

DOL's New Opinion Letters Examine Rules on Voluntary Training Time, Travel Time

Law and the Workplace Blog on November 4, 2020

On November 3, 2020, the U.S. Department of Labor's Wage and Hour Division ("WHD") issued new opinion letters addressing the compensability of time spent by employees attending voluntary training programs and in work-related travel.

The rules at issue only apply to non-exempt (e.g., overtime-eligible) employees. If the time is considered "hours worked" under the FLSA, it is not only compensable, but it must also be included in counting the number of hours worked for purposes of determining whether the weekly overtime threshold has been met—regardless of whether the employee is paid hourly, through a salary, or on some other basis.

Voluntary Training Time

In [FLSA2020-15](#), WHD examined a hospice care provider that provides funds to non-exempt employees for continuing education. The employees do not have to use the funds, or to attend any particular continuing education classes. The continuing education is entirely voluntary, and the employees gain no work-related benefit from attending and incur no penalties for not attending.

Under the [FLSA regulations](#), employers must pay employees for time spent in training, educational, and similar programs unless all of the following four criteria are met:

1. Attendance is outside the employee's regular working hours;
2. Attendance is voluntary;
3. The training, education, etc. is not related to the employee's job; and
4. The employee does not perform any productive work during such attendance.

With respect to the third requirement, the regulations provide two exceptions. First, under [29 C.F.R. §785.30](#) (the “independent training” exception), if employees on their own initiative attend an independent school, college, or trade school after hours, the time is not considered hours worked (and therefore is not compensable) even if the courses are related to their jobs. Second, under [29 C.F.R. §785.31](#) (the “special situations” exception), time spent by employees outside of working hours voluntarily attending courses established by their employer for the benefit of employees (and which correspond to courses offered by independent bona fide institutions of learning) is not considered hours worked even if the courses are directly related to their jobs.

In the opinion letter, WHD looked at six different scenarios, in each of which it was assumed that employee attendance was voluntary and that the employees did not perform any productive work:

Scenario	Opinion	Notes
An on-demand webinar <i>directly related</i> to the employee’s job, which counts toward the employee’s professional licensing requirements for continuing education, viewed <i>after</i> working hours.	Not compensable time, under the “special situations” exception.	Whether the employer could have provided the training during working hours. If additional time was required, the webinar offered by the institution would be compensable. Similarly, independent school attendance would be compensable.
An on-demand webinar <i>directly related</i> to the employee’s job, which does <i>not</i> count toward the employee’s continuing education requirements, viewed <i>after</i> working hours.	Unclear on the facts presented to WHD.	Whether the employer could have provided the training during working hours. Similarly, independent school attendance would be compensable.
An on-demand webinar <i>directly related</i> to an employee’s job, which does <i>not</i> count toward the employee’s continuing education requirements, viewed <i>during</i> working hours.	Compensable, because it takes place during working hours.	The employer’s policy prohibiting working hours during working hours.
An on-demand webinar <i>not directly related</i> to an employee’s job, which does <i>not</i> count toward the clerk’s continuing education requirements, viewed <i>during</i> working hours.	Compensable, because it takes place during working hours.	The employer’s policy prohibiting working hours during working hours.

An on-demand webinar *not directly related* to an employee's job, which counts toward the employee's professional licensing requirements for continuing education, viewed *during* working hours.

Compensable, because it takes place during working hours.

The empl
prohibiting
working h

An out-of-state weekend conference with some topics that relate directly to an employee's job and some topics that don't, components of which count toward the employee's professional licensing requirements for continuing education. Both the travel and the conference cut across the employee's normal work hours, but the actual conference occurs on days the employee doesn't normally work.

Not compensable time, under the "special situations" exception.

Because
confere
worked, tl
excludabl

Travel Time

In [FLSA2020-16](#), WHD examined a construction company whose non-exempt foremen and laborers work at job sites in various locations. The foremen travel to the company's headquarters at the beginning of a job or work day to retrieve a company truck; drive the truck to a job site, where the truck transports tools and materials; and return the truck to the company's headquarters at the end of the job or work day. Laborers have the choice of driving directly to the job site at the beginning of the work day or driving to the company's headquarters and riding to the job site with a foreman.

Under the [FLSA regulations](#), an employee's regular commute from home to work at the beginning of the work day, or from work to home at the end of the work day, is not compensable. This is true whether the employee works at a fixed location or at different job sites. By contrast, when an employee is required to report to one work location (e.g., to retrieve instructions, to pick up tools or materials, or otherwise to perform work) and then to travel to another work location that same day, the travel time from the first work location to the next is considered "all in the day's work" and is compensable under [29 C.F.R. § 785.38](#). Similarly, under [29 C.F.R. § 790.6\(a\)](#), travel time is compensable if it is part of a "continuous workday"—that is, if it occurs after the employee begins the first principal activity on a workday and before the employee ceases the performance of the last principal activity on a workday.

