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Understanding the Rules on Payment for Travel Time

This article previously appeared in the MABX Construx Magazine in its June 2012 edition. With the closing of the MABX in 2015, the link to the article became inactive so the article has been reformatted for this website.

The law regarding paying employees for travel time is confusing and illogical in certain ways. There are many misconceptions concerning the employee's right to be paid for travel. The rules are outlined in the Fair Labor Standards Act ("FLSA"), the Portal-to-Portal Act and the U.S. Department of Labor's Regulations. These laws provide minimum requirements concerning payment for travel. Employers are always permitted to pay employees for travel, even when not required to do so, but all employers must be aware of the minimum requirements.

As an initial matter, employees that are exempt from overtime need not be paid for any travel. The FLSA contains a number of exemptions specifying certain types of salaried workers that need not be paid for either overtime or travel. This article applies only to employees that are paid by the hour or who are not exempt from overtime. Keep in mind that just because an employee is paid a salary does not mean that she is either exempt from overtime or that she need not be paid for overtime. The question of whether an employee is exempt is determined by her job duties.

The first rule to remember is that the commute from home to work, and back again, is not usually considered work time, and the employee need not be paid for it. This rule is contained in the Portal-to-Portal Act. It applies regardless of whether the employee works at a fixed location each day or at different jobsites. However, under the "Emergency Home to Work" Rule, if an employee who has left work for the day is called back later that evening (for a service call or something similar), all travel time counts as working time and must be paid.

One slight exception to this general rule regarding commuting is that, if the employee is required to report to the office or to some other designated location in order to receive instructions, retrieve tools or materials, or for some other employment-related reason, then the time spent traveling from that location to the jobsite counts as working time, even if it occurs outside the employee's normal shift. Thus, if the employees are told to meet at the office at 7 am in order to travel together to the jobsite to begin work at 8 am, then the one hour of travel is considered work time. Likewise, if the workers leave the jobsite at 3:30 pm. and are required to return to the office, the return trip must be paid as well.

Special rules apply for employees traveling on a Special One Day Assignment in another city. If an employee is sent to a seminar, training or any other work-related assignment out of town that lasts for a day and does not involve an overnight stay, the travel time counts as work time. However, the time that the employee would spend on his/her normal commute to work can be deducted from the travel time. Thus, if an employee who normally works from 9 to 5 attends a training seminar in State College and does not return to Harrisburg until 8 pm, he/she must be paid for the three hours of travel after 5 pm. If the employee's normal commute is 30 minutes, it can be deducted from the three hours of travel time.



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If the out-of-town assignment lasts *more than a day and involves an overnight stay*, then all travel time need not be paid. Only the time spent traveling that overlaps the employee's regular work day must be paid. Importantly, in this scenario, travel time that overlaps the employee's normal working hours must be paid even if it occurs on a day that the employee does not normally work. For example, if an employee who normally works Monday through Friday from 9 am to 5 pm leaves the office at 5 pm and drives from Harrisburg to Philadelphia, arriving at 8 pm for a seminar the next day, the travel time need not be paid because it is outside the employee's normal working hours. If the same employee left Harrisburg for Philadelphia on a Sunday at 2 pm and arrived at 5 pm, it would be counted as work time because the travel occurs during the employee's regular working hours. The fact that it occurs on a Sunday is irrelevant. If the employee left at 5 pm on Sunday afternoon, it does not count as work time because it occurs after the employee's normal working hours. Needless to say, this rule makes little sense, but neither Congress nor federal regulators are famous for passing legislation that is logical or intuitive.

Notably, travel time during non-working hours would be considered payable time if the employee performs work while traveling. Thus, if the employee returns home from a seminar by train, for example, and reviews the training information on the return trip, it could be considered working time.

Another rule is the so-called "All in a Day's Work" Rule. Under it, an employee that travels from jobsite to jobsite, or from the office to a jobsite during the course of the normal workday, must be paid for that time.

As this brief overview demonstrates, the travel time rules are not necessarily logical or consistent. The Department of Labor has been very aggressive under the current administration in its enforcement activities. Enforcement and interpretations are heavily slanted in favor of the employee. To avoid a potential problem, know the rules and make sure your handbooks and written travel policies are consistent with the law. Again, you are free to pay your employees for travel time in situations where the law does not require it. If you do, be sure to treat your employees consistently to avoid accusations of disparate treatment.