



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

The information contained in this guideline is based on Washington State law<sup>1</sup>. 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 the Administrative Policy of the State of Washington Department of Labor and Industries Employment Standards ES.C.2; <https://www.lni.wa.gov/workers-rights/docs/esc2.pdf>.

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### I. BACKGROUND

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 university to be on duty on the university'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, university, and work week.

**Whether time spent driving in a university-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.

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<sup>1</sup> Washington State Law supersedes federal law in this instance.

- Time spent driving a university-provided vehicle during an employee’s ordinary commute, from home to the first job site of the day, or from the last job site of the day to home, is not considered hours worked if the employee is not on duty and performs no work while driving or riding during the commute.
- Time spent driving a university-provided vehicle from the university's place of business to a job site is considered hours worked. Time spent riding in a university-provided vehicle from the university's place of business to the job site is not considered hours worked when an employee voluntarily reports to the university 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 university-provided vehicle between home and work.**

To determine if the employee is on duty, the extent to which the university 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. The following is a non-exclusive list of factors to consider when deciding if an employee is “on duty.” 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 university business.
2. The extent to which the employee is required to respond to work related calls or to be redirected while en route.
3. Whether the employee is required to maintain contact with the university.
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 university’s premises or at a prescribed work place” when driving a university]-provided vehicle between home and work.**

- To determine if a university-provided vehicle constitutes a “prescribed work place,” the university must evaluate whether driving the particular vehicle is an integral part of the work performed by the employee. The following is a non-exclusive list of factors to consider when determining if an employee is “on the university’s premises or at a prescribed work place.” 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 university to carry necessary nonpersonal tools and equipment to the work site.

2. The extent to which the university-provided vehicle serves as a location where the university authorizes or requires the employee to complete business required paperwork or load materials or equipment.
3. The extent to which the university 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 university-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 university-provided vehicle:

- As a matter of accepted university practice, the employee is prohibited from any personal use of the vehicle, which must be used exclusively for business purposes; and
- The university regularly requires the employee to perform services for the university 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 daily job site assignments at home in a manner that requires the employee to spend more than a negligible 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 university-provided vehicle is COMPENSABLE.

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

- The university does not strictly control the employee's ability to use the vehicle for personal purposes. The employee, as a matter of accepted university 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 university during the drive including responding to work related calls or redirection; and
- The employee does not perform any services for the university 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 university-provided vehicle is NOT COMPENSABLE.

### III. OUT-OF-TOWN TRAVEL

In Washington State, all out-of-town travel that takes place for the university's benefit and is requested to meet the needs of a particular assignment is compensable regardless of whether the employee engages in additional work during the journey or whether the university owns or controls the employee's means of transport. Because the travel itself is a duty of the work assignment, so long as the university approves the means of travel, the employee is authorized to be on duty at a prescribed workplace through the active travel time and therefore the time meets all three elements of the hours worked rule. Compensable travel time includes the employee's travel time to an airport, train station or other transit center if the employee drives directly from home to the transportation center or out-of-town location. However, if the employee reports to work first, the drive between home and their regular work location is considered part of their normal commute and is not compensable. Once an employee arrives at the employee's lodgings (e.g. hotel), the employee is no longer "on duty" and the time is not compensable as "hours worked" so long as the employee is free to engage in personal activities.

**EXAMPLE #1:** Employee is required to travel to an out-of-town seminar and the University has approved their travel. The employee leaves for the training directly from their home, goes to the airport, parks, flies to the training city, picks up a rental car, and drives directly to the hotel. The employee is free to engage in personal activities while staying at the hotel. The employee performs no work outside of the required training and following completion, drives directly home after driving the rental car back to the airport, catching a flight home, and picking up their car at the airport parking lot. In this example,

- The time from when the employee leaves home until they get to the hotel is COMPENSABLE.
- Once they get to the hotel, since this personal time, they are considered off-duty and that time is NOT COMPENSABLE.
- The time from when the employee leaves the hotel until they get home is also COMPENSABLE so long as the university approves the travel and the employee is authorized to be on duty.

**EXAMPLE #2:** An employee is required to travel to a nearby city for an annual training presented by the university to a state-wide group of employees. The employee is required to report to work to pick up a work vehicle before traveling out of town. When the employee arrives at the hotel, the employee is free to leave the hotel to go on a walk or otherwise engage in personal activities while at the lodging. During the evenings, the employee spends several hours catching up on work emails. The employee attends all the required sections of the training seminars. The employee completes, the training, returns to the office to drop off the university's vehicle and drive home using a personal vehicle. In this example:

- The drive between work and home at the beginning and end of the travel is considered normal commute time and is NOT COMPENSABLE.
- The time spent on the journey to the other city after the employee leaves their work until the employee arrives at the hotel in the other city is COMPENSABLE.
- Any free time the employee engages in once the employee arrives at the hotel is NOT COMPENSABLE.
- Any time spent in training is COMPENSABLE.
- The time the employee performs work by checking work emails is COMPENSABLE.

**EXAMPLE 3:** An employee voluntarily travels out-of-town to another city for a non-work-related purpose. While in the other city, the employee visits a remote campus maintained by the university in the city to perform some remote work because it is easier to do so, but the employee is free to perform the work off-site. In this example,

- Since the employee's travel in this situation was for non-work purposes, the travel was not performed for the university's purposes so this is NOT COMPENSABLE.
- The time spent traveling from the employee's lodgings to the work-site is not compensable, because the employee chose to perform work while on personal trip by going to the university's satellite campus or office. The travel time is equivalent to normal commute time so is NOT COMPENSABLE.
- The time the employee actually spent working on-site at the remote campus is COMPENSABLE.

#### IV. TRAINING AND MEETING TIME

Training and meeting time mean all time spent by employees attending lectures, meetings, training periods, and similar activities required by the university. Time spent by an employee during such training and meeting time is considered hours worked unless all of the following tests are met:

- Attendance is voluntary; and
- The employee performs no productive work during the meeting or lecture; and
- The meeting takes place outside of regular working hours; and
- The meeting or lecture is not directly related to the employee's current work, as distinguished from teaching the employee another job or a new, or additional skill outside of skills necessary to perform the job.

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 at:

Human Resources  
 Email: HR@ewu.edu  
 Phone: 509-359-2381