Can our Department create policies to ensure that FLSA (Fair Labors Standard Act) subject employees who receive a Mobile Communication Device (MCD) allowance do not use their devices outside of normal, established working hours?

Tell Me

Supplemental to University Policy 602.10, Mobile Communication Device Allowances and MCD Procedures.

1. MCD allowances can only be provided for individuals required to maintain personal cell phones for substantial non-compensatory business reasons, following are two examples:
   a. The agency/institution’s need to contact the employee at all times for work-related emergencies; OR
   b. The agency/institution’s requirement that an employee be routinely available to speak with legislators or other elected officials, community leaders, or customers at times outside the normal work schedule or at times when the employee is away from the duty station.
2. Thus, guidance related to “substantial non-compensatory business reasons” should lead departments to consider whether an MCD allowance is truly appropriate for Fair Labor Standards Act (FLSA) non-exempt employees.
3. The University’s MCD policy states that employees and preparers on behalf of an FLSA-subject employee should maintain their devices to be “available for business use during their work hours” only and that “Compensable offsite or after-hours work is prohibited for FLSA-subject employees unless expressly pre-approved by supervisors in advance of the work” (Section VI).
4. In addition, FLSA-subject employees are required to certify that they understand this when they submit their annual MCD allowance, by selecting the certifying the statement, “If subject to the Fair Labor Standards Act, I understand that compensable offsite or after-hours work is prohibited for FLSA-subject employees unless expressly pre-approved by supervisors in advance of the work. In addition, I understand that failure to report hours on my timesheet within two weeks of the time period covered will result in forfeiture of my right to list additional hours at a later date.”
5. Departments are free to develop and maintain additional internal policies regarding the use of MCDs as long as they do not contradict University policies or federal or state laws or regulations. For further questions, please contact Human Resources.

Tip

For FLSA-subject employees who are deemed by their Supervisor to need an MCD for Substantial Non-Compensatory Business Reasons (see Section III of University Policy 602.10), the Supervisor is advised to consult with Human Resources to determine if the employee should be paid for on-call status, in accordance with PIM Number 52, “On-Call Pay,” and to receive guidance on properly accounting for time worked outside of the normal business hours.

Warning

The University is obligated to compensate FLSA-subject employees for all hours worked. Supervisors are responsible for ensuring that all timekeeping requirements are adhered to (see PIM Number 52, “Completing and Retaining Employee Weekly Time Records For FLSA Subject Employees”) and are advised to consider the financial impact of a FLSA-subject employee receiving an MCD (in terms of additional overtime and/or compensatory time obligations) prior to making such a request.

Related Articles

- Can our Department create policies to ensure that FLSA (Fair Labors Standard Act) subject employees who receive a Mobile Communication Device (MCD) allowance do not use their devices outside of normal, established working hours?
- Are there specific security policies I need to comply with if I receive a Mobile Communication Device (MCD) allowance for my personal MCD?
- Is an employee on leave eligible to receive an MCD allowance?
- How do I terminate an MCD allowance?
- What supporting documentation should I submit with my MCD Allowance Request eForm?