

Reporting Travel Time

Commuting Time:

When determining whether travel time counts as hours worked, the employer must consider the type of travel involved. Travel from home to work, or from the company's office to a site where the employee's work will be performed, normally does not count as hours worked. However, certain exceptions may apply if the employee commutes in a company vehicle.

If an employee commutes in a company vehicle, the time may be compensable, if:

- (a) The employee does so for the convenience of the employer.
- (b) The employee performs job-related activities during the commute.

Between Home and Work

Ordinary Travel

Daily commuting between home and work generally is not considered to be hours worked. This is true whether the employee works at a fixed location or works at various job sites.

Emergency Travel

Emergency travel from home to work after the employee's normal shift may or may not be considered hours worked. If the employee reports to his or her regular place of business, the time generally is not considered by the Wage-Hour Division to be compensable travel time. On the other hand, some federal courts have rejected this interpretation and have found such emergency travel to be compensable.

Emergency travel to a site other than the employee's regular place of business is always compensable.

EXAMPLE:

A mechanic who is called at home after hours to repair a car at a customer's residence must be paid for travel time.

Driving Company Vehicles

Whether time spent driving a company vehicle to and from work counts as hours worked depends mainly on whether the vehicle is provided for the convenience of the employee or for the benefit of the employer. The Wage-Hour Division determines who most benefits, in part by asking how frequently the vehicle is used for emergencies outside of normal working hours. In addition, the Wage-Hour Division also will consider how the vehicle “normally” is used in determining whether the vehicle is provided for the convenience of the employee or the benefit of the employer. In practice, Wage-Hour rarely holds home-to-work travel in a company vehicle to be hours worked. One opinion letter, for instance, holds that police officers are not working while driving home in a police car even though they are required to listen to the police radio. On the other hand, ambulance employees who drive an ambulance home to use to respond to emergencies are working while driving.

Carrying Loads

Travel from home to work in a company vehicle is treated as hours worked if the vehicle carries heavy, burdensome loads for the benefit of the employer. On the other hand, if the vehicle is used to carry only light, incidental loads, commuting time is not considered hours worked.

EXAMPLE

Peggy stops at the post office each day between home and work to pick up her employer’s mail. Since this task usually only takes a few minutes and involves just a few letters, her time is not compensable. However, if she picked up bulky or heavy mail or spent a significant amount of her time performing this duty, her time would be compensable.

Transporting Employees

The time an employee spends driving other employees to work in a company vehicle at the direction of the employer is considered hours worked. On the other hand, if the employee driving the company vehicle does so for his or her own convenience and he or she chooses to

drive the other workers to and from work, the driving time is not considered hours worked. In determining whether the driver's time must be counted as hours worked, the Wage-Hour division also will consider the degree of control that the employer has over the arrangement. Specifically, Wage-Hour investigators will consider:

- (a) Whether the transportation is provided primarily for the benefit of the participating employees.
- (b) Whether participation by the transported employees is voluntary, and whether the employees are free to accept or reject the arrangement at any time.
- (c) Whether the employee-driver is chosen by the participating employees or by the employer.
- (d) Whether the participating employees or the employer chooses the pick-up times and route.

Travel Between Job Sites

The Portal-to-Portal Act was passed by Congress in 1947 to nullify a Supreme Court ruling that time spent traveling from the company site to the actual work site counted as hours worked. The Act specifically states that walking, riding, or traveling to and from the actual place of performance of the principal activity, either at the beginning or at the end of the day, does not count as hours worked, unless:

- (a) It is custom or practice in the industry to pay for those travel hours.
- (b) The activity is compensable under an express contract, such as a collective bargaining agreement.

Job-Related Work During Commute

The exception to the Portal-to-Portal Act is that any job-related work performed during the commute that is primarily for the benefit of the employer is considered hours worked.

EXAMPLE

Travel to the work site from the company site counts as hours worked if the employee is required to report to the company site to:

- (a) Receive instruction.

