

Guidelines on Travel – When is Travel Time Compensable Work Time?

The information contained in this guideline is based on federal law, specifically, the Fair Labor Standards Act and state law, specifically the Industrial Welfare Act. It applies to staff positions where the position is *eligible for overtime*. It does not apply to positions determined to be exempt from overtime.

Additional information may be found within Fact Sheet #22, US Department of Labor, Wage & Hour Division: <http://www.dol.gov/whd/regs/compliance/whdfs22.pdf> and within the Administrative Policy of the State of Washington Department of Labor and Industries Employment Standards ES.C.2; <https://lni.wa.gov/workers-rights/docs/esc2.pdf>.

I. GENERAL

In general, whether an employee's time is compensable or not depends on whether the time is considered "hours worked" under RCW 49.46.020 and WAC 296-126-002(8). "Hours worked" means all hours when an employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed workplace. WAC 296-126-002(8). These statutory and regulatory requirements cannot be waived through a collective bargaining agreement or other agreement.

There are three required elements to the definition of hours worked: (1) an employee is authorized or required by the employer; (2) to be on duty; and (3) on the employer's premises or at a prescribed workplace.

II. TRAVEL DURING THE WORKDAY

Travel from home to work before the work day is not usually considered work time, so is not compensable; it is the employee's commute. Similarly, travel during the day for personal reasons in a personal vehicle is not compensable time. However, travel during the day for work purposes or some travel from home to alternative work sites might be compensable depending on the specific facts and circumstances of each individual employee, employer, and work week.

Whether time spent driving in a company-provided vehicle constitutes paid work time depends on whether the drive time is considered "hours worked."

- If the travel or commute time is considered "hours worked," then it is compensable and the employee must be paid for this time.
- Time spent driving a company-provided vehicle during an employee's ordinary travel, when the employee is not on duty and performs no work while driving between home and the first or last job site of the day, is not considered hours worked.
- Time spent driving a company-provided vehicle from the employer's place of business to the job site is considered hours worked. Time spent riding in a company-provided vehicle from the employer's place of business to the job site is not considered hours worked

when an employee voluntarily reports to the employer's location merely to obtain a ride as a passenger for the employee's convenience, is not on duty, and performs no work. Time spent driving or riding as a passenger from job site to job site is considered hours worked.

Factors to consider in determining IF AN EMPLOYEE IS "on duty" when driving a company-provided vehicle between home and work.

- To determine if the employee is on duty, you must evaluate the extent to which the employer restricts the employee's personal activities and controls the employee's time. This includes an analysis of the frequency and extent of such restrictions and control. Following is a non-exclusive list of factors to consider when making a determination if an employee is "on duty." There may be additional relevant factors that the Supreme Court or L&I have not considered. All factors must be considered and weighed in combination with each other. The mere presence or absence of any single factor is not determinative.
 1. The extent to which the employee is free to make personal stops and engage in personal activities during the drive time between home and the first or last job site of the day, or whether the vehicle may only be used for company business.
 2. The extent to which the employee is required to respond to work related calls or to be redirected while enroute.
 3. Whether the employee is required to maintain contact with the employer.
 4. The extent to which the employee receives assignments at home and must spend time writing down the assignments and mapping the route to reach the first job site before beginning the drive.

Factors to consider in determining if an employee is "on the employer's premises or at a prescribed work place" when driving a company-provided vehicle between home and work.

- To determine if a company-provided vehicle constitutes a "prescribed work place," you must evaluate whether driving the particular vehicle is an integral part of the work performed by the employee. Following is a non-exclusive list of factors to consider when making a determination if an employee is "on the employer's premises or at a prescribed work place." There may be additional relevant factors that the Supreme Court or L&I have not considered. All factors must be considered and weighed in combination with each other. The mere presence or absence of any single factor is not determinative.
 1. Whether the nature of the business requires the employee to drive a particular vehicle provided by the employer to carry necessary nonpersonal tools and equipment to the work site.
 2. The extent to which the company-provided vehicle serves as a location where the employer authorizes or requires the employee to complete business required paperwork or load materials or equipment.
 3. The extent to which the employer requires the employee to ensure that the vehicle is kept clean, organized, safe, and serviced.

The following are two examples of how this policy may be used to determine whether or not drive time between home and the first or last job site of the day in a company-provided vehicle is

compensable. These examples are illustrative and are not intended to create additional factors or address other scenarios where the facts differ from those below.

EXAMPLE #1: The employee drives between home and the first or last job site of the day in a company-provided vehicle:

- As a matter of accepted company practice, the employee is prohibited from any personal use of the vehicle, which must be used exclusively for business purposes; and
- The employer regularly requires the employee to perform services for the employer during the drive time including being redirected to a different location; and
- The employee regularly transports necessary nonpersonal tools and equipment in the vehicle between home and the first or last job site of the day; and
- The employee receives his/her daily job site assignments at home in a manner that requires the employee to spend more than a de minimis amount of time writing down the assignments and mapping travel routes for driving to the locations.

In this example, the facts establish that the drive time between home and the first or last job site of the day in a company-provided vehicle is COMPENSABLE.

EXAMPLE #2: The employee drives between home and the first or last job site of the day in a company-provided vehicle:

- The employer does not strictly control the employee's ability to use the vehicle for personal purposes. E.g., the employee, as a matter of accepted company practice, is able to use the vehicle for personal stops or errands while driving between home and the job site; and
- The employee is not required to perform any services for the employer during the drive including responding to work related calls or redirection; and
- The employee does not perform any services for the employer during the drive including work related calls or redirection.

In this example, the facts establish that the drive time between home and the first or last job site of the day in a company-provided vehicle is NOT COMPENSABLE.

III. ONE-DAY ASSIGNMENT¹

For travel from home to an alternate work location for a one-day assignment, two rules apply:

1. Travel time to an alternative work location which takes place during the employee's regular work schedule is considered work time and is payable.
2. Travel time to an alternative work location that takes place before or after the employee's regular work schedule is also considered work time and is payable, except that the employer may deduct the amount of time that the employee would normally spend commuting to work.

¹ 29 C.F.R. 785.37

IV. OVERNIGHT

Travel away from home to another location involving an overnight stay may be compensable; several rules apply to this scenario:

- If the travel time occurs during the employee's regular work schedule (8am to 5pm, for example), all of the travel time is considered work time and is payable, even if the travel occurs on a weekend.
- If the travel time occurs outside of regular work hours, whether or not it's paid time, is dependent on the mode of travel:
 - If the employee is driving, then the travel time is work time and is payable.
 - If the employee is a passenger during the travel time, then the travel time is not considered work time, and is not payable.
Exception: if the employee is a passenger, but performs work during the travel, then it is work time and is payable. Example: employee has a 3 hour airplane flight, and is working on his/her laptop during half the flight; in this example, 1.5 hours of the travel time is payable since the employee worked half the flight.

For additional assistance in determining whether or not travel time is considered work time, and therefore is payable to the employee, please contact Human Resources:

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