When do you have to pay employees who telework for travel time?

Travel time in the telework era poses unique challenges for payroll calculation. As the line blurs between working and personal hours, tracking compensable hours becomes more complex. For exempt workers, that's not a big deal. They're paid a set salary regardless of how many hours they work. While working at home, they can break up the day any way that suits them. But hourly workers are a different story.

The Fair Labor Standards Act (FLSA), a depression-era law, governs how employers pay hourly workers. An amendment to the FLSA, the Portal-to-Portal Act, dictates whether an employee's travel time is compensable. Neither of these laws was drafted with the internet, working from home, or a global pandemic in mind.

Still, the Department of Labor (DOL) isn't likely to be forgiving of violations simply because many companies are new to telework. When it comes to travel time, the blurring of the lines between work and home creates unique challenges. Additionally, as a result of the pandemic, the DOL has taken new approaches on other telework-related issues that companies must be aware of.

The FLSA ensures workers are paid for time spent working

The FLSA requires employers to pay nonexempt workers for time they spend working for the employer's benefit. The cardinal rule is that all time spent working must be paid. Work can't be "volunteered." Managers can't force "off the clock" work at the beginning or end of a shift. Answering emails or taking calls during a meal break means adding that time to the daily count. Any period of time the employee is not free to spend as she wishes because of work obligations is compensable. Plus, the FLSA dictates how many hours employees can be forced to work before overtime kicks in. Employees are entitled to time and a half pay for any hours over 40 worked in a week. Employees must be paid at least the federal minimum wage of $7.25 per hour for each hour unless overtime applies.

Portal-to-Portal Act considerations

The Portal-to-Portal Act states that normal commuting time is not compensable. Workers are expected to get to work and back home again on their own time. Otherwise, employers would be on the hook without being able to control the commute length. Traditionally, this has meant compensable time starts when the employee arrives at work and begins toiling on behalf of the employer. Compensable time stops when the employee stops working, takes a lunch break, or at the end of the workday.

Workers who must travel to multiple worksites are the real focus of the Portal-to-Portal Act. The employee’s trip from home to the first worksite of the day is not compensable. The Portal-to-Portal Act considers this commuting time. The time the employee takes to travel from worksite one to worksite two, however, is compensable. Work has already started for the day and under the employer’s direction, the employee must get to the next site. Each trip to a worksite after that is compensable as well. Thus, a plumber might make five stops during the workday, all for the employer’s benefit. The employee’s trip home from the last worksite is not compensable. That is commuting time.

DOL opinion letters on travel time while teleworking

The U.S. Department of Labor (DOL) recently issued an opinion letter addressing two specific sets of circumstances. In the first, an onsite employee has a parent-teacher conference at her child’s school from 1:30 p.m. to 2:15 p.m. She leaves the office at 1:00 p.m., drives 30 minutes to the school, and meets with the teacher for 45 minutes. Then she drives home, where she works the rest of the day. The travel time from the school to her home is 30 minutes. The questioner asked whether the travel time is compensable.

The DOL responded, “From the time she leaves work at 1:00 until she gets home and begins working again, her time is her own. She has been relieved of all job duties during that time. Her compensable time begins again when she resumes working for the employer’s benefit.”

The second scenario involved an employee who has a doctor’s appointment from 8:30 to 9:15 a.m. She works from home from 6:45 to 7:45, then drives 45 minutes to the doctor’s office. Afterward, she drives 15 minutes to the office and resumes working.

Again, the DOL opined that the time was not compensable. The employer must pay for the early morning hour of work, but the employee was free to do as she wanted until she arrived at work.

In effect, travel the employer does not require is not compensable.

Pandemic considerations

The DOL examples show we no longer live in the simple time of regular daily commutes. An employee’s office could be a few feet from his bed and travel time isn't the only time impacted by telework. Compensable time may start and stop several times during the day as childcare demands interfere. Prior to the pandemic, telework was largely a beneficial arrangement for the employee. It was used as an accommodation under the Americans With Disabilities Act (ADA). Now it is an employer requirement done in the name of workplace safety.

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Some unique problems include

- **Home office costs:** If the cost of home office expenses lowers employee pay below minimum wage, it violates the FLSA. In some cases, telecommuting employees have also begun asking for additional funds to cover home office expenses. Some states have strict rules requiring compensation for all telework expenses.
- **OSHA safety:** Prior to the pandemic, the U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) took a “hands-off” policy toward home offices. In February 2000, it announced it would not inspect home offices. However, now OSHA expects employers to report home office injuries on its Form 300.
- **The continuous workday rule:** One of the reasons mid-workday travel is paid time is the continuous workday rule. The FLSA dictates that employees should be paid for all time tied up once they begin work for the day. All time between first and last principal activities is compensable except meal breaks. But when telework occurs, it's often akin to a split shift. That’s especially true during the pandemic, when childcare and virtual schooling break up the day. Thus, many employers asked DOL whether they could allow hourly teleworkers to create their own split shifts. Could teleworkers begin at 5 A.M. stop at 11 A.M. to virtually school and resume at 2 P.M. until 5 P.M.? According to the DOL FAQ, this is fine. The employer only has to pay for time actually worked despite the continuous workday rule.

Additional Resource: If your employee handbook doesn't include these topics, it may be time to update or establish your remote employee code of conduct.

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