

# Chapter 5

## Off the Clock Work



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### 5.1 Introduction

An increasingly common wage and hour issue involves allegations of employees working “off the clock.” Employees are said to be “on the clock” between the time they clock in and the time they clock out, that is, the time for which employees are being paid. In contrast, employees are not being paid either before or after their shifts, during which time they are said to be off the clock. When employees are performing compensable work during a time for which they are not being paid, they are working off the clock. Employees may choose to initiate litigation to recover unpaid wages and overtime for the uncompensated time.

Off the clock work can occur in a variety of ways. Some of the more frequent allegations include employees starting work before clocking in, clocking out before finishing work, performing work from home but not reporting the time (e.g., work-related phone calls or emails), donning or doffing required uniforms or equipment before or after shifts, time shaving (i.e., paying employees for fewer hours than they worked), or improper time clock “rounding” practices. Employers can be liable for significant damages for not paying employees for the total amount of time worked.

Off the clock claims are only applicable to non-exempt “hourly” employees, as exempt employees are paid the same salary regardless of the number of hours they work. The Fair Labor Standards Act (FLSA) requires that non-exempt employees are paid at the overtime rate (e.g., 1.5 times the regular rate of pay) for all hours worked over 40 in a workweek.<sup>1</sup> The FLSA also requires employees to be paid a minimum wage for all hours worked, currently \$7.25 per/h at the federal level. Thus, an employee working off the clock triggers an FLSA violation in two situations: (1) the employee is not paid overtime when the unpaid time exceeds 40 h in workweek, or (2) the employee is paid less than minimum wage when the unpaid

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<sup>1</sup> 29 U.S.C. §§ 206–207 (2012).

hours result in the employee's hourly rate falling below the minimum amount. As an example, assume an employee is paid the exact minimum wage of \$7.25 per/h. If that employee works even 1 min of unpaid time, adding that minute to their hours worked and dividing by the paid amount will result in an hourly rate below the minimum wage.

Many states have more stringent requirements related to overtime and minimum wage. In some states, including Alaska, California, and Nevada, overtime may be required not only for all hours worked in excess of 40 per workweek but also for all hours worked in excess of 8 h in a workday.<sup>2</sup> In addition, many states and even some cities have minimum wage requirements higher than the federal minimum wage. As a result, local, rather than federal, violations are more apt to occur, and damages for off the clock work can accrue more rapidly in certain jurisdictions.

Litigation regarding off the clock work often involves understanding not only *what* activities performed by employees but also *when* the work is performed.<sup>3</sup> At the highest possible level, the evaluation of an off the clock claim requires a comparison of the amount of time worked to the amount of paid time. While this is a simple task conceptually, it is rarely simple in practice primarily because time worked off the clock is generally not recorded separately from the work time recorded for payroll purposes. As a result, it often becomes the job of an expert retained in these cases to collect reliable data to retrospectively “recreate” the actual time worked so that it can be compared to paid time. In some instances, this can be accomplished using existing electronic data such as phone records, email records, register data, computer activity data, or security badge entries. In other instances, electronic data is either unavailable or insufficient to answer relevant legal questions, and collecting data from other sources is necessary. Observations and self-report approaches may be applicable for this purpose.

## 5.2 Potential Causes for Off the Clock Work

There are several potential causes for off the clock work that are frequently alleged by plaintiffs in litigation. Plaintiffs often point to company policies that restrict overtime usage as a factor that causes employees to work off the clock. For example, some companies prohibit employees from working overtime without prior approval as a strategy to control labor costs. As a result, plaintiffs often claim they are “forced” to work off the clock in certain situations, such as when they have an excessive workload or customer demands require them to work beyond their scheduled shift. Plaintiffs may report that they are required to perform these tasks but feel pressure not to report this time because it was not pre-approved.

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<sup>2</sup>Alaska Stat. §§ 23.10.050–23.10.150 (2016); Cal. Lab. Code § 510 (2016); Nev. Rev. Stat. § 608.018 (2016).

<sup>3</sup>There are various other legal questions in these cases such as whether the employer had knowledge of employees performing work off the clock. These types of questions are not typically addressed through a systematic study.

Another frequently alleged cause of off the clock work is unrealistic performance targets. If employees are evaluated based on performance targets (e.g., sales goals) that cannot reasonably be achieved within the employee's scheduled workweek, they may claim that working off the clock is required to meet company expectations.

