

Employer COVID-19 Precautions May Expand Compensable Time

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As the United States reopens, businesses are figuring out how to operate among unprecedented challenges. Chief among them is bringing employees safely back to the workplace while complying with laws that govern the employer-employee relationship. One issue that employers must consider is compensable time.

Many employers with hourly workforces know that it isn't always easy to determine what constitutes compensable time. In some instances, it is clear that an hourly employee must be paid for time spent performing the task he was hired to perform, but other instances are not so clear, such as when the employee is present at the workplace but is performing duties other than those he or she was hired to perform.

COVID-19 complicates this issue even further as employers confront new requirements to operate during the pandemic. For example, CDC guidance recommends that businesses conduct in-person health checks, which can include assessing symptoms and/or temperature checks, before employees enter the worksite. The CDC's guidance includes suggestions that lengthen the process, such as changing gloves and using hand sanitizer between employees.

If an employer has a large hourly workforce scheduled to arrive at the same hour, these screenings could take a significant amount of time. Must an employer pay those workers for the time spent waiting for, and undergoing, these pre-shift screenings?

Unfortunately, the answer to that question is not entirely clear. The analysis depends upon the specific facts of the position. Generally, in the context of pre- and post-shift

activities, employers are required to pay hourly employees only for tasks that are integral and indispensable to their principal activities. Some courts have determined that tasks that contribute to the safety of the employees and the public qualify as integral and indispensable and, thus, compensable. These tasks include:

- the post-shift time that battery plant employees spent showering and changing clothes, because doing so was necessary to protect the employees and their families from hazardous substances
- the time that detention officers spent undergoing pre-shift security checks, because the checks prevented contraband from entering the prison, which was necessary for the officers to safely and effectively perform their jobs
- the time that food processing plant workers spent donning protective clothing, because wearing the clothing was intrinsic to producing food in a sanitary manner

Given this reasoning, it is possible that time spent on health screenings is compensable, since the screenings are arguably integral and indispensable as they promote the health and safety of the employees and their families by preventing the spread of the coronavirus at the workplace. This reasoning could apply to other suggestions intended to slow the spread of the coronavirus in the workplace, such as time spent cleaning high-touch surfaces.

The bottom line is that there is no clear answer. Given the novel questions raised by COVID-19 and the fact-specific nature of the inquiry, employers wishing to avoid risk should consider compensating their hourly workers for time spent on pre-shift health screenings and other safety practices related to COVID-19. **HR**

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