

Travel Time for Non-Exempt Employees Under the Fair Labor Standards Act (FLSA)

MINNESOTA STATE UNIVERSITY MOORHEAD

This information reflects the requirements of the federal Fair Labor Standards Act. Individual labor agreements or agency supplemental agreements may require counting of additional time.

Except for the normal commute to and from work, any travel during a non-exempt employee's normal working hours is time worked. This includes travel on what would otherwise be a day off, such as a weekend or holiday, if it occurs between the start and end of the employee's normal workday. For employees with variable work hours, the supervisor should designate the start and end times for non-workday travel (typically those which occur most frequently in the employee's normal schedule). Any travel between two locations where work is performed is time worked.

Regardless of the time of day or day of the week, any time (other than the normal commute) that an employee is the driver of a vehicle is time worked. However, if an employee must be away overnight, time spent as a passenger in a car, plane, train, etc. outside the employee's normal working hours is not time worked unless the employee performs work while riding. In addition, any duty-free meal periods are excluded for both drivers and passengers.

Example: Several employees who normally work 8:00-4:30 meet at their St. Paul office at 6 AM to carpool to a 9 AM meeting in Duluth. The employees leave Duluth at 4 PM, arriving back at the office at 6:30 PM. Since the employees left and returned in the same day, the time from 6 AM to 6:30 PM (less any duty-free meal periods) is time worked for all of the employees. Because employees reported to their usual work site in St. Paul, they had already made their "normal commute" so no additional time could be excluded.

If the meeting in Duluth lasted several days and employees were required to be away overnight, the situation would be treated differently. The travel time which cuts across the normal workday (8:00-4:30) would be time worked for all of the employees. However, because this is an overnight trip, passenger time outside normal working hours is excluded. The additional 4 hours (6:00-8:00 AM and 4:30-6:30 PM) count as time worked only for the driver. The time before and after normal working hours is not time worked for the passengers so long as they do not engage in work while riding during those periods. (The employees could perform work while riding within normal working hours since those are already being counted as time worked.)

In addition, the passengers must not engage in work before leaving or upon returning. If the employees had to report at 5 AM to discuss assignments and prepare (not just pick up) materials, the time from 5 AM to the end of their normal workday (4:30 PM) would be time worked. Even though much of the additional time was spent as passengers, they're considered to have begun work when they were required to report and engage in work (i.e., 5 AM).

The normal home to work commute is excluded for employees who report to a particular location on a regular/recurring basis. This includes the commute to a permanent or temporary work location. If commuting to multiple locations is a normal part of the job (e.g., the employee works 2 days in St. Paul and 3 days in Hastings every week), the drive to and from home and each location is excluded as commuting time. Exclusion of the normal commute also applies when employees return to the office during off duty hours (e.g., come to the office for an evening meeting or hearing, called back at night because of a computer problem). If employees drive from home to a location other than the usual work site, travel time minus the normal commute is hours worked. For example, an employee officed in St. Paul drives directly from home to an assigned training class in Minneapolis. Any difference between the drive from home to Minneapolis and the normal commute from home to the St. Paul office is time worked.

For employees who are assigned to work out of their homes (their home is their assigned work location, and they have no other fixed or temporary office) and travel to various locations within an assigned area or even statewide, the difficulty is determining what constitutes the “normal commute” which may be excluded from daily travel. Agencies need to establish a reasonable method for identifying each employee’s typical home to work travel. If an employee regularly travels to a group of specified locations, the agency might average the commute times to the various locations. If the locations are unknown and unpredictable, the agency might determine an average from past travel records. The method and result can vary by employee and should be appropriate to each employee’s situation. For example, a half hour commute might be normal for an employee who visits sites concentrated in a small area while an hour or more is typical for another employee doing the same work but assigned sites widely dispersed over a large territory.

For employees who work out of their homes, performing work prior to leaving for the first work site or after returning from the last work site does not eliminate your ability to exclude the “normal commute” from the day’s travel. You must count the time the employee is actually engaged in work at home, but the normal commute is still excluded from travel, just as it would be if the employee left immediately for the first work site or returned from the last site and did no work. The outcome is different from the previous example about the trip to Duluth which became paid travel time when employees engaged in work prior to traveling. Those employees reported to their office in St. Paul so they’d already made their usual home to work commute, while employees who work at home and then leave for the first work site have not yet made their normal commute.

For Further Information

Refer to the regulations on travel time (CFR 785.33 - 785.41) and on the Portal to Portal Act (CFR 790.1 - 790.12). Regulations and other information about the Fair Labor Standards Act are available from the federal Department of Labor web site at www.dol.gov.