A third potential cause of off the clock work is reclassification of employees from exempt to non-exempt. In an effort to comply with FLSA exemption regulations, or to avoid litigation, many employers have chosen to reclassify formerly exempt managers as non-exempt.<sup>4</sup> While the risk of misclassification litigation is eliminated by reclassification, the risk of other wage and hour violations, such as off the clock work, can increase. Exempt managers typically work more than 40 h per workweek but may be asked to work no more than 40 h after reclassification to avoid overtime costs. Unless the workload is decreased after reclassification, it may not be possible for the reclassified managers to accomplish the same tasks they performed prior to reclassification within 40 h. Some managers may be tempted to work off the clock to keep productivity up while staying within the 40 h expectation.

It is worth noting that although these policies are commonly alleged to cause off the clock work, the presence of these policies is not an evidence that employees have worked off the clock. Most companies, for example, have an interest in limiting overtime usage and may require pre-approval for that purpose. It does not follow that employees in all of these companies are working off the clock. Similarly, most companies in the retail industry set challenging sales targets for employees to increase motivation and job performance, and it's not uncommon for some employees to find these targets unreasonable. Again, one cannot conclude that all companies that establish sales targets for non-exempt employees are violating the FLSA. Whether violations have actually occurred is a question best answered through an analysis of the data. Methods for collecting and analyzing these data are described in a later section.

### 5.3 Compensable Work

The terms "hours worked" and "compensable time" are defined by the US Department of Labor as the time an employee must be on duty, on the employer's premises, at any other prescribed place of work, or any additional time the employee is allowed (i.e., suffered or permitted) to work. That is, if an employer knows that work is performed, the time should be counted toward hours worked, even if the work was not requested by the employee or it was performed away from company premises.<sup>5</sup> Thus, a critical component when studying off the clock work is identifying which employee activities should be considered "work." Though somewhat obvious, this component is sometimes overlooked and can be a source of substantial debate.

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<sup>4</sup>Chap. 3 discussed issues in relation to classification of employees as exempt or nonexempt from the FLSA.

<sup>5</sup>Kearns (2002).

When evaluating the amount of time working off the clock, one must differentiate between compensable work activities and non-compensable activities. However, employees often perform activities that do not clearly fall into either category. A manager talking with an employee before a shift about a personal issue could be considered part of her responsibility as a manager (i.e., building rapport with staff) or could be considered a non-work task, similar to any other conversation that occurs outside of the workplace. Classifying activities as compensable or non-compensable often benefits from the input of a legal expert, either an attorney involved in the case or an external legal expert. Similar to classifying tasks as exempt or non-exempt (see Chap. 3), the ultimate decision is largely within the court's domain. As a practical matter, however, tasks must be classified in some manner to analyze and present study results. Depending on the methods used, study results can be updated fairly easily if the court finds the classification of any activities to be improper. Regardless of who makes classification decisions, it is important for the expert to capture enough detail about the tasks performed to allow those decisions to be made or reviewed. Knowing that an employee "made a phone call," for example, lacks some important detail that would aid in task classification. Additional information such as who the employee called (e.g., co-worker or spouse), the content of the call (e.g., issues in the store, arranging a ride home), or even which phone was used (e.g., company phone, personal phone) may play a role in the classification of a task as compensable or non-compensable.

## 5.4 Measurement Precision

In Chap. 2, I discussed some trade-offs to consider when determining the precision with which time measurements will be captured. Recording time measurements in larger intervals (e.g., 10 s) is less precise but often preferred in situations such as evaluations of FLSA exemption status because larger intervals enable observers to record more detail about the tasks performed. In addition, when observations cover a long period of time (e.g., full shift), slightly reduced measurement precision is unlikely to have any meaningful impact on overall study results.

Studies of off the clock work, on the other hand, typically require precise time measurement. Because the period of time at issue is rarely more than a few minutes, it is feasible (and often preferable) to record time to the nearest second. Less precise measurements have the potential to substantively impact study results when the total observation time is short. Also, the range of tasks being considered in an off-the clock case is typically a greatly reduced subset of all the tasks an employee may perform. Thus, it may be feasible to generate a predefined list of tasks that will be observed in this context. In some situations, the observed tasks may be performed in a known sequence and can be pre-populated into a data recording tool, thus eliminating the need for the observer to record any task descriptions, allowing them to focus all of their attention on time measurements.

In many off the clock studies, the time that an employee clocks in or clocks out is recorded as part of the observation. In some cases, it may be possible to cross-check observation data with timekeeping data to verify its accuracy. This requires the observer to synchronize his or her clock to the timekeeping system. However, because many timekeeping systems record data to the nearest minute, comparisons may also need to be performed to the nearest minute. Regardless, a comparison to external data demonstrates the validity of the data collection and can strengthen the value of the study.

