

## HAVE YOU ESTABLISHED A POLICY FOR AFTER HOURS ONLINE WORK?<sup>1</sup>

By Daniel N. Janich

In the digital age work life balance is often difficult, if not impossible, to achieve. Many workers today are provided with company smart phones and tablets with the implied or explicit expectation that they will be available to respond to calls, emails or texts outside of normal working hours. However workers around the world are realizing that smartphones and tablets provide both mobility as well as a tether and, as such, their use comes at a price. Employees are expected to be available to work on a 24/7 basis. Even more so where the employer provides the smartphone or tablet.

Several lawsuits have already been filed dealing with the issue of whether an employer must pay employees for after hours work done on their smartphones and other digital devices. The problem is likely to expand with the advent of new Department of Labor rules that raise the pay floor used to determine workers exempt from overtime pay from the current level of \$23,660 per year to \$50,000 per year so as to make many more Americans subject to the FLSA overtime pay rules.

Have you addressed this issue yet for your employees? In my previous blog post I discussed the importance of updating your company handbooks to keep up with changing laws and employee working conditions. Employers need to address the use of digital devices to work after hours and its implications for overtime pay as part of this process.

### **Recommendation**

Employers must establish policies for their employees that clearly spell out their expectations and pay policies regarding after hours work on employer provided digital devices. Employees must understand that overtime pay will be paid only when work is done after hours on the smartphone or tablet at the request of the employer. Employees should not be paid for after hours work on the digital device that was initiated by the employee and not specifically requested by the employer.

In addition to describing the policy in the employee handbook, a copy of the policy should be provided to the employee when the company smartphone or tablet is furnished. In doing so, an employer will increase its likelihood of success in defending against overtime pay claims. This policy must remain in compliance with the now evolving FLSA overtime pay rules.

*Daniel N. Janich is a Partner at Greensfelder, Hemker & Gale, P.C. in Chicago. Dan has extensive experience representing clients in employment, benefits and compensation matters. [dnj@greensfelder.com](mailto:dnj@greensfelder.com); 312.345.5003. Copyright 2015. All rights reserved.*

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