

Travel, commuting time: When must employers pay?



Determining when and how much to pay employees for their travel and commuting time is a complex subject, governed by Fair Labor Standards Act (FLSA) regulations.

Employers need to know what is considered working time when employees are traveling; how to deal with weekend time that may combine business and personal travel; and how to handle requests for travel reimbursements when company vehicles are used for "commuting."

1. If an employee travels on company business outside of his/her regular work hours, is that time considered "working" time?

Depending on the circumstances, employees may, indeed, be entitled to compensation for that time. Whether employees' travel time must be counted as hours worked hinges on the kind of travel involved:

- **Commuting:** Employees who travel to and from their homes to work are commuting, which isn't working time. The same rule applies even if the worksite changes every day.
- **Travel that's all in day's work:** The time employees spend traveling from job site to job site during the day is working time.
- **Special one-day assignments:** If employees travel to another city and return home the same day, the time spent traveling to, and returning from, the other city is considered working time.
- **Travel away from home overnight:** This travel time is working time when it cuts across employees' workdays. It's also working time if employees travel corresponding hours on non-workdays. *Exception:* The time employees spend traveling outside their regular work hours as passengers on a plane, train, bus, in a car, etc., isn't working time.

2. If an hourly employee must fly to another division of the company, does the employer have to pay for his travel time? He will be leaving on Sunday and returning the following Saturday.

It depends. The rules for paying for an employee's travel time are covered in the FLSA. There are basically three scenarios.

1. If the employee is traveling during his/her normal working hours, then you must pay him/her for the time, even if the travel occurs on a day when the employee wouldn't otherwise be working (i.e., a Saturday or Sunday).
2. If the employee starts his/her trip during normal working hours (again, even if the travel occurs on a

Saturday or Sunday), and the trip ends after his/her working hours, you don't have to pay for the time in excess of normal working hours. *Example:* If an employee regularly works Monday through Friday, 8 a.m. to 5 p.m., flies on Tuesday at 12 p.m., and arrives at 7 p.m., you don't have to count travel hours after 5 p.m. as hours worked.

3. If all travel is strictly limited to an employee's non-working hours, you don't have to pay for the time. *Example:* If the employee's flight took off at 7 p.m., the employer would not have to pay for the time.

Note: Keep in mind that if a nonexempt employee's travel time, together with his/her working time, adds up to more than 40 hours during the week, the employee is owed overtime at one-and-one-half times his/her regular rate of pay.

3. Must an employer pay employees for their commuting time if they drive a company vehicle from their homes to the first job of the day?

According to the FLSA, commute time isn't considered working time if an employee drives from his/her home to the first worksite of the day. This is true even if the worksite changes every day. On the other hand, it would be considered working time if employees had to report to the office first, before they went out to the job site. If that were the case, the drive into the office would be considered non-compensable commuting time, but the drive from the office to the first job site would be considered traveling that's all in a day's work.

4. A service tech covers a three-state area for the company. He doesn't come into the office to get his assignments. Instead, he receives his daily schedule via email before his last job of the day. It can take him three hours to get from his home to the first job of the day. We pay him for traveling among work sites during the day, but he's suggested that we have to pay him for his extraordinary commuting time. Do we?

No. Under the Portal-to-Portal Act, which is an amendment to FLSA, employers need not pay employees for their ordinary commuting time, even if they go from their home to the first job of the day, and even if that commute is extraordinary. The Portal Act applies regardless of the length and distance of an employee's commute.

5. Prior to going out on their first call of the day, employees log onto their laptop computers to download assignments and maps, and respond to email. They never come into the office. Must we pay them for the time they travel to the first job of the day?

Maybe. Under the Portal Act, you don't have to pay employees for their ordinary commuting time. This includes situations where employees go from their home to the first worksite of the day. But these employees may not be commuting. If their workdays begin when they fire up their laptops, their first trip of the day isn't commuting, and you must pay them for their travel time.

6. As a condition of continued employment, an employee must seek counseling. The company chose the therapist and pays for the counseling sessions. The employee goes on her days off, but she's now insisting that we also pay her for her travel time to/from the therapist's office. This seems personal to us, so we don't want to pay. Must we pay her for this time?

Probably. Attendance at the counseling sessions is mandatory. This creates a strong inference that it's the employer that benefits from the sessions. Under the Portal Act, employees must be paid for activities that are integral to their jobs. By mandating that the employee receive counseling from an employer-selected therapist, the employee's activity (i.e., traveling) is integral to her job.

7. An employee who normally works in New York City traveled to Washington, D.C., for a special one-day seminar. Must she be paid for this traveling time?

Yes. Under the FLSA, if employees who regularly work at one location have special assignments in another city

and return home the same day, all of the time they spend traveling to and from those assignments is compensable working time. *Exception:* You don't have to count the time she would normally spend commuting to her regular workplace.