



## On-Call Time Under FLSA

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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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# Table of Contents

On-Call Time Under FLSA.....	3
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## On-Call Time Under FLSA

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On-call time is time spent by employees, usually off the working premises, in their own pursuits, where the employee must remain available to be “called back” to work on short notice. 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:

“... an 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 or with company officials where he may be reached is not working while on call.”

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 \$50 on-call payment per eight hour shift) that would not otherwise be considered hours worked under the regulation, that \$50 compensation nevertheless must be included in the employee’s rate of pay calculation for overtime. 29 C.F.R. § 778.221(b). 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 over 40 in a week or any other permitted schedule, overtime must be paid.

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