## 5.5 Common Types of Off the Clock Work

There are a variety of ways in which off the clock work can occur. Broadly, off the clock work either occurs before the employee clocks in or after the employee clocks out. In the following sections, I highlight some commonly alleged off the clock work claims. I also discuss methodological options for evaluating each type of claim. The underlying principles for data collection methods are provided in Chap. 2, and issues related to data analysis are discussed further in Chap. 8.

### 5.5.1 Call Centers

In recent years, a variety of call centers have faced allegations related to compensating employees while they boot up their computers prior to starting their shift. In addition to many well-known companies within the telecommunications industry such as AT&T,<sup>6</sup> Comcast,<sup>7</sup> and Charter Communications,<sup>8</sup> companies operating call centers in other industries have faced similar litigation such as pharmaceuticals,<sup>9</sup> health care,<sup>10</sup> staffing,<sup>11</sup> banking,<sup>12</sup> and energy.<sup>13</sup> Call centers function in a highly structured manner and use sophisticated software to precisely record employee activities throughout the day such as when they are on a calls and when they are available to receive calls. It is not uncommon for companies that operate call centers to schedule their employees' day to the minute and record the degree to which they adhere to that schedule. In fact, many call centers use this scheduling data as key performance indicator.

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<sup>6</sup> See, e.g., *Lamarr et al. v. Illinois Bell Telephone Co. et al.*

<sup>7</sup> See, e.g., *Faust et al. v. Comcast Cable Communications Management LLC.*

<sup>8</sup> See, e.g., *Davenport v. Charter Communications, LLC.*

<sup>9</sup> See, e.g., *Williams v. AmerisourceBergen Drug Corporation.*

<sup>10</sup> See, e.g., *Brown et al. v. Permanente Medical Group Inc.*

<sup>11</sup> See, e.g., *Holmes v. Kelly Services USA LLC et al.*

<sup>12</sup> See, e.g., *Sheffield v. BB&T et al.*

<sup>13</sup> See, e.g., *Volney-Parris v. Southern California Edison Company.*

There have been a number of lawsuits against call centers alleging that employees are not compensated for time spent logging into their computers and loading necessary applications before they are clocked in. Plaintiffs allege that this occurs either because employees must log into their computers before their scheduled start time to ensure they are available to take calls when their shift starts or because they use an application on their computer to clock in which cannot be accessed until the computer is booted up.

There are a few potential approaches to studying this issue. Observations and work simulations are both useful methods in this circumstance. Electronic data may also be useful in some situations, and the use of these sources of data is discussed at the end of this chapter. For all approaches, the goal is to determine how much time it takes the computer to boot up before the employee clocks in, and to the extent possible, to account for the various factors that influence this boot up time (e.g., whether the computer is powered down or waiting on the restart screen when the employee arrives or the specific applications and the order in which they are loaded).

The observational approach has the advantage of collecting data from actual employee behaviors, thus eliminating any concerns about the degree to which simulations accurately replicate the employee's environment. Observers can be strategically positioned to observe employee activities once they arrive in the facility and record the tasks performed and the duration of those tasks up until the employee is clocked in. Observations can be challenging when the facility is large. Because all activities performed before employees arrive at their desk are potentially relevant, the observer may need to identify the employee upon entrance into the facility and follow him through the facility. The observer must also be physically positioned to clearly see the employee's computer screen and accurately record the sequence of tasks performed. Properly executed observations provide compelling information about the tasks employees perform prior to clock-in and the amount of time spent on them.

Alternatively, work simulations<sup>14</sup> have the advantage of generating a significant amount of data within a relatively short period of time. In addition, a variety of different scenarios can be replicated as desired, as opposed to waiting for them to naturally occur in an observation. The ability to collect multiple measurements also minimizes sampling error. It is important when conducting simulations to replicate the actual employee environment as closely as possible. For instance, using computers with comparable processing speed and memory, on the same network, loading the same applications in the same order all contributes to a higher-fidelity simulation. Conducting a simulation on multiple computers and in multiple call center locations (when applicable) adds to the robustness of the simulated data.

