

## TRAVEL TIME FOR NON-EXEMPT EMPLOYEES UNDER THE FLSA

This information reflects the requirements of the federal Fair Labor Standards Act. Individual labor agreements or agency supplemental agreements may require counting of additional time.

Except for the normal commute to and from work, any travel during a non-exempt employee's normal working hours is time worked. This includes travel on what would otherwise be a day off, such as a weekend or holiday, if it occurs between the start and end of the employee's normal work day. For employees with variable work hours, the supervisor should designate the start and end times for non-workday travel (typically those which occur most frequently in the employee's normal schedule). Any travel between two locations where work is performed is time worked.

Regardless of the time of day or day of the week, any time (other than the normal commute) that an employee is the driver of a vehicle is time worked. However, if an employee must be away overnight, time spent as a passenger in a car, plane, train, etc. outside the employee's normal working hours is not time worked unless the employee performs work while riding. In addition, any duty free meal periods are excluded for both drivers and passengers.

Example: Several employees who normally work 8:00-4:30 meet at their St. Paul office at 6 AM to carpool to a 9 AM meeting in Duluth. The employees leave Duluth at 4 PM, arriving back at the office at 6:30 PM. Since the employees left and returned in the same day, the time from 6 AM to 6:30 PM (less any duty free meal periods) is time worked for all of the employees. Because employees reported to their usual work site in St. Paul, they had already made their "normal commute" so no additional time could be excluded.

If the meeting in Duluth lasted several days and employees were required to be away overnight, the situation would be treated differently. The travel time which cuts across the normal work day (8:00-4:30) would be time worked for all of the employees. However, because this is an overnight trip, passenger time outside normal working hours is excluded. The additional 4 hours (6:00-8:00 AM and 4:30-6:30 PM) count as time worked only for the driver. The time before and after normal working hours is not time worked for the passengers so long as they do not engage in work while riding during those periods. (The employees could perform work while riding within normal working hours since those are already being counted as time worked.)

In addition, the passengers must not engage in work before leaving or upon returning. If the employees had to report at 5 AM to discuss assignments and prepare (not just pick up) materials, the time from 5 AM to the end of their normal work day (4:30 PM) would be time worked. Even though much of the additional time was spent as passengers, they're considered to have begun work when they were required to report and engage in work (i.e., 5 AM).

The normal home to work commute is excluded for employees who report to a particular location on a regular/recurring basis. This includes the commute to a permanent or temporary work location. If commuting to multiple locations is a normal part of the job (e.g., the employee works 2 days in St. Paul and 3 days in Hastings every week), the drive to and from home and each location is excluded as commuting time. Exclusion of the normal commute also applies when employees return to the office during off duty hours (e.g., come to the office for an evening meeting or hearing, called back at night because of a computer problem).

If employees drive from home to a location other than the usual work site, travel time minus the normal commute is hours worked. For example, an employee officed in St. Paul drives directly from home to an assigned training class in Minneapolis. Any difference between the drive from home to Minneapolis and the normal commute from home to the St. Paul office is time worked.

For employees who are assigned to work out of their homes (their home is their assigned work location and they have no other fixed or temporary office) and travel to various locations within an assigned area or even statewide, the difficulty is determining what constitutes the "normal commute" which may be excluded from daily travel. Agencies need to establish a reasonable method for identifying each employee's typical home to work travel. If an employee regularly travels to a group of specified locations, the agency might average the commute times to the various locations. If the locations are unknown and unpredictable, the agency might determine an average from past travel records. The method and result can vary by employee and should be appropriate to each employee's situation. For example, a half hour commute might be normal for an employee who visits sites concentrated in a small area while an hour or more is typical for another employee doing the same work but assigned sites widely dispersed over a large territory.

For employees who work out of their homes, performing work prior to leaving for the first work site or after returning from the last work site does not eliminate your ability to exclude the "normal commute" from the day's travel. You must count the time the employee is actually engaged in work at home but the normal commute is still excluded from travel, just as it would be if the employee left immediately for the first work site or returned from the last site and did no work. The outcome is different from the previous example about the trip to Duluth which became paid travel time when employees engaged in work prior to traveling. Those employees reported to their office in St. Paul so they'd already made their usual home to work commute, while employees who work at home and then leave for the first work site have not yet made their normal commute.

