

LABOR AND EMPLOYMENT LAW UPDATE



THE HEAT IS ON! GOVERNMENT AGENCIES ADDRESS OUTDOOR WORK

According to the NOAA National Climatic Center, the first seven months of 2006 were the warmest of any previous year in the United States since records began in 1895. Not since the “dust bowl” year of 1936 has there been a hotter July in the continental United States.

The National Institute for Occupational Safety and Health advises that work in hot environments can result in deaths, illnesses, injuries and reduced productivity. Heat-induced disorders include transient heat fatigue, heat rash, fainting, heat cramps, heat exhaustion, and heat stroke. Heat also poses the threat of injuries because of accidents caused by slippery palms as a result of sweating, fogged up safety glasses, and dizziness. Severe burns can also occur as a direct result of accidental contact with hot surfaces and steam.

Not surprisingly, the warm temperatures have garnered the attention of governmental agencies which regulate health and safety in the workplace. Some agencies have issued directives and recommendations for working in the heat. Employers with employees who work outdoors would do well to heed these directives and recommendations.

OSHA: The Occupational Safety & Health Administration (“OSHA”) has published a Fact Sheet regarding “Working Outdoors in Warm Climates.”

The Fact Sheet recommends the following precautions for employees:

- * Drink small amounts of water frequently.
- * Wear light-colored, loose-fitting, breathable clothing – cotton is good.
- * Take frequent short breaks in cool shade.
- * Eat smaller meals before work activity.
- * Avoid caffeine, alcohol and large sugar doses.
- * Find out from your health care provider if your medications and heat don’t mix.
- * Know that equipment such as respirators or work suits can increase heat stress.
- * Know the symptoms and first aid treatment for heat-related disorders.

CALIFORNIA: A new Cal/OSHA standard entitled “Heat Illness Prevention in Outdoor Places of Employment” became effective July 27, 2006. In addition to requiring employee access to drinking water and shade, the standard requires training as to:

- * The environmental and personal risk factors for heat illness.
- * The importance of frequent consumption of small quantities of water, up to 4 cups per hour, when the work environment is hot and employees are likely to be sweating more than usual in the performance of their duties.
- * The importance of acclimatization, i.e., adaptation of the body to work in the heat.
- * The different types of heat illness and the common signs and symptoms of heat illness.
- * The importance to employees of immediately reporting to the employer symptoms or signs of heat illness in themselves or co-workers.
- * Emergency protocols for dealing with symptoms of possible heat illness.



TRAVEL TIME FOR HOURLY PAID EMPLOYEES

Increased security measures at America's airports have resulted in longer lines, earlier suggested arrival times and flight delays. These developments have increased the travel time spent by employees traveling on behalf of an employer.

As part of its minimum and overtime wage requirements, the Fair Labor Standards Act requires a computation of hours worked. This requirement presents difficult questions for employers regarding the compensation of hourly paid employees who travel on their behalf.

DO I HAVE TO PAY AN EMPLOYEE WHO ARRIVES FOR A FLIGHT TWO HOURS EARLY?

Yes. Depending upon the time of travel, the U.S. Department of Labor may or may not regard such time as an enforcement priority. A court or state agency, such as the Texas Workforce Commission, however, could order the employer to pay for the time without regard to the time of travel. A limited exception could apply to a meal break taken at the airport.

CAN A FLAT RATE FOR ALL TRAVEL TIME ON A TRIP COMPLY WITH THE OVERTIME REQUIREMENTS OF THE FLSA?

No. For a nonexempt employee, the FLSA requires a weekly determination of a regular hourly rate of pay and payment of 1½ times this rate for overtime hours worked. A flat rate will be used in determining the regular hourly rate of pay, but will not be treated as overtime compensation.

CAN I REGULATE THE TRAVEL TIME OF EMPLOYEES?

Yes. An employer can prescribe rules for employee travel which include arrival times, modes of travel, etc. An employer can also require that work be performed while traveling. The punishment for a violation of a rule, however, cannot be the docking of unauthorized hours or the withholding of pay. Another form of discipline, such as a written warning, suspension or termination, must be used to enforce a travel rule.

DISCLAIMER

This paper is not intended to provide legal advice in general or with respect to any particular factual scenario. Any such advice should be obtained directly from retained legal counsel.

CAMPBELL & LEBOEUF

A PROFESSIONAL CORPORATION

BRUCE A. CAMPBELL
 NICOLE T. LEBOEUF
 ROBERT G. CHADWICK, JR.*
 SHELLY L. SKEEN
 NATHAN J. SCHWARTZ
 ALEXANDER G. BLUE

3939 BELT LINE ROAD, SUITE 510
 ADDISON, TEXAS 75001
 TELEPHONE: 972.277.8585
 FACSIMILE: 972.277.8586
 WWW.CAMPBELLLEBOEUF.COM

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