Simulations can be conducted with assistance from an employee who is knowledgeable about the login procedures, such as a supervisor or trainer. The employee performing the test should be knowledgeable about the process employees use to start their shift and be able to identify when something unusual happens that

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<sup>14</sup>Work simulations are a common technique in other areas of human resources such as validation of personal selection procedures. *See* Whetzel et al. (2012) for additional information about work simulations.

impacts the results (e.g., software update, failed login). The employee can perform the steps an employee would follow to login, and each step in the process can be timed. The process can be repeated as many times as necessary to obtain a sufficient amount of data.

### 5.5.2 *Working Remotely*

One of the advantages of the widespread use of smartphones and other mobile technology is the flexibility it offers employees to accomplish work from a variety of locations. Advancements in technology, however, can also increase risk that non-exempt employees will perform work-related tasks outside of the workplace and off the clock. This includes tasks such as making or receiving work-related calls, reading and responding to work-related emails, reviewing reports, preparing work schedules, or other tasks that can be accomplished remotely.

Evaluating the occurrences of these activities can be challenging because observation is not feasible and these events may occur irregularly. However, there are two primary strategies that can be used in the context. First, an analysis of electronic data (e.g., phone and email records) may be useful. If the employee is using a company phone, for example, call logs can be used to determine when certain work-related activities occurred and the duration of those activities. These data can be compared to time records to see whether the activities occurred when the employee was off the clock. While this can provide some useful information, the data may be limited. For instance, electronic data will not reveal the content of the phone calls. Other sources of electronic data such as email records would include the content of each message. However, a somewhat lengthy process review is required to determine whether each message is work-related. Records of email communication are also limited in that the amount of time reading or composing emails is generally not known.

An alternative approach to evaluating the occurrence of these activities is through self-report. Although notable limitations to self-report exist in this context, there are times where this is the best approach to obtain reliable estimates of these activities. Many of the limitations are discussed in Chap. 2, but the most problematic in this situation is the tendency of employees to overestimate absolute time spent performing work tasks. In litigation involving off the clock work, estimates of absolute time are almost always necessary. Therefore, features to minimize, if not eliminate this bias, should be built into the methodology to the extent possible. Chapter 2 describes a technique known as the “events history calendar” along with a variety of studies that have demonstrated the effectiveness of these types of exercises for improving recall accuracy. This approach involves linking a memorable event from the relevant time period to the less memorable event that addresses a relevant legal question. When possible, self-report data can also be compared to external data to assess its accuracy. For example, if an employee’s self-reports align with their phone and/or email data, confidence in the accuracy of the self-report is substantially increased.

### 5.5.3 Security “Bag Checking”

Many companies, especially within the retail industry, require employees to have their belongings inspected before leaving the premises as a strategy to mitigate internal theft. Legal questions sometime arise, however, regarding whether these policies require employees to work off the clock. Plaintiffs have alleged that “bag checks” are mandatory and the employee is therefore under the control of the employer until the bag check is complete, thus making time waiting for and submitting to a bag check compensable. Bag check policies have been challenged legally at several well-known retail companies in recent years including Amazon,<sup>15</sup> CVS,<sup>16</sup> Nordstrom,<sup>17</sup> Macy’s,<sup>18</sup> Apple,<sup>19</sup> Converse,<sup>20</sup> and Nike.<sup>21</sup>

There are typically three broad research questions in cases involving bag checks: (1) How often do employees submit to bag checks? (2) Are the bag checks performed on the clock or off the clock? (3) What is the duration of the bag checks? Observation is typically the preferred method for answering these questions. Through observation, the sequence of events leading up to the bag check, time waiting for the bag check and the bag check itself, can be documented and timed. Both video and live observational approaches are applicable here. Video has the advantage of collecting a large amount of data in a short period of time, and videos can be re-watched by multiple observers to maximize timing accuracy and reliability. Live observers have the advantage of capturing contextual information not observable through video. In several bag check lawsuits, observation data demonstrated that bag checks occurred inconsistently, and when they did occur, they lasted for only a few seconds. The evidence was influential in judges’ decisions to not certify a class or decertify an existing class.<sup>22</sup>

### 5.5.4 Donning and Doffing

Another potential off the clock activity that has received attention in the court system is “donning and doffing” (i.e., putting on and taking off) uniforms and personal protective equipment (PPE) that are “integral” to the employees’ principal work activity.<sup>23</sup> These allegations are concentrated in jobs requiring employees to wear protective equipment to perform their work. Food processing,<sup>24</sup>

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<sup>15</sup> *Integrity Staffing Solutions v. Busk*.

