

## **FLSA AND TRAVEL TIME FOR NON-EXEMPT EMPLOYEES**

*Taken From: Title 29, Part 785 of the Code of Federal Regulations,  
U.S. Department of Labor, Wage and Hour Division*

### **GENERAL RULE**

Excluding normal commuting time, employees should be compensated for all travel unless it is:

1. overnight;
2. outside of regular work hours;
3. on a common carrier or as a passenger
4. Where no work is done.

However, special rules apply to special situations.

### **COMMUTE TIME**

Generally, an employee is not at work until he or she reaches the work site.

- If the employee is required to report to a meeting place where he or she is to pick up materials, equipment, or other employees, or to receive instructions before traveling to the work site, time is compensable once the employee reaches the meeting place.
- If the employee drives a state vehicle, to and from work, he or she does not have to be compensated for that commuting time as long as:
  1. Driving the vehicle between home and work is strictly voluntary and not a condition of employment;
  2. The vehicle is a type normally used for commuting;
  3. The employee incurs no costs for driving the employer's vehicle or parking it at home; and
  4. The work sites are within normal commuting area of the employer's place of business.

### **TRAVEL DURING THE WORKDAY**

- Travel as a part of the employer's principal activity must be counted as hours worked. If the travel is for the benefit of the employer, it is compensable.
- Time spent by the driver in picking up other passengers and transporting them to a specific location is work time and therefore compensable. Time spent by passengers traveling in a car outside the normal workday hours is not compensable.
- Regular meal period time is not considered compensable time.

### **OUT OF TOWN TRAVEL – SPECIAL ONE-DAY ASSIGNMENT**

If the employee is assigned to work in another city for one day and the travel is performed at the employer's request and for the employer's benefit, it is part of the principal activity of the employer and therefore is compensable. This is true even if the employee is traveling by common carrier since this is a special assignment and is not ordinary home to work travel. The

assignment is performed for the employer's benefit and at the employer's special request to meet the needs of the particular and unusual assignment.

- However, in this special one-day assignment travel time between the employee's home and the airport or railway station is home to work travel time and therefore not compensable.
- To the extent that an employee performs work while traveling, e.g. preparing for a meeting, reviewing documents, making telephone calls, this time constitutes hours worked even if the travel time would otherwise not be compensable.
- Single day out-of-town travel is considered hours worked, excluding a meal period. For example, a non-exempt employee whose normal work hours are 8:00 a.m. to 5:00 p.m. is given an assignment to be in Charlotte for one day and return that evening. The nonexempt employee leaves the University (or his/her home) at 7:00 a.m., the meeting is over at 3:00 p.m., and the employee arrives back at the University (or his/her home) at 7:00 p.m. In this case, the travel time between 7:00 a.m. to 8:00 a.m. and 5:00 p.m. and 7:00 p.m. is considered as hours worked and the three hours count towards calculating eligibility for overtime over 40 hours. Assuming that the non-exempt employee did not perform any other extra work during the work week, the employee worked 43.0 hours in the work week, and would be eligible for 4 and ½ hours of compensatory time.

## **OVERNIGHT TRAVEL**

Travel performed at the request and for the benefit of the employer 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 regular workday hours and is compensable.

- If this travel occurs during normal work hours on non-working days (i.e. Saturday or Sunday for an employee who works Monday through Friday) the time is also compensable.
- Time the employee spends in overnight travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile and the employee is free to relax, is not considered compensable time.
- If the employee is the driver of the vehicle, the employee must be compensated as driving is work time.
- To the extent that an employee performs work while traveling, e.g. preparing for a meeting, reviewing documents, making telephone calls, this time constitutes hours worked even if the travel time would otherwise not be compensable.

*Example: Employee drives to the airport to attend a seminar and has two co-workers as passengers with him. If the trip is made before or after normal work hours, only the driver receives compensation as only the driver is working. If one of the passengers (before or after normal work hours) writes a report or makes work-related phone calls or conducts any type of business on the behalf of the employer, that time is compensable. If the trip is made during normal work hours, all three employees are compensated because travel during normal work time is compensable.*

- Time spent at a hotel with freedom to use time for the employee's own purposes is not compensable.

#### More Examples:

*An employee who regularly works from 8 a.m. to 5 p.m. from Monday through Friday is assigned overnight travel. The employee travels on business to a location that requires two hours of travel time. The employee leaves Friday at 8 a.m., arrives at the work location at 10 a.m. and works until 5 p.m. on Friday. The employee should be compensated for 8 hours of work on Friday. The employee begins work at 8 a.m. on Saturday morning, takes an hour meal break, and returns home on Saturday at 2 p.m. Since the employee worked and traveled for 5 hours on Saturday during hours that would be considered normal work hours on a non-working day, the employee would be eligible for 7.5 hours of compensatory time on Saturday (5 hours x 1.5).*

*An employee who regularly works from 8 a.m. to 5 p.m. from Monday through Friday is assigned work out of town. On Friday, the employee works at his regular job location until 4 p.m. and then travels by bus to an out of town work location, arriving at 6 p.m. The employee should be compensated for 8 hours on Friday, since with overnight travel only the travel time that overlaps the employee's regular working hours must be paid. On Saturday, the employee works from 8 a.m. to 4 p.m. with an hour meal break. The employee then leaves to travel home by bus, arriving at 6 p.m. Since only the travel time that overlaps the employee's regular working hours on a non-working day must be paid, the employee is eligible for 12 hours of compensatory time. (8 hours x 1.5)*

- Regular meal period time is not considered compensable time.

#### **TRAINING TIME**

Generally, when the employer permits or requires a non-exempt employee to attend training, such time is considered as hours worked unless all four of the following criteria are met:

1. Attendance is outside of the employee's regular work hours;
2. Attendance is voluntary;
3. The course, lecture, or meeting is not directly related to the employee's job; and
4. The employee does not perform any productive work for the employer during such training.

#### **QUESTIONS**

If you have questions please contact your [HR Consultant listed on the HR website](#) or at 540-568-7247