

EAT, DRINK AND BE MERRY, ON YOUR OWN TIME AND YOUR OWN DIME!

QUESTION: Recently we sent an employee, Kelli, on a business trip to call on clients in Texas. Although she's one of our best sales employees, Kelli is not usually required to go on business trips and made it very clear to us that she did not want to go on this one. She informed us that she has an "ex" who lives in Texas, and that she did not want to leave her kids for an entire week.

But it's an important account, and since she used to live there she is familiar with the language and the local customs. We decided that Kelli had the best chance to win over the client and make the sale, and asked her to make the trip.

Kelli made her own flight reservations and insisted on taking the "red-eye" so she could sleep in transit. In the end, Kelli sealed a multi-million-dollar deal with the Texans. She also reunited briefly with her ex for an amicable dinner during which they laughed about old times.

The problem is, when Kelli submitted her expenses from the trip she included things we don't normally reimburse employees for, including her babysitter's pay, dinner and drinks with her ex, museum and sporting event admissions, movies she watched in her hotel room, and snacks and beverages (including an expensive split of champagne) from the hotel mini-bar. She also included every hour of the trip, 24 hours a day for 7 days, on her time sheet; a big ticket item since she is a non-exempt employee and is entitled to overtime pay.

Kelli is adamant that she should be reimbursed for all of her expenses as well as the time she spent traveling to and from Dallas. She is also insistent that the total time she spent there counts as work time. Kelli even included the time she spent packing for the trip and the time she spent sleeping on the airplane on her time sheet.

My question is, what expenses are we legally required to reimburse? In addition, how many hours of pay do we owe? Paying her to sleep, sightsee or catch up with old friends seems excessive?

ANSWER: You are legally required to pay Kelli for time she spent performing work while on the trip. You are also obligated to pay her at the overtime rate for any hours she worked beyond 40 hours in a workweek.

As for the travel time and expenses, here are the rules:

Travel time can be broken down into four basic types: "portal-to-portal" time (commuting time), travel between two work sites during the same work day, special assignment travel, and overnight stays.

Portal-to-portal is just a formal term for one's daily commute from home to the work site. It is not counted as hours worked.

Travel between work sites, if required by the employee's job, counts as hours worked and the employer must pay for the time an employee spends traveling from job site to job site.

Special assignment travel is when an employee is required to report to a job site that is in a different city and more than 30 miles from the employee's regular, fixed work station. Special assignment travel time is compensable time.

Overnight travel rules are a bit more complex than the previous three categories, and whether overnight travel time counts as paid time depends on the time of day the employee travels in addition to whether the employee is a passenger (in any type of transportation) or a driver.

If the travel time runs concurrently with the employee's regular work hours (this applies 7 days per week), it is paid time. If the employee is a passenger, and the travel time falls outside of regular work hours, travel time may be unpaid. If the employee is driving, travel time is paid even if it falls outside the employee's regular work hours. This rule applies unless the employer offers alternative transportation that would not require an employee to drive and the employee chooses to drive anyway.

Of course, any time an employee spends working while in transit also counts as paid time.

Paid travel time counts as hours worked when calculating whether an employee must be paid overtime. In other words, if an employee's travel time in addition to other work hours results in an employee working over 40 hours in a workweek, the employer needs to pay the employee at the overtime rate of pay for each hour over 40 hours.

Here's how the rules would apply to Kelli's trip to Texas. Since the trip involves an overnight stay, Kelli must be paid for the travel time that cuts across her normal work hours. This includes paying her for any travel time that occurred on Saturday or Sunday if it occurred during her usual work time (even if she does not usually work on Saturday or Sunday). However, the time that Kelli spent packing for the trip does not count as hours worked.

As for the time Kelli spent in Dallas, you need only pay for the time she spent performing work, without regard to whether the work occurred during regular business hours. Any time that she spent sightseeing and visiting with friends does not count as hours worked.

And now about those travel expenses. Though this comes as a surprise to many

employers and employees alike, employers are not generally required to pay for or reimburse employees for job-related expenses, unless the employee's payment of these expenses results in the employee's pay dipping below minimum wage (currently \$7.50 per hour). Remember, this rule contemplates only job-related expenses, so all of those things Kelli purchased that were not job related (dinner and drinks with a friend, for example) are not factored in to the calculation of whether her net pay is below minimum wage.

Of course, if employers have a policy or practice of paying employees' expenses, job related or otherwise, the employer must continue to comply with the company policy and treat employees equally with respect to the established policy or practice.

Keep in mind, too, that union agreements or company policies may provide for payment of travel time, training time or travel expenses over and above the minimum legal requirements described above.

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