

## Department of Labor Issues Guidance on Tracking and Compensating Telework

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Spurred by the uptick in remote work due to the ongoing COVID-19 pandemic, the U.S. Department of Labor ("DOL") recently issued a new Field Assistance Bulletin clarifying employers' obligations to pay hourly, non-exempt employees when they are teleworking. Consistent with its guidance for in-person workplaces, the DOL's guidance makes clear that employers must compensate employees for all time worked remotely about which the employer knew or should have reasonably known. It also specifically clarifies what working time employers will be expected to know about when their employees are working from home and therefore is harder to directly monitor.

Importantly, the DOL emphasizes that the standard is not what employers "could know" – that is, what it would be technologically possible for employers to know. This means that employers are not required to, for example, spend time digging for electronic records of when their employees were using specific work-related programs. Even though that information might technically be available to the employer, the DOL indicates that locating and making sense of it would be deemed too cumbersome for employers. Instead, the DOL recommends that employers set up remote timekeeping systems for employees to record their time while they are working remotely. Moreover, employers should encourage employees to accurately record all of the time they spend working from home and must pay them for all time recorded. Assuming employers do that, and assuming that they do not discourage or prevent employees from accurately recording their time, then the employer will not be expected to know about any unplanned and unrecorded time worked remotely, and will not be expected to compensate workers for that time.

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