



TRACKING REMOTE WORKERS' HOURS.

The U.S. Department of Labor's Wage and Hour Division published in late August a Field Assistance Bulletin ("FAB") to provide guidance regarding employers' obligations under the Fair Labor Standards Act ("FLSA") to track and compensate for hours of work performed by employees who are working remotely. Although the FAB was intended to respond directly to needs created by new work arrangements arising in response to COVID-19, it applies to all remote work arrangements. **The FAB is available here.**

In particular, the FAB addresses the need to pay for all hours worked, including work not requested but "suffered or permitted" and including work done at home. Generally, if the employer knows or "has reason to believe" that work is being performed the time must be counted as hours worked. One way for an employer to exercise the diligence required to satisfy the "reason to believe" standard is to provide a reporting procedure for non-scheduled time work and then compensate the employee for all reported hours of work, even those not requested. The FAB suggests that when an employer implements a reasonable reporting system to report unscheduled work, the failure to compensate an employee for unreported hours that the employer did not know about or have reason to believe were being worked would not violate the FLSA. Less clear is whether such an employer would also avoid a violation of Massachusetts wage laws.

What remains clear is that if an employer fails to pay nonexempt employees for hours the employer knew or should have known were worked, the employer is subject to the prospect of substantial liability, including a multiple of the unpaid wages under the FLSA or treble damages under the Massachusetts wage law, plus costs and attorneys' fees.

Contact a member of Bulkley Richardson's Employment Law Practice Group for more information or to have questions answered.



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