
Coates' Canons Blog: Must Travel Time to Training and Conferences Be Paid?

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In a previous blog post, I explained the Fair Labor Standards Act rules that govern paying for nonexempt employees for training time. Much of an employee's training, of course, is done on-site. But what happens when an employee travels to attend a training or a conference? Is the time spent driving to the training event compensable? Does it matter whether the employee is the driver or is a passenger in a vehicle driven by another? You bet it does. The rules governing the compensability of travel time are among the most confusing that the U.S. Department of Labor has issued under the FLSA.

This blog post is not about exempt employees. When exempt employees travel to another location for a conference or training program, whether that travel is near or far doesn't affect compensation. Exempt employees are paid the same amount each week regardless of how many hours they work. So if they work their regular schedule during the workweek, but spend three hours Friday evening driving to the site of a conference that takes place on Saturday, their compensation is unaffected.

Nonexempt employees, however, are generally paid by the hour or are paid on the basis of a regular hourly rate and must be paid time-and-one-half premium overtime pay for every hour over 40 in a workweek. So if a nonexempt employee works her regular schedule during the workweek, but spends three hours Friday evening driving to the site of a conference that takes place on Saturday, she will be paid more than she is usually paid for a regular workweek because she has worked more.

Travel Time Rules

There are four basic rules governing whether time spent traveling for work must be compensated. They are:

1. Travel away from home must be paid when it occurs during the employee's regularly scheduled hours.
2. Travel away from home must be paid when it occurs during what would be working hours, but on nonworking days.
3. Time traveling away from home outside of regular working hours as a passenger on in a car or on an airplane, train or bus does not have to be paid.
4. Time traveling away from home outside of regular working hours as the driver of an automobile must be paid.

Let's examine these rules.

Travel Away from Home during an Employee's Workday

Travel away from home or from the employee's worksite is compensable when it takes place during an employee's regularly scheduled hours of work. The easiest way to think about this is to remember that here, the employee is simply substituting travel for other duties. It doesn't matter whether the employee is traveling from worksite to worksite, as a building inspector might do, or to a meeting across town or across the country. The employee is entitled to be paid for the time. See 29 CFR § 785.39.

Travel during a Non-Workday

The rules governing travel away from home or from the employee's worksite on a non-workday are less intuitive than the rule that applies to travel during the workday because it makes a distinction between travel that occurs during the hours that employee would be scheduled to work if it were a workday and the hours that an employee would be off-duty if it were

a regular workday.

Imagine that Phil and Patti, both nonexempt employees, drive from Paradise, NC, to Chapel Hill on late Sunday afternoon. They are attending a class in public employment law at the School of Government and need to be there by 9 a.m. Since it is a good five-hour drive from Paradise to Chapel Hill, they need to leave the day before. They set out at 3 p.m. Patti drives. Phil sits in the passenger seat and sings along to the radio to entertain Patti.

Patti and Phil's regular hours are Monday to Friday, 9 a.m. to 5 p.m. 29 CFR § 785.39 directs that Phil be paid for two hours of work on that Sunday, from 3 p.m. to 5 p.m. His employer does not have to pay him for the additional three hours he spends in the car from 5 p.m. to 8 p.m. Patti, on the other hand, gets paid for the entire trip from 3 p.m. to 8 p.m.

Why the difference?

To start with, 29 CFR § 785.39 provides that travel away from home is compensable when it occurs during what would be working hours on a nonworking day. In other words, if an employee regularly works from 9 a.m. to 5 p.m. from Monday through Friday, travel time on from 9 a.m. to 5 p.m. on Saturday and Sunday is also compensable time. So both Phil, who is the passenger, and Patti, who is the driver, are paid for the hours between 3 p.m. and 5 p.m.

Different Rules for Passengers and Drivers Who Travel Outside of Regular Work Hours

Different rules apply to the roles of driver and passenger. 29 CFR § 785.41 provides that anyone driving is working while traveling. But 29 CFR § 785.39 makes clear that the U.S. Department of Labor, which enforces the FLSA and issues the FLSA regulations, will not "consider as worktime that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile." This is why Patti is paid for the hours from 5 p.m. to 8 p.m. and Phil is not. Had more of their trip taken place between the hours of 9 a.m. to 5 p.m., Phil's would have been paid more for the trip.

Working on an Employer Project While Passenger in an Automobile

What if Phil owed the city manager a report first thing when he returns from Chapel Hill and instead of regaling Patti during the ride works on his report on his laptop during the entire ride? In that case, Phil would be paid for the entire trip – from 3 p.m. to 8 p.m. – because he was performing work for the employer's benefit during that time. It isn't any different than if Phil were sitting on his couch at home working on the report. The time would be compensable. Any time a nonexempt employee performs work at the direction of and for the benefit of the employer, the time must be paid, whether on-site or at home, whether in town or traveling. See 29 CFR § 785.7 and 29 CFR § 785.11.

Links

- canons.sog.unc.edu/is-training-time-work-that-must-be-paid/
- www.gpo.gov/fdsys/pkg/CFR-2011-title29-vol3/xml/CFR-2011-title29-vol3-sec785-39.xml
- www.gpo.gov/fdsys/pkg/CFR-2011-title29-vol3/xml/CFR-2011-title29-vol3-sec785-41.xml
- www.gpo.gov/fdsys/pkg/CFR-2011-title29-vol3/xml/CFR-2011-title29-vol3-sec785-7.xml
- www.gpo.gov/fdsys/pkg/CFR-2011-title29-vol3/xml/CFR-2011-title29-vol3-sec785-11.xml