

Employment & Labor Alert



Department of Labor Issues New Guidance on Whether Employees Must be Paid for Travel and Training

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The Wage and Hour Division of the U.S. Department of Labor recently issued two opinion letters detailing how employers must calculate compensable hours worked under the Fair Labor Standards Act ("FLSA"). Employers should review the new guidance pertaining to [travel](#) and [voluntary training](#) and should realign policies and pay practices where necessary to ensure compliance.

Compensable Travel Time

The DOL considered whether non-exempt foremen and laborers must be compensated for travel time to job sites. Foremen were required to keep a company vehicle at the employer's principal place of business and would pick up the truck, drive it to the job site, and return it to the employer's place of business. Whether that travel time is compensable is determined by two factors: (1) the nature of the work site; and (2) whether the employee was a foreman or laborer.

Local job sites: Job sites close to the employer's place of business are local. Foremen must be paid for the travel time to local job sites because retrieving the truck, driving it to the job site, and returning it at the end of the day are duties which are "integral and indispensable" to their work. Laborers, however, are not paid for travel to local job sites. Rather, the laborers' travel time is normal commuting time between home and work. Therefore, even if the laborer chooses to meet at the employer's place of business and ride to the job site with the foreman in the company truck, such travel time is not compensable.

Remote job sites: Job sites between 1.5 to 4 hours away from the employer's place of business are "remote." Foremen drive the company vehicle from the place of business to the work site, and such travel time is compensable. However, travel time for laborers is compensable only if the laborers travel during their normal work hours. Furthermore, if employers offer laborers the opportunity to ride to the remote job site with the foremen, the employer may choose to compensate the laborer for either the time that accrues on the trip in the company truck or the time the laborers actually take to travel to the remote job site. Finally, if laborers choose to commute to the remote job sites, travel time outside of normal work hours is not compensable.

Compensable Time for Voluntary Training Programs

A medical facility asked whether the FLSA required employers to compensate employees for attending voluntary training programs. The facility employs clinical staff who must complete continuing education each year to maintain their licenses. The facility also employs non-clinical support staff who have no continuing education requirements. If the facility mandated training or education, it counted the time as compensable but asked whether it could require employees to use paid time off or vacation to attend "voluntary" continuing education requirements not mandated by the employer.

The DOL explained that there are two situations when training time is not compensable for FLSA purposes, even if it directly relates to the job. First, voluntary attendance at a course offered by “independent bona fide institutions of learning” is not compensable. Second, an employer is not required to pay for time voluntarily attending an independent school, college, or trade school after hours, even if the courses are related to the employee’s job.

Whether the training is attended to maintain a professional license is only helpful in proving that the course was offered by an “independent bona fide institution of learning.” The biggest factor in determining whether professional training is “work time” under the FLSA is, ultimately, whether the training occurs outside of an employee’s regular work hours.

The key takeaway from these new opinion letters, is that employers should consider establishing or modifying compensation policies or practices to ensure compliance. GableGotwals’s [Employment & Labor team](#) is happy to help.

We remain on the cutting edge of employment-related legal developments and are committed to helping employers navigate the nuances of emerging issues they face. Please contact any member of the team for further assistance.



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