



## Travel Time

### Who, What, Why . . .

*Who does it apply to:* All employers who are subject to the Fair Labor Standards Act, which is virtually every employer.

*What is the issue:* Employers are required to count certain time spent traveling toward an employee's hours worked each week unless the employee is exempt from overtime. (For more information on who is exempt from overtime, see the Exemptions edition). The problem is that not all time must be counted and the rules can be quite tricky.

*Is the drive from home to work covered:* Let's start at the beginning of the day (and the end). Of course, most of you are thinking the commute to the office can't possibly count. Like many legal issues – it depends. In its simplest form, compensable travel time starts when work begins whether that is picking up food for the office or sitting in traffic on a conference call. If the Department of Labor (DOL) considers the travel "for the employee's benefit" it does not count. If, on the other hand, the DOL considers the travel to be "for the employer's benefit," it does count. The Common Situations section will help you understand this point better.

*What if the employee drives a company car:* If the employee drives to a business location to pick up a company vehicle before heading out to the first job of the day, their time starts to count as soon as they get in the vehicle. If the employee drives the company vehicle to and from home, and from home to work or business calls, the time is treated like a regular commute and does not count. On the other hand, if the employee drives the vehicle to pick-up co-workers or materials on the way to work, the time counts as soon as the employee leaves home.

*How is travel during the workday treated:* Once an employee arrives "at work" (whether that be a jobsite, first call, or office) any additional travel during the day up to the end of the workday or last call of the day is counted. This time is clearly for the employer's benefit with the possible exception of driving to and from a meal break location.

*Who gets paid for time in a carpool:* Again, it depends. If a group of employees decide on their own to carpool, the time does not count. If the employees take their own vehicles to a common location to ride in a bus or other vehicle to a jobsite,

the bus driver is on the clock, but the riders may not be. If the riders are not obligated to use the company vehicle their ride time does not count. There is some question about whether ride time counts if the employees are unable to drive directly to the ultimate destination themselves – perhaps to a construction site or factory. Check with your employment counsel in that situation.

*What about travel out-of-town:* Out-of-town travel is generally broken down into two categories: "special" trips all in a day's work and longer trips, usually overnight. If an employer sends an employee out of their usual work area for a special one-day project, the company must pay for the travel to and from that site, less the employee's usual commute. If the employee travels to the airport to fly to another town, the flight time to and from the location counts, but the drive to the airport does not. If an employee is sent out-of-town multiple days for work, travel time that is outside of their usual work time is counted. Hence, an employee who usually works Monday – Friday, 8 to 5 will be paid for all time (including the drive to the airport since it is not a regular workday) on a Sunday to arrive for a Monday meeting. The employee will also count time in a plane or other mode of transportation returning to his home location. Travel of this type can also be complicated. Check with your employment counsel about more complicated situations such as an employee leaving early to visit friends in the destination location.

*How is travel overseas treated:* Overseas travel is complicated and beyond the scope of this edition. Check with your employment counsel about travel time of this type.

*Does on-call or emergency travel change anything:* Employees required to travel outside of their normal work hours to a location other than their primary work location must be paid travel time to and from the location. Employees called in to their primary work location after hours are not paid for travel to the location. It is an odd dichotomy, but those are the DOL's rules.

### Common Situations:

*Donut stop:* Maggie stops for donuts on the way into work just to be nice to her co-workers. Even though she made a stop for the benefit of her co-workers, her employer did not require it, so the time is not counted. What if Maggie's boss decides to

reimburse her after she shows up with the donuts? The stop was still of Maggie's own volition, so it does not count. Now, what if Maggie's boss asks her to stop and pick up a case of coffee at the grocery store and Maggie still decides to buy the donuts for her co-workers? Now it counts because Maggie is making a stop for her employer's benefit. How much of Maggie's 45-minute commute counts, though? That is up to Maggie. If she stops at the grocery store five minutes from her house, 40 minutes count. If she stops at the grocery store 5 minutes from the office, only five minutes count. The same would be true if Maggie's boss asked her to make the stop on the way home.

*Hitching a ride:* Sylvia lives 15 minutes from Maggie, just off Maggie's regular route to work. If Maggie stops to pick Sylvia up, does that count as work time? It depends. If Maggie's boss asks her to pick Sylvia up, the time counts. If Maggie is just being a good co-worker, the time does not count. Either way it doesn't count for Sylvia. Now, what if Sylvia completes a report for work that her boss has been waiting on during the ride? This time, Sylvia must count the time. Simply because she is not in the office and is using time that would otherwise be her commute, does not mean she loses the time.

*Travel here, there and everywhere:* Joe works for Cable Two as an installer. He was given a fully equipped truck to drive each day. For the company's convenience, Joe is allowed to drive the truck home each night so he can go straight to his first call each day and from his last call home. You might think Joe's day starts the moment he leaves the house. Not true. Because Joe is allowed to drive the vehicle home for his convenience, he does not start counting time until he arrives at his first call of the day and his time stops when he starts home from his last call every day.

The fact that Joe reports to different locations at the beginning of each day and drives home from a different location does not make the time count. This is true even if the drive time is different each morning and evening. There are situations where employees drive two to four hours for their first job each day and none of that time counts toward the employee's hours for the week. That said, it may be hard for the employer to keep employees under those circumstances.

*Ride and work:* Calvin rides from an assembly point each day on a bus into the plant where his construction company is performing an upgrade. The ride is about 30 minutes each way. Initially, Calvin and his co-workers could listen to music or talk on their phones during the ride. Over time, Calvin's supervisor figured out he could save time when the employees arrive at the jobsite by using the ride to go over the day's assignments. Is the ride compensable? Of course – it is used for the employer's benefit. It is not a novel circumstance for a situation like this to naturally arise. The head office starts with an approach designed to comply with the law and someone with no understanding of the rules decides to be more efficient. Oops. Now you've got a problem.

### **What should I do:**

*Good:* Analyze all the common situations for your business and determine the compensability of employees' time. Act on your determinations accordingly. Plan travel away from home locations or overnight in advance to be sure that you handle it appropriately. There may not be time to get advice of counsel after the employee returns and before their paycheck is due.

*Better:* As you can tell from this edition, there are many situations in which you may find yourself. When in doubt, consult an attorney.



Michael Kelsheimer focuses his practice on the employment law needs of Texas businesses and executive employees. He recognizes that the cost and expense of litigation make resolving employment disputes challenging. To help avoid these concerns, he utilizes his experience in and out of the courtroom to prevent or quickly resolve employment disputes through proactive employer planning and timely advice. When a dispute cannot be avoided, Michael relies upon his prior experience as a briefing attorney for the United States District Court and his extensive experience in employment and commercial lawsuits to secure favorable resolutions for his clients.

This guide is one in a series. For more information, or to receive the entire collection contact Michael Kelsheimer by email at [mkelsheimer@grayreed.com](mailto:mkelsheimer@grayreed.com) or by phone at **469.320.6063**