<sup>16</sup> *Murphy v. Caremark CVS Corp. et al.*

<sup>17</sup> *Ogiamien et al. v. Nordstrom Inc.*

<sup>18</sup> *Narez v. Macy’s West Stores Inc.*

<sup>19</sup> *Frlekin et al. v. Apple Inc.*

<sup>20</sup> *Chavez v. Converse Inc. et al.*

<sup>21</sup> *Rodriguez v. Nike Retail Services Inc. et al.*

<sup>22</sup> See, for example, *Murphy v. Caremark CVS Corp. et al.*

<sup>23</sup> See 29 C.F.R. §785 et seq.

<sup>24</sup> One well-known case involving donning and doffing against Tyson foods is highlighted at the end of Chap. 8.



law enforcement,<sup>25</sup> and manufacturing<sup>26</sup> are a few industries that have faced lawsuits in which employees claimed they were not compensated for time spent donning and doffing required PPE.

The first question is whether the PPE worn by employees is integral to the job, thus making time donning and doffing that PPE compensable. In many cases, this issue is debated by attorneys and decided prior to involving an expert. The key question for experts is the amount of time employees spend donning and doffing uniforms and PPE. This can be measured using observational approaches or work simulations. Observations provide information regarding how long these activities actually take whereas work simulations provide information about how much time is required to complete the activities (two slightly different questions). The speed at which employees don or doff their PPE depends on various factors and may differ from person to person. As an example, an employee who arrives early for his shift may perform the task more slowly because there is little urgency, whereas an employee who arrives late is likely to perform the task as quickly as possible. In other words, observation results are influenced by factors other than the task being performed.

Observations can be conducted using live observers or video cameras. Privacy is an issue when using either approach. Jobs where PPE is donned over the top of one's clothes and done in open view are more conducive to an observational approach. An additional advantage, beyond those described in the previous section, to live observations in this context is the ability to capture information about unusual events. For example, if an employee is interrupted during the process or there is something wrong with the equipment, a live observer is more likely to be able to capture that information and interpret the data accordingly.

Work simulations involve an employee demonstrating the process of donning and doffing PPE for an observer to measure the time. This can be repeated as many times as necessary to obtain a sufficient sample size. This approach provides information about how much time is required to perform the task, as the employee conducting the simulation can focus their attention primarily on the simulation and perform the task efficiently. These data provide a useful estimate for how quickly the process could be completed by a motivated employee. The more employees included in this process, the more robust the data. This approach may be preferred when data cannot be collected directly from incumbents.

### 5.5.5 Time Clock Rounding

Another allegation involving off the clock work is related to company policies with respect to "rounding" time entries. Many companies have time clock policies that round all time entries to the nearest 15 min. If an employee clocks in at 8:07 am, his paid time will begin at 8:00 am. In other words, he would be paid 7 min more than

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<sup>25</sup> *Martin v. City of Richmond*.

<sup>26</sup> *Sandifer v. U.S. Steel Corp.*

he actually worked. However, if they instead clock in at 8:08 am, his paid time will begin at 8:15 am, and he would be paid 7 min less than he actually worked. Time clock rounding is a common practice in many industries such as healthcare.

Time rounding policies are generally considered legal, provided that the policy does not systematically round time in the employer's favor, thus underpaying employees. In other words, the policy must be both neutral in theory and in practice. In theory, rounding policies are almost always neutral because the same number of minutes would round up to 8:00 am, for example, as the number of minutes that would round down to 8:00 am. The question for experts in this case is how rounding policy has affected employees *in practice*. Plaintiffs often argue that because employees are expected to be at work at their scheduled start time (typically right at the start of an hour), they are much more likely to arrive a few minutes early than a few minutes late. If this is true, the time system would round time in the employer's favor more frequently, which may be ruled to be a violation.

Experts in these cases usually rely on electronic data to reach conclusions about the neutrality of the policy. Some time clock systems maintain the actual entry and the rounded entry, which simplifies the analysis. If only the actual entry is available, it becomes relatively straightforward to re-create the rounding rules to determine the impact of the policy. However, it would not be possible to create the actual time entries based on data showing the rounded entries. At a minimum, the actual time entries are needed to conduct analysis of electronic data.

In Chap. 8, I discuss a variety of issues related to data analysis. In particular, data quality is an important consideration before conducting the analyses. Without reliable data, results are undermined regardless of how well the analyses are conducted. Assuming the data are acceptable, analysis can indicate the frequency that time was rounded in the employee's favor, the employer's favor, or not rounded at all. The analysis can also determine the total net impact of the policy over time, that is, the amount of time that was rounded in the employer's favor and the employee's favor and the difference between the two.

