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On The Road Again: When Is Traveling for Work Compensable?

As COVID fears have eased and Zoom fatigue has grown, the road warriors have re-emerged. In-person meetings with clients and customers and work and industry conferences are back in vogue. And with those meetings come the perennial questions about when you have to pay an employee who is traveling for work. Here's a refresher:

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.

Travel That is All in The Day's Work: Time spent by an employee in 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.

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) time the employee would normally spend commuting to the regular work site.

Example: A Huntsville employee that normally spends ½ hour traveling from his home to his work site is required to attend a meeting in Montgomery. He spends three hours traveling from his home to Montgomery. Thus, employee is entitled to 2 ½ hours (3 hours less ½ hour normal home to work time) pay for the trip to Montgomery. The return trip should be treated in the same manner.

Travel Away from Home Community: Travel that keeps an employee away from home overnight is considered as travel away from home. It 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 Department of Labor does not consider as hours worked that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

Example: An employee who is regularly scheduled to work from 9:00 am to 6:00 pm on Monday through Friday is required to leave on a Sunday at 3:00 pm to travel to an assignment in another state. The employee, who travels via airplane, arrives at the destination at 8:00 pm. In this scenario, the employee is entitled to pay for 3 hours (3:00 pm to 6:00 pm) since it cuts across his normal work hours, but is not

entitled to compensation for traveling between 6:00 pm and 8:00 pm (outside their regular hours). If the employee completes his assignment at 6:00 pm on Friday and flies home that evening none of the travel time would be considered as hours worked. Conversely, if the employee traveled home on Saturday between 9:00 am and 6:00 pm the entire travel time would be hours worked.

Driving Time: Time spent driving a vehicle (either owned by the employee, the employer or a third party) at the direction of the employer transporting supplies, tools, equipment or other employees is generally considered hours worked and must be paid. Many employers use their exempt foremen to perform the driving in order to avoid having to pay for this time. If employers use nonexempt employees to perform the driving, they may establish a different rate for driving from the employee's normal rate of pay. For example, if you have an equipment operator who normally is paid \$20.00 per hour, you could establish a driving rate of \$10.00 per hour and thus reduce the cost for the driving time. The driving rate must be at least the minimum wage. However, if you do so you will need to remember that both driving time and other time must be counted when determining overtime hours and overtime will need to be computed on the weighted average rate.

Riding Time: Time spent by an employee in 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. When an employee is required to report to 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 work place 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 of 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 with regard to riding time is whether the employee is required to report to a meeting place and whether the employee performs any work (i.e. receiving work instructions, loading or fueling vehicles, etc.) 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 the riding time is not hours worked. Conversely, if the employee is required to report to the company facility or performs any work while at the meeting place, then the riding time becomes hours worked that must be paid. To avoid having to pay for the riding time, you should ensure that the supervisors do not allow employees to perform any work prior to riding to the job site. Further, you should make sure that the employee does not perform any work (such as unloading vehicles) when he returns to the facility at the end of his workday in order for the return riding time to not be compensable.

Lehr Middlebrooks Vreeland & Thompson, P.C. can help you with this. Reach out to Al Vreeland at avreeland@lehrmiddlebrooks.com or at (205) 323-9266 for any questions or inquiries.