

FAQs About Employee Travel Time — Is It Compensable?

There are few things more confusing to employers than the nitty-gritty rules of what is and is not compensable time for non-exempt employees under the Fair Labor Standards Act (FLSA). There are also few things more costly to employers than when a mistake is made and a non-exempt employee is not paid for time he/she should have been paid for. With the continuous onslaught of FLSA lawsuits being filed every day, it is important for employers to be familiar with the rules that affect their obligation to pay non-exempt employees.

Here are some answers to common questions that are often asked with regard to the compensability of time non-exempt employees spend traveling in connection with work.

1. Do employees have to be paid for the time they spend commuting to work?

Ordinarily, travel from home to an employee's regular place of work, or from work to home, does not count as "time worked." Once an employee's work day ends, the time the employee spends traveling from his/her last job site to home is considered ordinary commuting time for which the employee will generally not be owed wages. If an employee has a regular work site, but he/she is required to report to a different work site on occasion, the time spent traveling from home to the different job site (or from the job site back home at the end of the work day) is also not compensable, as long as the different job site is within the same general locality as where the employee regularly works. For employees who do not have regular work sites and instead travel to different work sites each day, all home-to-work and work-to-home travel time is generally considered non-compensable commuting time, even if the distances traveled are long and the time spent commuting is substantial.

2. What if the employee uses a company car — do you have to pay for the employee's commuting time then?

Generally, no. An employee's home-to-work and work-to-home travel in a company-owned vehicle is not generally considered to be hours worked, as long as: (1) it is a vehicle of a type normally used for commuting; (2) the employee is able to use his/her normal route for the commute; (3) the employee does not incur any additional costs using the company vehicle; (4) the home-to-work and work-to-home travel is within the company's normal commuting area; and (5) the use of the vehicle is subject to an agreement between the company and the employee.

3. Do you have to pay an employee for travel during the work day?

Once an employee arrives at his/her regular work site and begins work for the day, the employee's travel during the course of the work day is compensable. For example, the time the employee spends traveling between two work sites will count as "time worked," just as will the time an employee spends traveling between other places for work-related reasons during his/her work day. Such travel time therefore is compensable as work time for both minimum wage and overtime purposes.

4. Do you have to pay an employee for time spent traveling on an overnight trip?

Whether or not travel in connection with overnight trips is compensable work time generally depends on when the travel occurs. If an employee goes on an overnight trip for work and the travel occurs outside of the employee's regularly scheduled work hours, generally the travel time will not be deemed work time. If, however, the time the employee spends traveling is during his/her regular work hours, that travel time will generally count as "time worked" — even if the travel occurs on a day that the employee would not ordinarily have worked! For example, if an employee regularly works 9:00 a.m. to 5:00 p.m. Monday to Friday, but travels for work from 4:00 p.m. to 10:00 p.m. on Sunday, the employee would have to be paid for the hour from 4:00 p.m. to 5:00 p.m. because that time overlaps with the hours during the days that the employee regularly works, even though Sunday is not a regular work day for that employee. The hours from 5:00 to 10:00 p.m. need not be paid because they are outside the hours that the employee regularly works. This rule may seem counterintuitive, but it is what is currently required under the law.

5. Does it matter whether the employee uses public transportation or drives himself/herself for the overnight work trip?

Yes. If an employee uses public transportation to get to the distant location, whether or not the travel time is compensable will be determined as set forth in Question 4 above. If the employee is not offered the option of using public transportation and is required to drive himself or herself, the entire time spent driving is compensable. However, if an employee is offered the option of using public transportation and instead chooses to drive himself or herself to the distant location, the employer can count as compensable "work time" either the actual time spent driving or the hours that overlap with the employee's regular work hours as set forth in Question 4 above.

Take the following scenario, for example. Employee A regularly works Monday to Friday from 9:00 a.m. to 5:00 p.m. and has to travel from New York City to Syracuse for an overnight trip. The employer offers the employee the option of air travel, which would require the employee to take a flight departing New York City at 4:00 p.m. on Sunday and arriving in Syracuse at 5:05 p.m. that same day. The employee instead opts to drive the 5 hours from New York City very early on Monday morning instead of flying to Syracuse on Sunday. In this scenario, the employer has the option of paying the employee for either the one hour from 4:00 p.m. to 5:00 p.m. on Sunday since it overlaps with the employee's regular work hours of 9:00 a.m. to 5:00 p.m., or the five hours the employee spends driving on Monday morning before his/her regular workday would otherwise begin.

6. Do you have to pay an employee for the entire time he/she is away on an overnight work trip?

If, while on an overnight trip for work, a non-exempt employee performs work outside of his/her regularly scheduled work hours, the time the employee spends doing that work will count as "time worked" and has to be compensated just as it would had the employee worked that time under ordinary circumstances. But time that the employee spends idly or on personal activities will not count as "time worked" and will not have to be compensated.

7. What about one-day work trips to a different city that do not require an overnight stay — do you have to pay an employee for the entire day?

Different rules apply when an employee usually works in a single location, but goes on a special one-day work trip to a different city than where he/she regularly works. In that circumstance, if the employee uses public transportation to get to the destination city, the employee does not have to be paid for time he/she spends commuting from home to the train station or airport (whichever applies), because that is considered to be the employee's ordinary commuting time. But the employee does have to be paid for all of the time he/she spends at the airport or train station (yes, flight delays and the like will be deemed compensable), and actually traveling between the train station or airport to the other city, regardless of whether or not the travel occurs during the employee's regular work hours. If the employee instead drives himself/herself to the destination city instead of taking public transportation, the time spent driving would be compensable as work time. If, however, the driving employee first drives to his/her regular work location before or after driving to the destination city, that home-to-work travel to the regular work location would be considered the employee's ordinary commute and therefore non-compensable. Regardless of whether public transportation is used or the employee drives to the destination city for a one-day work trip, the time the employee spends for meal breaks (assuming he/she is not working during those breaks) and any idle time (i.e., time spent neither working nor traveling) outside of his/her regular work hours is not compensable and does not count as "time worked."

8. Are these rules the same under the FLSA and any state-specific wage and hour laws?

The wage and hour rules are not necessarily the same from state to state, so it is always important to be mindful of any state-specific laws that could affect an employer's obligation to pay its non-exempt employees. For employers with operations in New York State, the New York State Department of Labor has indicated that it interprets the relevant New York Labor Law provisions and accompanying state regulations "in line" with the FLSA's "travel time" rules, but that is not a guarantee that the state and federal laws will always be in congruity. It is always possible that the New York State Department of Labor could take an inconsistent position on a particular "travel time" issue, so it is important to always double check and not just assume that the federal rules apply.

If you have any questions about this Information Memo, please contact [Jessica C. Moller](#), [Jennifer B. Schoch](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



Bond, Schoeneck & King PLLC (Bond, we, or us), has prepared this communication to present only general information. This is not intended as legal advice, nor should you consider it as such. You should not act, or decline to act, based upon the contents. While we try to make sure that the information is complete and accurate, laws can change quickly. You should always formally engage a lawyer of your choosing before taking actions which have legal consequences. For information about our firm, practice areas and attorneys, visit our website, www.bsk.com. • Attorney Advertising • © 2016 Bond, Schoeneck & King, PLLC, One Lincoln Center, Syracuse, NY 13202 • 315.218.8000.

CONNECT WITH US ON LINKEDIN: SEARCH FOR BOND, SCHOENECK & KING, PLLC

FOLLOW US ON TWITTER: SEARCH FOR BONDLAWFIRM