#### **For Further Information**

Refer to the regulations on travel time (CFR 785.33 - 785.41) and on the Portal to Portal Act (CFR 790.1 - 790.12). Regulations and other information about the Fair Labor Standards Act are available from the federal Department of Labor web site at [www.dol.gov](http://www.dol.gov).

## Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning what constitutes compensable time under the FLSA. The Act requires that employees must receive at least the minimum wage and may not be employed for more than 40 hours in a week without receiving at least one and one-half times their regular rates of pay for the overtime hours. The amount employees should receive cannot be determined without knowing the number of hours worked.

### Definition of "Employ"

By statutory definition the term "employ" includes "to suffer or permit to work." The workweek ordinarily includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place. "Workday", in general, means the period between the time on any particular day when such employee commences his/her "principal activity" and the time on that day at which he/she ceases such principal activity or activities. The workday may therefore be longer than the employee's scheduled shift, hours, tour of duty, or production line time.

### Application of Principles

Employees "Suffered or Permitted" to work: Work not requested but suffered or permitted to be performed is work time that must be paid for by the employer. For example, an employee may voluntarily continue to work at the end of the shift to finish an assigned task or to correct errors. The reason is immaterial. The hours are work time and are compensable.

**Waiting Time:** Whether waiting time is hours worked under the Act depends upon the particular circumstances. Generally, the facts may show that the employee was engaged to wait (which is work time) or the facts may show that the employee was waiting to be engaged (which is not work time). For example, a secretary who reads a book while waiting for dictation or a fireman who plays checkers while waiting for an alarm is working during such periods of inactivity. These employees have been "engaged to wait."

**On-Call Time:** An employee who is required to remain on call on the employer's premises is working while "on call." An employee who is required to remain on call at home, or who is allowed to leave a message where he/she can be reached, is not working (in most cases) while on call. Additional constraints on the employee's freedom could require this time to be compensated.

**Rest and Meal Periods:** Rest periods of short duration, usually 20 minutes or less, are common in industry (and promote the efficiency of the employee) and are customarily paid for as working time. These short periods must be counted as hours worked. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and any extension of the break will be punished. Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. The employee is not relieved if he/she is required to perform any duties, whether active or inactive, while eating.

**Sleeping Time and Certain Other Activities:** An employee who is required to be on duty for less than 24 hours is working even though he/she is permitted to sleep or engage in other personal activities when not busy. An employee required to be on duty for 24 hours or more may agree with the employer to exclude from hours worked bona fide regularly scheduled sleeping periods of not more than 8 hours, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. No reduction is permitted unless at least 5 hours of sleep is taken.

**Lectures, Meetings and Training Programs:** Attendance at lectures, meetings, training programs and similar activities need not be counted as working time only if four criteria are met, namely: it is outside normal hours, it is voluntary, not job related, and no other work is concurrently performed.

**Travel Time:** The principles which apply in determining whether time spent in travel is compensable time depends upon the kind of travel involved.

**Home to Work Travel:** An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.

**Home to Work on a Special One Day Assignment in Another City:** An employee who regularly works at a fixed location in one city is given a special one day assignment in another city and returns home the same day. The time spent in traveling to and returning from the other city is work time, except that the employer may deduct/not count that time the employee would normally spend commuting to the regular work site.

**Travel That is All in a Day's Work:** Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.

**Travel Away from Home Community:** Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. As an enforcement policy the Division will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

### **Typical Problems**

Problems arise when employers fail to recognize and count certain hours worked as compensable hours. For example, an employee who remains at his/her desk while eating lunch and regularly answers the telephone and refers callers is working. This time must be counted and paid as compensable hours worked because the employee has not been completely relieved from duty.

### **Where to Obtain Additional Information**

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243). This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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