

11 Employer FAQs (No. 9): When must I pay a non-exempt employee for travel time?

By Robin E. Shea on September 07, 2011

Here are the rules, as simply as I can state them:

1. If actual work is performed, you've almost always gotta pay. 99.99999 percent* of the time. This is so, whether the work is performed at the office or factory, at a customer's or client's site, at the employee's home, in the employee's car, in a hotel room, at McDonald's, in a parking lot, in a dark alley, ANYWHERE. And, yes, "work" can include emails, text messages, and calls from cell phones..

**Not an actual scientific figure.*



Actually, there is an exception for time that is "*de minimis*," which is time that would be compensable but where the courts allow employers to fudge because the amount is so trivial that it would be more trouble than it's worth to keep up with it. The determination of what is "*de minimis*" varies from one jurisdiction to another. Apart from that exception, an employer must always pay for time that the employee is required or "suffered" (allowed) to work.

If you flat-out forbid the employee from working, and she does so anyway, then you may or may not have a defense to payment. Even in this case, it's usually safer to pay the employee but take disciplinary action based on her violation of your direct instruction.

The rest of the rules apply to time that the employee is traveling but not performing any other work-related tasks:

2. Commuting time. Generally, the employer does not have to pay for time spent driving from home to the workplace (up to one hour each way). The rules get muddier if the commute is more than an hour each way. Assuming a commute of an hour each way or less, the employer does not have to start paying until the employee performs her first "principal activity of the workday," or the first task that is "integral and indispensable" to the first "principal activity."

(Say "integral and indispensable" three times fast - I dare you!)

3. Travel from one worksite to another. This time must be compensated, and it includes time spent driving from a central "reporting location" to the first site where work is actually performed.

4. Business trips. The employer has to pay for all travel time that occurs during the employee's regular working hours, even if the travel occurs on a non-working day. (For example, if Joe's regular work day is 8 to 5 Monday through Friday, and he travels on business from 8 to 5 on Saturday, that time has to be compensated.) If the travel occurs outside normal working hours, even if it's on a work day, the travel time does not have to be compensated. (For example, if Joe travels on business from 6 p.m. to midnight on Friday, then he is not entitled to compensation for that time.)

5. Special trips from home. If the employee has to leave from home to go to a special site, the first hour (each way) is generally non-compensable, but the travel time in excess of the first hour is compensable time.

6. Salaried does not equal "exempt." These rules apply not only to hourly employees but also to salaried individuals who are non-exempt, including (but not limited to) clerical employees.

Please note that there are exceptions and nuances to all of the above. This is a general summary only. **And don't forget Rule No. 1 - "If actual work is performed, you've almost always gotta pay."**

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