



## On-call Time

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Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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On-call time is time spent by employees in their own pursuits, usually away from the working premises, when the employee must remain available to be called back in to work on short notice, such as with a police detective. 29 C.F.R. § 785.17. The FLSA requires employers to compensate their workers for on-call time when such time is spent “predominantly for the employer’s benefit.” The regulations state that:

[A]n employee who is required to remain on-call on the employer’s premises or so close thereto that he cannot use the time effectively for his own purpose is working while “on-call.” An employee who is not required to remain on the employer’s premises but is merely required to leave word at his home where he may be reached or carries a pager or cell phone is not working while on-call

On-call time has become a contentious issue with the proliferation of cellular telephones and pagers. Many law enforcement employers require employees to maintain a working telephone to facilitate “call back” to duty in an emergency. Many employees use cellular telephones as their only telephone. Even if the telephone or pager is provided by the employer, requiring the employee to have a telephone or pager does not mean that the employee is “working” while off duty, even if the employee is “on-call,” as long as the employee is free to pursue personal activities during the on-call time.

**It is important to note that on-call payments may alter an employee’s regular rate of pay.** If the employer chooses to pay the employee for on-call time (for example, a specified amount of money or number of hours to be paid during the period of time the employee is “on-call.”), that would not otherwise be considered hours worked under the regulation. The additional compensation must nevertheless be included in the employee’s rate of pay calculation, thus increasing the hourly rate used to compute overtime pay. Of course, all payment for time actually worked must also be included in the regular rate calculation. 29 C.F.R. § 778.223.

Once the employee arrives at work after being called into service, all working time must be compensated. If this pushes the hours worked above the overtime threshold for the work period, overtime must be paid.

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