

PAYING OFFICERS FOR TRAVEL TIME

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Pursuant to the Fair Labor Standards Act (FLSA), when travel time is compensable depends entirely on the kind of travel involved.

As a general rule, unless a collective bargaining agreement specifies otherwise, home to work travel is not compensable, even if an employee must travel from home to an outlying site to get to the employer's premises. This is true whether an employee works at a fixed location or at different job sites. Generally an employee is not at work until reaching the job site.ⁱ However, if an employee is required to report to a meeting place where he or she is to pick up materials, equipment, or other employees, or to receive instructions, before traveling to the work site, compensable time starts at the time of the meeting.ⁱⁱ

During Work Day

Traveling by an employee from one job site to another job site during the work-day is compensable work. Also, traveling from an outlying job at the end of a scheduled work-day to the employee's premises is compensable.ⁱⁱⁱ According to the US Department of Labor (DOL) regulations, if an employee is required to report to a meeting place to receive instructions, perform other work there, or pick up tools, the travel from the designated meeting place to the work site is compensable working time and must be counted as such, regardless of contract, custom or practice.

Transportation Furnished By Employer

Employees are not entitled to compensation from home to work merely because the employer furnishes the transportation. An employee who chauffeurs other employees to work at the direction of the employer, however, is entitled to compensation. An employee who uses a government car is working while driving on business, but not while going to and from home. For example, a police officer who has the use of a patrol car and drives it home at night and back to the station in the morning is not entitled to compensation for that time, unless he or she is required to pick up other officers and transport them to and from work or actually responds to an emergency from his or her home.

Pursuant to the above-quoted regulations, the Department of Labor has issued a letter ruling dated November 15, 1990, which provides further guidance in this area. The inquiry involved a police officer who was assigned to a police academy for two weeks of traffic accident investigation training. The classes were scheduled from 8:00 a.m. to 5:00 p.m. each day. In order to travel to and from the training site each day, the police officer picked up a police vehicle at the municipal building in lieu of using his personal vehicle, since no travel expenses were provided to him for attending the training. The time spent traveling between the training site (approximately 45 minutes

each way) presumably occurred before 8:00 a.m. and after 4:00 p.m. (the officer's normal shift) each day.

According to the Department of Labor, the travel performed by the police officer at the beginning and the end of the work day from the officer's home to the municipal building, and from there in a police vehicle to the police academy, is considered ordinary home to work travel and would not be considered to be compensable hours of work under the provisions of the Fair Labor Standards Act. The Department of Labor stated, "an employee who travels from home for his or her regular work day is engaged in ordinary home to work travel which is a normal incident of employment. (We note that the approximate 25-mile difference between . . . and . . . is not an unreasonable distance for home to work commuting.) This is true whether he or she works at a fixed location or at different sites. Normal travel from home to work is not work time as discussed in sections 785.34 and 785.35 of regulations, 29 CFR Part 785. The mere fact that the employer provides the employee with transportation, for the employee's convenience, does not convert such travel time to a principal activity. However, if there is a custom, contract, or practice providing the employee's regular daily travel between home and the work place is compensable, such time will be so regarded under the provisions of section 4 of the Portal Act of 1947 as indicated in Section 785.34. On the other hand, if the employer requires or directs the employee to drive the employer's vehicle to a job location, such travel time would constitute hours worked under the provisions of FLSA. In this regard, see section 785.38 of Part 785."

Based upon the above, in the absence of a "custom, contract or practice," it is clear that compensation for travel time put in by a police officer prior to his or her working hours and after the normal work-day, is not mandated under the Fair Labor Standards Act.

Pursuant to Section 4 of the Portal-to-Portal Act, if a department has customarily paid officers for travel time between home and a training facility, or is required to do so by an existing collective bargaining contract, such time must be included in computing hours worked. In order to change this "past practice," a chief would have to provide notice to the union of the proposed change, affording the union the opportunity to demand bargaining. If a timely request were made, good faith negotiations to the point of either agreement or impasse is required before implementing the change. Chiefs should NOT make such a proposed change during regular contract negotiations; only mid-term bargaining is the recommended way to approach this issue. Otherwise, it is likely the matter will get commingled with other issues and either be compromised, dropped or submitted to mediation/arbitration with unpredictable results.

ⁱ *Dillion v. North States Power Company*, 75-1612, 22 WH cases (BNA) 1187 8th Cir. 1976.

ⁱⁱ FLSA, 29 C.F.R. §785.35.

ⁱⁱⁱ FLSA, 29 C.F.R. §785.38.