

## Updates

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### DOL Issues Guidance Regarding Travel Time Compensability for Nonexempt Foremen and Laborers

The U.S. Department of Labor (DOL) published an opinion letter, [FLSA 2020-16](#), considering whether the travel time of foremen and laborers is compensable in three different scenarios. The DOL makes clear that, for some nonexempt employees, whether travel away from home is compensable depends on when and how the employee travels.

The employer asking the question was a construction company that employed nonexempt foremen and laborers that required travel to job sites in various locations. In all circumstances, the employer required the foremen to go to the employer's principal place of business to retrieve a truck, then drive it to the work site, and afterwards return it to the place of business. Trucks are necessary on the job sites to transport tools and materials around the sites, but otherwise the trucks need to be stored in the employer's place of business for safety and security.

#### **Scenario 1: Local job sites**

The job site is local (close to or within the same city as the employer's principal place of business) and each foreman retrieves a truck from the principal place of business in the morning, drives it to the job site, then returns it at the end of the day. Laborers have the option to drive directly to the job site or drive to the principal place of business and ride with the foremen to the job site.

**Foremen:** In all scenarios, the time spent by the foremen traveling from a central location (the employer's principal place of business) to the job site and back to return the truck is compensable regardless whether the job site is local or remote.

The Portal-to-Portal Act explains that time spent traveling from a central location to a job site when the employee is directed to first report to the central location is generally compensable. However, the U.S. Supreme Court clarified in *Integrity Staffing Solutions, Inc. v. Busk* that the requirement to report to a central location is insufficient to make that time compensable. Rather, the *Busk* Court explained that it is compensable only if it is "integral and indispensable to the principal activities that [an employee] is employed to perform." 135 S. Ct. 513, 519 (2014).

Here, the DOL opined that time to and from the job site after retrieving the company truck is compensable because truck retrieval is "integral and indispensable" to the foreman's job—the company needs the foremen to retrieve the trucks because the trucks are needed at the job sites, but safety and security reasons require the trucks to be returned and stored at the employer's place of business.

**Laborers:** Unlike the foreman's travel time, the laborer's travel time is not "integral and indispensable" to his or her job. Rather, the laborer's travel time to and from a local job site is normal commuting between home and work which is not compensable. Thus, the laborers' travel time is not compensable whether they decide to drive directly to the job site or meet at the employer's principal place of business to ride with the foreman.

#### **Scenario 2: Remote job sites**

The job site is one and a half to four hours away from the employer's principal place of business. Employer provides those who work at these sites with hotel accommodations and a per diem meal stipend. Again, the

foreman drives to the employer's principal place of business to retrieve a truck to drive to the site, then returns it after the job. Laborers "are to drive personal vehicles" to and from the job site, but some would like to drive instead to the employer's principal place of business and ride with the foreman to and from the job site.

**Foremen:** Again, the foreman's time is compensable for the reason in Scenario 1.

**Laborers:** The laborers' travel to and from their *hotel* to the job site is not compensable as it is, again, normal commuting between "home" and work. As for travel *to the remote location* (travel away from home), the DOL states that compensability depends on *when* and *how* the employee travels.

- Laborers who drive their personal vehicles: The laborers' travel time to the remote job site is compensable if the travel time cuts across their normal hours, whether or not they are traveling on a non-work day.
- Laborers who are passengers with the foreman: The laborers' travel time to the remote job site as a passenger is not compensable if the travel time is outside of their normal working hours. If the travel occurred during their normal working hours, whether or not they are traveling on a non-work day, the time is compensable.

### **Scenario 3: Employees commute to remote job site**

The facts are as in Scenario 2, but the laborers choose to drive back and forth between the remote job site and their homes each day instead of staying at the employer-provided hotel.

**Foremen:** Again, the foreman's time is compensable for the reason in Scenario 1.

**Laborers:** Travel time here is not compensable because, once the workday ends, the laborers are released from duty. Once relieved from duty, the worker is entitled to use the time for his or her own purposes. 29 C.F.R. § 785.16(a). That the laborers' purpose is to travel home from work does not convert that time to compensable hours worked.

### **Takeaways**

In accordance with [FLSA 2020-16](#), employers that require nonexempt employees to work in various locations should consult with experienced counsel to determine whether employees are entitled to be paid for travel time under the FLSA. And, remember that state laws may have different rules.

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