Two exceptions to the “continuous workday” doctrine exist—for bona fide meal periods and for off duty time. Under [29 C.F.R. § 785.19](#), bona fide meal periods (ordinarily of 30 minutes or longer) during which an employee is completely relieved from duty are not compensable. Under [29 C.F.R. § 785.16](#), periods during which employees are completely relieved from duty and which are long enough to enable them to use the time effectively for their own purposes are not hours worked.

Under [29 C.F.R. § 785.39](#), when work-related travel includes an overnight stay away from the employee’s home community, the travel time that occurs during the employee’s normal work hours is compensable, regardless of whether the travel occurs on one of the employee’s normal workdays or whether it occurs on what would otherwise be a non-workday. Conversely, travel time that occurs outside the employee’s normal work hours is not compensable, regardless of whether the travel occurs on a workday or non-workday. For example, if an employee who is required to travel and stay overnight in another city is normally scheduled to work 9:00 a.m. to 5:00 p.m. Monday through Friday and the employee is required to travel between the hours of 6:00 p.m. and 11 p.m. (on any day of the week), such travel time is compensable. If, however, the employee is required to travel between the hours of 9:00 a.m. and 5:00 p.m. (on any day of the week), such travel time is compensable.

In the opinion letter, WHD looked at three different scenarios:

- **Scenario 1:** The job site is close to or within the same city as the company’s headquarters.
- **Scenario 2:** The job site is between 90 minutes and four hours’ travel time from the company’s headquarters, and the company pays for hotel accommodations near the job site during the duration of the job. The laborers stay in the hotel during the duration of the job.
- **Scenario 3:** Same facts as Scenario 2, but the laborers choose to travel between the job site and their homes each day rather than stay at the hotel.

In each of the three scenarios, the foremen’s travel time between the company’s headquarters (where they retrieve the company truck) and the job site is compensable. The retrieval of the truck is integral and indispensable to the principal activities the foremen are employed to perform, and the travel time falls within the “all in the day’s work” regulation.

In Scenario 1, the laborers' travel time to and from a local job site is not compensable, regardless of whether they commute directly to and from the job site or whether they choose to meet at the company's headquarters and ride with the foremen in a company truck to the job site.

In Scenario 2, the laborers who drive their personal vehicles to the job site at the beginning of the job and to their homes at the end of the job must be paid for such time spent driving to the extent it cuts across their normal work hours, even if they are traveling on what would otherwise be a non-work day. The same rule applies if the laborers are passengers in others' vehicles. If, however, the company offers a laborer the opportunity to ride to the remote worksite with a foreman in a company truck (in which case the laborer would meet the foreman at the company's headquarters), the company may choose to count as hours worked either (a) the time that accrues during a trip in the company truck or (b) the time the laborer actually takes to travel to the remote worksite. For example, if the company gives a laborer the opportunity to ride with a foreman in a company truck and that trip would take three hours, but the laborer chooses to drive directly from home to the worksite and that trip takes four hours, the company would only have to pay for three hours of travel time.

Once at the job site, the travel time from the hotel to the job site at the beginning of the day, and from the job site to the hotel at the end of the day, is considered part of the everyday commute and is not compensable.

In Scenario 3, in which the laborers choose to drive from their homes to the remote job site each day (and do not stay overnight at the hotel), the initial drive to the job site at the beginning of the job and the final drive home at the end of the job is treated the same way as in Scenario 2—the time is compensable to the extent it cuts across their normal working hours (subject to the company's right to pay for fewer hours if the company offers the laborers the opportunity to ride with a foreman in a company truck, that ride would take fewer hours, and the laborers decline the opportunity and choose to drive themselves). Aside from the initial drive to the job site at the beginning of the job and the final drive home at the end of the job, the laborers' travel time home and back to the job site during the duration of the job is considered part of the everyday commute and is not compensable.

These travel scenarios are illustrative, but WHD concedes that the FLSA regulations “do not purport to address every conceivable situation in which an employee must travel for work.” WHD also notes that “[t]he FLSA is not an inflexible bar that places employer and employee in opposition; it recognizes that employment is a relationship that both parties enter into for their mutual benefit.” Employers with travel time circumstances that do not fit squarely within the scenarios examined in the opinion letter, or otherwise within the examples included in the travel time regulations, should consult with experienced wage and hour counsel prior to making decisions or rolling out policies regarding the compensability of such time. Employers must also consider whether state wage and hour laws require travel time to be paid, even if federal law does not.

Proskauer’s [Wage and Hour Group](#) is comprised of seasoned litigators who regularly advise the world’s leading companies to help them avoid, minimize, and manage exposure to wage and hour-related risk. Subscribe to our [wage and hour blog](#) to stay current on the latest developments.

[View Original](#)

[Related Professionals](#)

- **Allan S. Bloom**

Partner