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### **When is Travel Time Considered Work Time**

One of the most difficult areas of the Fair Labor Standards Act is determining whether travel time is considered work time that must be paid for. The following provides an outline of the enforcement principles used by the Wage and Hour Division of the US Department of Labor to administer the Act.

The principles which apply in determining whether time spent on travel is compensable time, depend upon the kind of travel involved.

**Home To Work Travel:** An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.

**Home to Work on a Special One Day Assignment in Another City:** An employee who regularly works at a fixed location in one city is given a special one-day assignment in another city and returns home the same day. The time spent traveling to and returning from the other city is work time, except that the employer may deduct/not count that time the employee would normally spend commuting to the regular work site.

**Travel That is All in the Day's Work:** Time spent by an employee on travel as part of his/her principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.

**Travel Away from Home Community:** Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. As an enforcement policy the Division will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

**Driving Time:** Time spent driving a vehicle (either owned by the employee or the driver) at the direction of the employer transporting supplies, tools, equipment or other employees is generally considered hours worked and must be paid for. Many employers use their "exempt" foremen to perform the driving and thus do not have to pay for this time.

**Riding Time:** Time spent by an employee on travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work

there, or to pick up and to carry tools, the travel from the designated place to the workplace is part of the day's work and must be counted as hours worked regardless of contract, custom, or practice. If an employee normally finishes his work on the premises at 5 p.m. and is sent to another job which he finishes at 8 p.m. and is required to return to his employer's premises arriving at 9 p.m., all the time is working time. However, if the employee goes home instead of returning to his employer's premises, the travel after 8 p.m. is home-to-work travel and is not hours worked.

The operative issue regarding riding time is whether the employee is required to report to a meeting place and whether the employee performs any work (i.e., loading or fueling vehicles) prior to riding to the job site. If the employer tells the employees that they may come to the meeting place and ride a company provided vehicle to the job site and the employee performs no work prior to arrival at the job site, then such riding time is not hours worked. Conversely, if the employee is required to come to the company facility or performs any work while at the meeting place then the riding time becomes hours worked that must be paid for. In my experience when employees report to a company facility there is the temptation to ask one of the employees to assist with loading a vehicle, fueling the vehicle or some other activity which begins the employee's workday and thus makes the riding time compensable. Thus, employers should be very careful this the supervisors do not allow these employees to perform any work prior to riding to the job site. Further, they must ensure that the employee performs no work (i.e., unloading vehicles) when he returns to the facility at the end of his workday.

If you have any questions regarding travel time please contact Whitney Brown at [wbrown@lehrmiddlebrooks.com](mailto:wbrown@lehrmiddlebrooks.com) or Lyndel Erwin at [lerwin@lehrmiddlebrooks.com](mailto:lerwin@lehrmiddlebrooks.com).