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. Yes. 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.

2. MCD allowances may be provided only to employees required to maintain personal devices for “substantial noncompensatory business reasons.” Examples of required substantial noncompensatory business reasons include:
   a. The University’s need to contact the employee at all times for work-related emergencies;

   For FLSA-subject employees who are deemed by their Supervisor to need an MCD because they need to be available at all times for work-related emergencies, 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.

   OR

   b. The University’s requirement that an employee is routinely available to communicate with legislators or other elected officials, community leaders, or customers at times outside the normal work schedule or at times during the normal work schedule when the employee is away from the duty station.

   Compensable offsite or after-hours work is prohibited for FLSA-subject employees unless expressly pre-approved by supervisors in advance of the work. Failure to report hours worked within two weeks of the time period covered will result in forfeiture of their right to list additional hours at a later date. Employees must certify their understanding of these policies when they submit their annual MCD allowance request.

   Teleworking is NOT an example of a substantial noncompensatory business reason when the employee chooses to telework but could otherwise report to their duty station or when their remote location is their duty station unless their job duties meet one of the business justifications mentioned above. However, employees may be eligible to request reimbursement for internet or mobile device service for teleworking IF they incurred additional incidental charges (i.e., adding internet, home phone, or mobile service necessary to connect to VPN or receive calls).

3. Thus, guidance related to “substantial noncompensatory business reasons” should lead departments to consider whether an MCD allowance is truly appropriate for Fair Labor Standards Act (FLSA) non-exempt employees.

4. For further questions, please contact Human Resources, Director of Compensation and Position Management.

Related Articles

- What are the deadlines for requesting/renewing a MCD allowance?
- What fund should I enter in the "Allowance Fund" field of the MCD eForm?
- What supporting documentation should I submit with my MCD Allowance Request eForm?
- How do I purchase mobile "apps" needed on a University-owned Mobile Communication Device (MCD)?
- Why is my personally-owned Mobile Communication Device (MCD) excluded from my taxable compensation?