waiting to be engaged'. If you do choose to provide an incentive/stipend, ensure the conditions under which it is earned are clearly defined.

Whether 'engaged to wait' or 'waiting to be engaged' as an 'on-call' employee, the practice's policy should address the requirement that an employee complies with the practice's alcohol and substance abuse policy and is 'fit' for work.

What about overtime calculations? The law characterizes such time as "hours worked" because the employee is 'engaged to wait' for the practice's benefit. In these situations, the practice must count these 'engaged to wait' 'on-call' hours when calculating any overtime due to the employee for the workweek.

Besides the Federal regulations, some state laws address pay for 'on-call' time. The practice should also check the appropriate state law as part of your compliance process. Don't let your 'on-call' pay practices become a violation of the FLSA's regulations which could result in your practice becoming a target for an hours and wage investigation.