

## “On-Call” Time – Compensability for Hourly Employees

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### PURPOSE

The county recognizes that there is an occasional need for an hourly<sup>1</sup> employee to remain on call and available to be called back to work outside of normal working hours. Unless a collective bargaining agreement provides otherwise, whether or not on-call time is compensable is a fact-specific inquiry that must be done on a case-by-case basis.

Under the Fair Labor Standards Act (FLSA) and the Washington Minimum Wage Act (WMWA), the county must compensate hourly employees for on-call time when the employee’s time is spent primarily for the county’s benefit. This determination is resolved according to the unique circumstances of each case, thereby requiring consideration of the amount of freedom enjoyed by the employee while on-call, the agreement between the parties, the nature and extent of any restrictions, and all of the surrounding circumstances.

### PROCEDURES

Department of Labor regulations provide that when an employee is required to remain on-call on county premises or so close thereto that the employee cannot use the time effectively for his or her own purposes, the employee is working and the on-call time is compensable. Further, if the conditions of the on-call time are so circumscribed that they restrict the employee from effectively using the time for personal pursuits, the on-call time is also compensable. However, unless otherwise provided by a collective bargaining agreement, when an employee is merely required to leave work where he or she may be reached the employee is not working and the on-call time is not compensable.

The approval of compensation for on-call time for hourly employees is rare since most employees can use the time effectively for their own purposes. On-call time should only be assigned after consultation with the Human Resources Division (HRD) Operation Section. HRD will consult with the Prosecuting Attorney’s Office, when appropriate.

When requesting a determination from HRD as to whether or not on-call time is compensable, the following factors should be relayed for consideration:

- Whether there is an on-premises living requirement
- The general expectations of the on-call assignment
- The duration of the on-call assignment
- The number of employees who perform the work and the overall on-call schedule
- Any general restrictions placed on the employee while on-call
- The extent of geographic restrictions on an employee's movement
- The extent to which the employee actually engages in personal activities while on-call
- Whether there is a fixed time limit for response and, if so, potential consequences for failure to respond within the time limit

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<sup>1</sup> On call time is not compensable for employees who are exempt from the overtime pay and minimum wage requirements of the Fair Labor Standards Act (FLSA) and the Washington Minimum Wage Act, also known as FLSA-exempt employees. FLSA-exempt employees may be required to work a specific schedule set by their appointing authority and, in all cases, are expected to work the hours necessary to satisfactorily perform their jobs.

- Frequency of actual calls during the on-call time and the percentage of calls that the employee is expected to return
- Whether on-call employees would be able to easily trade on-call responsibilities
- Whether the employee has a pager
- Any applicable collective bargaining agreement provision

In general, the more flexibility an employee has, the greater the likelihood that they can engage in personal activities and therefore the time would likely not be compensable. It is important to note that requiring an employee to refrain from drinking alcoholic beverages or otherwise being impaired while on-call is not by itself sufficient to require compensation. No single factor will likely determine the compensability of on-call time. These factors are typically considered in totality.

If on-call time is determined to be compensable, it must be included as time worked and attributed to the workweek in which the on-call hours were worked. The on-call time may not be averaged over two or more weeks for the purposes of compensation.

This bulletin provides general guidance regarding the compensability of on-call time. Once the employee actually receives a call, the employee is performing work for the county and must be paid for all hours worked.

In the event that any provision of this Human Resources Bulletin conflicts with an applicable provision of a collective bargaining agreement or binding past practices thereunder, the latter shall prevail provided those terms are not less beneficial to the hourly employee than the minimum requirements of the FLSA and the WMWA.

#### **QUESTIONS/COMMENTS**

Refer all questions or comments via e-mail to the Human Resources Division Operations.