
LAW

What constitutes work under Kentucky's Wages and Hours Law?

Under Kentucky's Wages and Hours Law, an employer must pay an employee for work performed for the benefit of the employer. No surprise there. We all expect to be paid for our work. But what exactly is "work?"

According to the Kentucky Department of Labor, work includes more than just an employee's productive time on the job. Work can also include an employee's non-productive time. If that time is used for the company's benefit, it could be considered work, no matter how it is spent.

Surprisingly, Kentucky statutes do not provide a definition of work. However, the department offers several illustrations that shed light on what constitutes work. They are found in 803 KAR1:065. According to the department, an employee's non-productive time is considered work under the following circumstances:

■ A production line worker voluntarily continues to stay after her shift to fill out some paperwork. If the employer is aware of this situation, he must pay the worker for this nonproductive time. The worker is entitled to be paid for her time since the employer is ultimately benefited by the work.



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■ A mechanic waits around for a customer who has a problem with his car. While waiting for the customer, the mechanic runs down to Popeye's for a chicken wing special. The mechanic is entitled to be paid for his time since the employer requested the mechanic to wait for the customer.

■ A secretary takes a long nap on her boss' couch during down time between assignments. A plumber's apprentice rocks out to Led Zeppelin while waiting for a job site to clear. They are entitled to be paid for their time since waiting is an essential

function of their jobs.

■ An officer quietly browses through a book store during a short break from duty. A power plant operator watches television at home while waiting for an expected call to return to work. These employees are entitled to be paid for their time since they cannot effectively use their time off for their own purposes.

■ A cell phone salesman attends a high-tech seminar that his boss had scheduled during the salesman's off hours. The salesman is entitled to be paid for his time since the employer required him to attend the seminar.

These illustrations give rise to this rule of thumb: If an employer is benefited by an employee's time, or if an employee's time is burdened by the employer's demands, the employer must pay the worker for that time. Sometimes the determination can be difficult to make. If an employer has difficulty making this decision, he or she should contact the Kentucky Department of Labor for guidance at 502-564-3070.

Since such nonproductive time constitutes work, it must be considered in determining an employee's entitlement to overtime pay. But what if an employee is paid

a salary? Is a salaried employee entitled to overtime pay? Yes, unless the employee is exempted from overtime pay.

Exempted employees are classified under KRS 337.010, including people who serve in a "bona fide" executive, administrative, supervisory or professional position. To apply this exemption, the employer must analyze whether an employee qualifies for one of these positions.

The department's administrative regulations give two factors to consider: salary and duties. If the employee is paid at least \$455 per week, and performs the duties and skills typically associated with one of these positions, he is exempt. Regulations under 803 KAR 1:070 offer more information on this subject.

Once again, if you need help with an analysis, contact the department.

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