- (b) Perform other work at the company site.
- (c) Pick up or load tools.

If one employee drives others to the work site, only the travel time of the driver is compensable. The travel time of the transported employee is compensable only if they perform some work at the first site.

Guidance

To avoid paying employees for travel time from the company office to a work site, the employer should give the employees the option of either reporting directly to the work site or reporting to the company office for their own convenience. For those who choose the second option, the employer should designate one person to drive everyone to the work site. The driver's time counts as hours worked, but compensable time for the other employees being only when they start their duties at the work site.

To keep costs down, the employer can do one of the following:

- (a) Designate either an exempt foreman or the lowest-paid employee to act as the driver.
- (b) State in advance that the rate for the driving, regardless of the employee's normal rate, is the current minimum wage.

NOTE: For the employer to avoid compensating the employees other than the driver for travel time, those employees must do absolutely no work at the company site. This includes loading. The clock begins to run for the transported employees once they perform any work at the company site, however trivial.

Travel As Principal Activity

If travel is part of an employee's principal activity, it is counted as hours worked.

EXAMPLE

A worker who travels from job site to job site during the workday must be paid for this travel time. However, the worker need not be paid for traveling from home to the first job site or from the last job site to home.

Out-Of-Town Travel

Day Trips

An employee who travels from home to another city for the day can count travel time as hours worked. In computing hours worked, the employer may deduct the employee's normal commuting time from the travel time.

EXAMPLE

An employee residing and working in New York City is asked to do some work at a client's office in Philadelphia. His ordinary schedule is 9:00a.m. to 5:00p.m. He leaves New York at 8:00a.m., arrives in Philadelphia at 11:00a.m., completes his assignment by 5:00p.m., and arrives home at 8:00p.m. The twelve hours between 8:00a.m. and 8:00p.m. are compensable, but the employee's normal commuting time (and meal time) may be deducted. If the employee travels by train or plane, the employer may deduct the time spent traveling between home and the train station or airport.

Overnight Trips

Travel that keeps an employee away from home overnight may or may not be compensable, depending on:

- (a) Whether the travel time falls outside of the employee's regular working hours.
- (b) The mode of transportation used by the employee.

Regular Working Hours

When an employee travels overnight, any travel time outside of an employee's normal working hours is not considered hours worked.

EXAMPLE

Joe's normal working hours are 9:00a.m. to 5:00p.m., Monday through Friday. On one leg of an overnight trip he travels from 3:00p.m. to 8:00p.m. The time from 3:00p.m. to 5:00p.m. is considered hours worked, even if the travel occurs on a weekend. However, the three hours between 5:00p.m. and 8:00p.m., are not considered hours worked.

GUIDANCE

As strange as it sounds, if an employee is sent on a red-eye flight that leaves at 11:00 p.m. and arrives at 1:00 a.m., the flight time need not be treated as compensable because it falls outside of the regular workday. Of course, not paying the employee ignores the impact on the employee's morale of having to travel at midnight without compensation.

Driving Own Automobile

If an employee on an overnight trip is offered transportation on a common carrier – e.g., bus, rail, plane, etc. – but he or she requests permission to drive his or her car, the employer has the option of counting as hours worked either:

- (a) The total time spent driving.
- (b) The time that would have been counted as working time had the employee taken public transportation.

GUIDANCE

Employers who do not want to pay employees for travel time beyond what is legally required should advise employees of this policy before employees travel. This notice should be provided in writing and should be maintained in the employer's records as evidence that the employer has not "suffered or permitted" the employee to work during the hours deemed to be noncompensable. Also, be careful of employees who work while traveling. An employee flying as a passenger on the "red eye" is normally not working. If, however, she is doing company business on her laptop computer, that is compensable time.

Farrington, Brian T. Essential Facts: wage-hour compliance. New York: Warren, Gorham & Lamont, 1996.