



## “CALL BACK” and “STAND BY” TIME

An employer is obligated to pay the wages of an hourly employee for all time that the employee is under the control of the employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so. In Industrial Welfare Commission Orders 4 and 5, there is a modified definition of hours worked for specified occupations. (Industrial Welfare Orders, § 2)

On-call or standby time at the work site is considered hours worked for which the employee must be compensated even if the employee does nothing but wait for something to happen. “[A]n employer, if he chooses, may hire a man to do nothing or to do nothing but wait for something to happen. Refraining from other activities often is a factor of instant readiness to serve, and idleness plays a part in all employment in a stand-by capacity”. (*Armour & Co. v. Wantock* (1944) 323 U.S. 126) Examples of compensable work time include, but are not limited to, meal periods and sleep periods during which times the employees are subject to the employer’s control. (See *Bono Enterprises v. Labor Commissioner* (1995) 32 Cal.App.4<sup>th</sup> 968 and *Aguilar v. Association For Retarded Citizens* (1991) 234 Cal.App.3d 21)

Whether on-call or standby time off the work site is considered compensable must be determined by looking at the restrictions placed on the employee. A variety of factors are considered in determining whether the employer-imposed restrictions turn the on-call time into compensable “hours worked.” These factors, set out in a federal case, *Berry v. County of Sonoma* (1994) 30 F.3d 1174, include whether there are excessive geographic restrictions on the employee’s movements; whether the frequency of calls is unduly restrictive; whether a fixed time limit for response is unduly restrictive; whether the on-call employee can easily trade his or her on-call responsibilities with another employee; and whether and to what extent the employee engages in personal activities during on-call periods.

Travel time is considered compensable work hours where the employer requires its employees to meet at a designated place and use the employer’s designated transportation to and from the work site. (*Morillion v. Royal Packing Co.* (2000) 22 Cal.4<sup>th</sup> 575)