



**"I read your email last night - now pay me overtime"
BlackBerrys, Remote Access and Compensation**

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BlackBerrys, PDAs and other forms of remote access provide more freedom to stay connected with work when away from the workplace. We are now free to handle work projects anytime, anywhere. For those reasons, many local governments offer such access to staff. Local governments who do so, however, should consider the issue of compensation. Is an employee entitled to be paid for using a BlackBerry or connecting remotely at night or on weekends?

The issue falls within two related areas of the law: overtime and payment for hours worked. If an employee is entitled to overtime pay, the local government may be liable for time spent on the BlackBerry or connected remotely outside regular hours. Further, even if the employee is not entitled to overtime pay, the local government may still be liable if that employee has stated hours of work in an employment contract or a policy, and spends time connected remotely or on the BlackBerry outside those stated hours. Finally, an employee does not even need specific permission to work outside regular or stated hours. A local government may become liable if it provides the ability to connect while outside the office but says nothing more. A laissez faire approach, therefore, is a risky and potentially expensive proposition.

The risk of claims for additional compensation may be minimised by having a clear policy regarding remote access and BlackBerry use, and ensuring a consistent approach to hours of work and overtime. A clear policy may also alleviate a problematic psychological issue: a feeling of the "24/7" working environment, which in turn may contribute to stress and "burn-out".

Considerations for a BlackBerry/Remote Access Policy

- Do you want to offer remote access or a BlackBerry outside regular/stated hours, or do you want the employees to leave their BlackBerrys in the office when they leave?
- Under what circumstances do you want the employee to be available remotely outside regular hours: generally or emergency only? What constitutes an emergency?
- If you want the employee to be available generally, how should you pay them?

Considerations for an Hours of Work Policy

- Do you really need to state hours of work? If not, don't. If you do, consider a policy that to be eligible for additional pay, the employee must obtain authorisation to work in advance.
- Consider instead a statement that salary includes all hours worked.
- As an alternative, consider other forms of compensation for additional hours, such as time off in lieu or a bonus at year end.

As with all workplace policies, BlackBerry/remote access and hours of work policies will only be effective if they are applied and enforced consistently. Ongoing monitoring is crucial.