

## **Driving the Work Truck or Riding in the Work Truck - What Wages Need to be Paid?**

By: [Adam S. Kunz](#)

Some of your employees ride to the jobsite in a company truck. Do you pay wages for that time? Generally, the choice is up to the employer. As long as you, the employer, understand and follow a few basic rules, the law does not require you to pay employees for commuting time when they **voluntarily ride** in a company truck to the jobsite. You must pay them when they arrive on the first jobsite and start work, and until they quit work on the last jobsite of the day. The law does not require you to pay for the time spent riding from home to work and work to home. However, there is a very good chance that you do need to pay the employee who drives the truck full of tools from your headquarters to the jobsite, even if other employees hitch a ride and are not paid for the ride time.

The Fair Labor Standards Act requires an employer to pay minimum wage for all work hours, and to pay increased wages for overtime. However, under the Portal-to-Portal Act, there is a clear and specific exemption for commute travel time prior to work and after work, even if the employee uses the employer's vehicle for commuting between home and the jobsite.

A typical situation involves a service company doing contracted work with crews at different jobsites. The job might be building structures, maintaining grounds and landscape, pest control, or other jobs. The workers often meet at the company yard and ride to the jobsite in company trucks that also carry tools, equipment, and work papers. The crews start work at the jobsite. The Portal-to-Portal Act clearly exempts the drive time from minimum wage and overtime laws, as long as the travel is within the normal commuting area for the business, and there is an understanding between the employer and employees.

If an employee is not paid for the time riding in the company truck to the first jobsite, it is important that the employer and the employee understand and agree that the use of the employer's transportation is voluntary, not required. When the employee has a choice to come to the jobsite in his own way (walking, biking, driving, etc.) the employer can offer another commuting option, such as arriving early at company headquarters and riding to the jobsite in a company truck with other members of the work crew, and riding back to headquarters at the end of the work shift. That kind of option can benefit an employee by helping them to save money on the cost of transportation to and from work. Riding to and from the jobsite is not the "principal activity" which the employee is employed to perform, and the employer is not required to pay wages for that time.

The Portal-to-Portal act also says that the travel should be "within the normal commuting area for the employer's business." What is "normal" depends first on the understanding between the employer and the employee about what to expect, and second on the regular practice of the business. For many service companies, the company regularly performs work at many different jobsites, many miles away from the company office or yard. An employer should orient a new employee about this when the employee is first hired.

There have been court cases about these laws. One employee sued his employer, a building materials company, claiming unpaid wages based on time spent riding to and from jobsites in a company truck. The company owner explained to the Court that company employees had a choice to drive their own vehicles to the jobsite, or to ride in a company pickup or box truck to save their personal money. The workers were told that

they would not be paid for time spent riding the company truck to work. The Florida court recognized that the jobsites were part of the normal commute area, even if they were in a different city or county from the company yard.

The employee testified that before getting into the truck, he would load tools for the job, and claimed he should be paid for the loading work and the subsequent riding to the jobsite. The Florida court determined that loading the tools was "voluntary," "preliminary", and not an "integral and indispensable" part of the employee's job because the employee could have driven himself to the jobsite and the tools would have been there for him to work with. Also, although loading tools could be considered compensable activity, there was no evidence that the employee spent significant time doing it. The employee was typically moving tools from the cab to the bed of the pickup truck, so that he would have a place to sit during the ride to the jobsite. The employer was not required to compensate the employee for this *de minimus* and voluntary activity that took only a few minutes.

In a different case, several employees sued their employer for overtime compensation based on employer-required travel time. These employees were each required to report to the employers yard, each required to take a company truck full of necessary tools and documents to jobsites, and also required to return the truck to the secure yard at the end of each day. The employer did not pay employees for the travel time between the yard and the first jobsite, or for time between the last jobsite and the yard. In this case, the court determined that picking up the truck, transporting the tools, and bringing the truck back to the secure yard conferred a significant benefit on the employer by getting the tools to the job, and by protecting the trucks and tools from theft and vandalism. The court found that taking the trucks to the jobsites, and back to the secure yard was an "integral and indispensable part of the employees' principal activities." It also took a significant amount of time, between 7.5 and 15 hours per week for each employee, so it was not a few seconds or minutes of work that could be ignored as a *de minimus* amount of work that did not need to be paid. In this case, the employees won the case and the employer was forced to pay overtime and other penalties.

That employer possibly could have avoided overtime liability by allowing the employees to take the company truck home at night, and drive it from home to the first jobsite in the morning. If the employer had offered the option, the employees' commute time between home and work would have been exempt from minimum wage and overtime requirements by the Portal-to-Portal Act. The employer didn't do that because it didn't want to worry about whether the employees would follow the rules against personal use, and because it felt the trucks and tools were safest in their secure yard.

Service companies should learn from these examples. Offering the employees a voluntary choice between getting themselves to the jobsite or hitching a free ride on the company truck may help employees save money, and should not require the company to pay wages for the travel time. Also, the employer is not required to pay for the commute time of an employee that is allowed to take home the company truck and use it for the commute to and from the jobsite. However, if the employee is required to come to the yard or office before going to the jobsite, the employer should pay for the time spent transporting tools and necessary materials between the yard and the jobsite, and should be paying for time shutting employees between jobsites during the workday. The liability for errors is significant, especially because attorney fees are a mandatory award for a successful wage and hour claim under the Fair Labor Standards Act.

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