One final consideration is whether the actual clock-in time should be considered the beginning of compensable work time. In a structured work environment such as an assembly line, it may not be feasible for an employee to start working before the assembly line begins running. In such a case, it may be more appropriate to use the time the employee is known to begin working (e.g., when the assembly line begins) in the analysis, rather than their actual clock-in time.

## 5.6 Strategies to Prevent Off the Clock Work

The frequency and high costs associated with allegations of off the clock work leave many companies searching for strategies to prevent its occurrence, ensure all employees are paid for all time worked, and minimize litigation risk. While eliminating risk of litigation entirely is not possible, this section contains some strategies that can reduce this risk. In most companies, the interests of management

and employees are aligned on this issue: employees are paid for all time they work. The recommendations below work toward that goal. Not all recommendations are feasible in all companies, but the more effort dedicated to reducing off the clock work, the greater the expected impact.

Early in the chapter, I discussed some company policies that are often cited by plaintiffs in litigation as causes of off the clock work. One of these was an inflexible prohibition on overtime usage without prior approval. Though the desire to reduce payroll usage is reasonable and ubiquitous, this can often be accomplished in a way that also minimizes legal risk. Adding flexibility to such a policy would help avoid employee perceptions of being pressured to avoid reporting time worked. For example, the policy could include an acknowledgment that infrequent situations occur wherein prior approval is not possible and employees will be paid for all time worked in these situations, whether pre-approved or not. Such a policy is likely to reduce perceptions that all time cannot be reported.

Training employees and managers on wage and hour compliance is also a way to mitigate risk. Some employees believe they are being a “team player” by not reporting all of their hours. This practice, however, can have serious financial consequences for the company if litigation arises. Employees should know that they are expected to report all hours worked, and managers should be vigilant in making sure that this occurs. Employees can be trained to avoid using personal devices for work-related activities when off the clock, and some companies may have the ability to block remote employee access to company email. Managers should also be trained to avoid reaching out to non-exempt employees when they are off the clock when possible and when not possible, to ensure that they record the time as worked time. Managers can also periodically perform random time record audits to look for evidence of off the clock work. As an example, some employees self-report their start time and record the same start time each day or always round their time entries to the start of an hour. It is unlikely that the employee actually started working at the exact time each day and could result in the employee working off the clock.

A common strategy for companies to influence employee behavior is by measuring it. Adding wage and hour compliance as a performance metric, for instance, will formally communicate to employees the importance of not working off the clock.<sup>27</sup> When performance is tied to compensation, this becomes a primary driver of employee motivation.<sup>28</sup> Companies that discipline employees for not meeting sales targets, but provide no repercussions for employees working off the clock, may increase the risk of employees working off the clock, as employees are likely to pursue goals they perceive to be most beneficial. Employees who work off the clock without reporting time can receive feedback in the form of a progressive disciplinary plan to further reinforce this message. Regardless of whether a policy was violated, litigation risk can be reduced by paying employees for the time they actually worked.

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<sup>27</sup> See Martocchio (2011).

<sup>28</sup> Milkovich and Wigdor (1991).

Another fairly typical practice is to require employees to review their time entries each week and verify that they included all hours worked by physically or digitally signing the time sheet. Plaintiff attorneys usually dispute the validity of these signatures in litigation, but they are still valuable to have, especially in combination with some of the other measures discussed to minimize off the clock work.

Finally, some employers recognize that employees regularly perform a small amount of compensable work prior to clocking in or after clocking out. To ensure these employees are paid properly and to minimize litigation risk, additional time can be added to each employee's recorded time each time to cover the additional work. As an example, an employer whose employees don and doff PPE that is believed to be compensable might add time to each employee's timecard on every day they wear PPE. Observational data and/or simulations are useful for determining the appropriate amount of time to add.

## 5.7 Conclusion

This chapter describes the legal context for off the clock work. There are a variety of scenarios in which off the clock tends to occur and a variety of causes that are frequently alleged in litigation. Methods such as observations, work simulations, and analysis of electronic data are useful for evaluating whether off the clock work has occurred and, if it has, quantifying the amount. In addition, several strategies were proposed to minimize risk of employees working off the clock.

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## Statutes and Regulations

- 29 U.S.C. §§ 206–207 (2012).  
See 29 C.F.R. §785 et seq.  
Alaska Stat. §§ 23.10.050–23.10.150 (2016).

Cal. Lab. Code § 510 (2016).  
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