

FLSA: Calculating Hours Worked



To ensure you're in compliance with the FLSA, it's important to understand the definition of "hours of work." Any hour when an employee's on duty is considered time worked. The only period usually excluded: when an employee uses the time for personal reasons.

You don't need to count meal periods lasting 30 minutes or more as time worked if the employee is completely relieved from duty. But if, for example, you require someone to assist customers, take business calls or stay by his or her machine during lunch, you must count those minutes as paid time. Coffee breaks or other rest periods lasting 20 minutes or less are also considered time worked.

The federal law doesn't require rest or meal breaks for workers over age 18. Nearly half the states, however, mandate that you must provide rest or meal breaks for a specified minimum period each day. For example, in California employers must give workers a 10-minute rest period in every four-hour period, plus a 30-minute meal break within five hours of starting their shift if the workday lasts six hours or more. Be sure to check with an attorney about your state's law.

Caution: If you require employees to wear pagers or be recalled to duty during meal breaks, you must pay them for that time. You may incur significant liability if you're not paying entire units of employees on call during breaks. You can be hit with back pay for up to three years, plus an equal amount as liquidated damages—not to mention attorneys' fees.

When an employee engages in his regular duties, you must count the time as work even if it falls before or after his usual shift. (A mere few minutes of work may be excluded as unsubstantial.) If an employee is working at home or any other place outside the job site, you must also count that time if you know, or have reason to believe, that the employee is performing work.

Before the workday begins or after it ends, you don't need to pay for time when an employee may engage in certain activities related to his regular job but not integral to it. For instance, you wouldn't need to count or pay for travel between a logging camp and the site of logging operations.

In 2005, the U.S. Supreme Court decided two cases involving hours of work. It said manufacturing workers must be paid for the time they spend changing into and out of protective clothing and safety gear, a "principal activity ... integral and indispensable" to their work. They must also be paid for time spent walking between their workstations and locker rooms where they put on and remove their gear. However, the court didn't order employers to pay for the time workers spend in line at the beginning of the day to get their clothing and safety gear; this is "preliminary activity" for which they needn't be paid. *IBP v. Alvarez* and *Tum v. Barber Foods*.

However, in a 2014 ruling, the U.S. Supreme Court said there's an exception to "donning and doffing" cases under the FLSA. It said workers need not be paid to change into and out of protective gear if a union contract has already specified that the time isn't compensable. *Sandifer v. United States Steel Corp.* (No. 12-417)

Also in 2014, the Supreme Court ruled that employers do not have to pay their employees for time they spend undergoing (and waiting for) security screenings at the end of their shifts. The court said the screening process is not a “principal activity” of the workers’ jobs and, therefore, is not subject to compensation. *Integrity Staffing Solutions v. Jesse Busk* (No. 13-433)

Travel time

Many nonexempt (hourly) employees are entitled to pay for time spent traveling. Some general guidelines:

- **Travel between home and work.** Regular commuting back and forth to work doesn’t count as paid time unless the employee performs work en route. Travel time does count, though, when an employee must travel a substantial distance for an emergency job at a customer’s premises.
- **Travel as a regular part of the job.** When an employee’s daily duties regularly involve travel, you must count that as paid work time.
- **One-day travel assignments.** You must count all such travel time as work, except meal periods and the employee’s ordinary commute.
- **Extended trips.** Travel during normal working hours, no matter the day of week, counts as work time.

In addition, the time an employee spends waiting for work counts as paid time: for example, when an administrative assistant waits for her boss to give her an assignment or a mechanic stands around while a machine’s being repaired. Both have been “engaged to wait”: Their employers require them to be present even though they may not have tasks available for the entire shift.

Employees on call: Thanks to a recent decision in a class action case, it’s now clear that if you have employees report to their regular workplace location in response to a call, they aren’t entitled to extra pay for their trip time. That’s counted as regular commuting time, which is always unpaid. Your organization can take advantage of this rule only if the employees report directly to their regular workplace first. If you send them to another location (such as a customer’s property), you must pay for their travel time. *Jonites, et al., v. Exelon Corporation*, No. 05-C-4234, ND IL (2007)

Sleeping time

In certain circumstances, you must pay for the time an employee working an extended shift spends sleeping. If she’s on duty fewer than 24 hours, the entire period counts as work time even though she may sleep or engage in other personal activities during her shift. If the shift extends beyond 24 hours, you and the employee may agree to exclude meal periods and sleeping periods of not more than eight hours from her hours worked.

You may also exclude sleeping periods of not more than eight hours per day if you provide adequate sleeping facilities and allow for uninterrupted rest. But when the job interrupts an employee’s sleep, you must count each interruption as paid time. If an employee can’t get at least five hours’ sleep, you must pay for the entire period as time worked.

Training programs and lectures

You must pay an employee for time spent attending training programs and lectures unless the following apply:

- **Attendance is outside** regular working hours.
- **Employees don’t perform** any productive work during the sessions.
- **The program doesn’t directly** relate to their jobs.
- **Attendance is** voluntary.

If you give employees the impression that they must attend or risk losing their jobs, their attendance isn’t considered voluntary. If the training is intended to help an employee perform her job better, it’s directly related

to her job. But if the purpose is to upgrade an employee's skills in hopes of advancement—and you haven't required her to attend—you don't have to pay her for training time.

What about any hours spent in an apprenticeship program? Usually, you can exclude this period from paid time if the apprenticeship meets the standards of the Labor Department's Bureau of Apprenticeship and Training and the instruction doesn't involve productive work or performing regular duties. You must count instruction time, however, if the written agreement specifically provides for it. For further details, contact the Office of Apprenticeship Training, Employer and Labor Services at (202) 693-2796 or go to www.doleta.gov/OA/eta_default.cfm.

Civic and charitable work

Recently, the Labor Department issued two opinion letters addressing questions about paying wages to employees performing civic or charitable work at the request of their employers. The DOL regulation defines civic and charitable work as "hours of service for a public agency for civic, charitable or humanitarian reasons." Examples include volunteering for nonprofit organizations such as food banks, churches and religious organizations, and fund-raising events designed to raise money for disease research and the like.

Essentially, you must pay for hours spent on civic or charitable work if:

- **The activity takes place** during normal business hours or
- **If outside normal work time**, it's the same type of work the employee would do as part of her job or
- **You require** employees to participate.

You needn't pay for civic or charitable work if:

- **You don't require** participation or penalize those who don't.
- **The work doesn't occur** during normal work hours.
- **The duties performed** are outside their normal work duties.

Other work-related activities

Several other work-related activities count toward an employee's paid work hours. For example:

- **Medical attention.** The time an employee spends waiting for or receiving medical care on the premises or at the employer's direction during his regular workday counts as work time.
- **Grievance hearings.** Time spent in grievance conferences during working hours is generally considered work time. If a union is involved, look to past practices or to the collective bargaining agreement to determine whether the time counts.