

NEWS & INSIGHTS

Compensable Travel Time under the Fair Labor Standard Act (FLSA) for Hourly Technicians

[INSIGHTSLEGAL UPDATE](#)

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On April 12, 2018, the U.S. Department of Labor Wage and Hour Division issued an opinion letter on the compensability of travel time for hourly wage technicians. The opinion letter is informative for any employer of hourly wage technicians seeking to determine whether technician travel must be considered compensable worktime.

Generally, the FLSA requires employers to pay employees for their work. However, compensable worktime does not include time spent commuting to or from work. This is true regardless of whether the employee works at a fixed location or different job sites each day. 29 C.F.R. § 785.35. Once an employee reaches the job site or place of work, any travel between job sites or places of work during the work-day, must be counted as hours worked. 29 C.F.R. § 785.38.

Frequently, employers may send their employees to out-of-town job sites or training courses. In these instances, travel time must be considered work-time when it overlaps with an employee's regular work-day hours. 29 C.F.R. § 785.39. For example, if the regular work-day hours for an employee are 7:00 a.m. to 4:00 p.m., and the employer requires the employee to travel out of town for training, then any time spent by the employee traveling to and from the course between the hours of 7:00 a.m. and 4:00 p.m. are considered compensable worktime. This is true even if the employee travels on days in which (s)he typically does not work, i.e., Saturdays and Sundays.

In some instances, an hourly employee may not have clearly established normal working hours. In these instances, the Department of Labor provides three methods that an employer may use to determine an employees compensable travel time under 29 C.F.R. § 785.39.

- The employer may review the employee's time records during the most recent month of regular employment. If these records reveal typical work hours, the employer may consider those the employee's normal working hours.
- If the past month's records do not reveal any normal working hours, the employer may instead average the start and end times for the employee's work-days.
- In the rare case in which an employee truly has no normal working hours, the employer and employee may negotiate and agree to a reasonable amount of time in which out-of-town travel is compensable.

While this list is not exhaustive and there are additional means of determining an employee's regular work hours under C.F.R. § 785.39., the opinion letter clearly states, "when an employer reasonably uses any of these methods to determine an employees' normal working hours...the [DOL] will not find a violation for compensating employees' travel only during those working hours." To view the complete April 12, 2018 Department of Labor advisory opinion [click here](#).

For more information, please contact a member of the [Construction Law](#) and [Employment Law](#) Group's at Saxton & Stump, LLC.

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