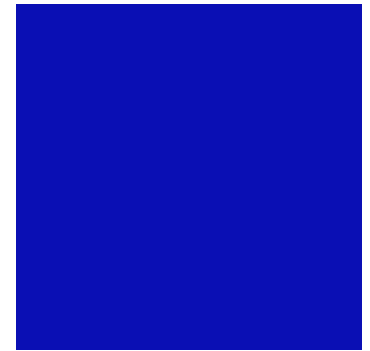


# Travel Time: What is Compensable?



Connecting Payroll Professionals  
Midwest Regional Payroll Conference

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# Overview

- Is travel time working time?
  - It depends on the time and kind of travel involved.
- Does not apply to exempt employees
- Does not apply to independent contractors
  - But be careful: if hourly workers were deemed to be misclassified, then they would be entitled to pay for travel time retroactively for previous two years.

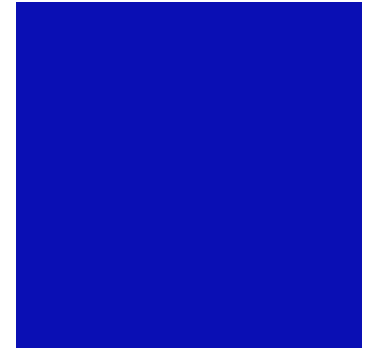
# Overview (continued)

- “Travel” time is time employee spends travel while occupied with non-work activities, e.g. sleeping, reading novel, talking on personal calls. If while traveling an employee performs work, e.g. reading and responding to work e-mails, taking work phone calls, reading or preparing reports, that time is always paid.
- “Travel” also must all be paid if the employee’s job itself is to travel. For instance, an employee who drives a truck, bus, automobile, boat, or airplane is working while driving or piloting. An employee who is required to ride along as an assistant or helper, is working while riding. Except during bona fide meal periods or when he is permitted to sleep in adequate facilities furnished by the employer.

# Commute Time

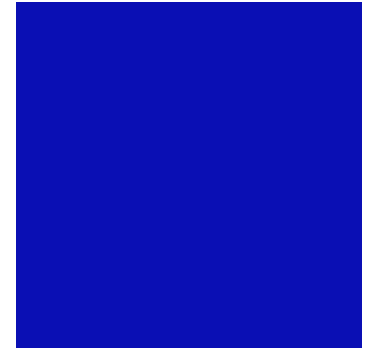
- Time spent walking, riding, or traveling to and from the actual place of work is not paid.
- Ordinary travel time between home and work is not considered hours worked.
- This is true whether the employee has one fixed work location or works at several different job sites around town.

# Commute Time – Special Scenarios



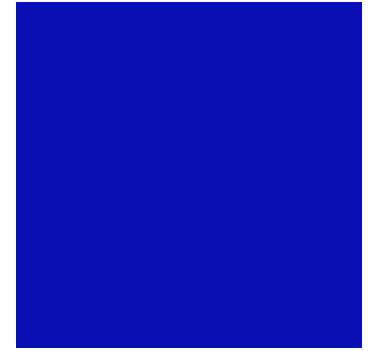
- What if the employee is driving a company van?
  - It does not matter.
- What if the employer does pay for commute time?
  - The hours spent commuting still do not have to be considered hours worked for overtime purposes.
- Example: Joe worked 8:00 a.m. – 5:00 a.m. M-F with a one-hour unpaid lunch break. He spent 30 minutes each way commuting to and from work, so 5 hours commuting per week. Joe's employer voluntarily pays him for those 5 hours commuting. But the employer need not count those 5 commuting hours as hours worked, so it can still pay Joe straight time for those 45 total hours that week.

# Commute Time – Emergency Situation



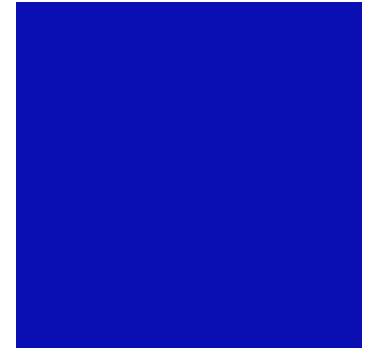
- There may be instances when travel from home to work is overtime.
- Example: Joe has gone home after completing his day's work. His boss then calls him at night and tells him to travel a substantial distance to perform an emergency job for one of his employer's customers.
- All time spent on such travel is working time.
- Example: Joe has gone home after completing his day's work. His boss then calls him at night and tells him to come back to the office to perform an emergency job.
- No clear answer whether travel to the job and back home by an employee who receives an emergency call outside of his regular hours to report back to his regular place of business to do a job is working time.

# Home to work on special one-day assignment in another city



- Joe regularly works 8:00 a.m. – 5:00 p.m. at a fixed location in St. Louis but is given a special one-day work assignment in Chicago. He leaves St. Louis at 8:00 a.m. and arrives at the Chicago office at noon, ready to work. He finishes the work assignment at 3:00 p.m., leaves, and arrives back in St. Louis at 7:00 p.m.
- This is not ordinary home-to-work travel.
- It was performed for the employer's benefit and at the employer's special request to meet the needs of the particular and unusual assignment.

# Home to work on special one-day assignment in another city (cont.)



- Therefore, this is like an emergency call.
- “All in a days work”
- So travel time needs to be paid here, but not all 11 hours.
- Since, except for the special assignment, the employee would have had to report to his regular work site, the travel between his home and the airport/ train station/ bus depot, may be deducted, it being in the “home-to-work” category.
  - Also, the usual meal time would be deductible.



# “All in a Day’s Work”

- Time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked.
- Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the work place is part of the day’s work, and must be counted as hours worked.
  - Example: construction project supervisor.
  - Cannot be changed by contract, custom, or practice.

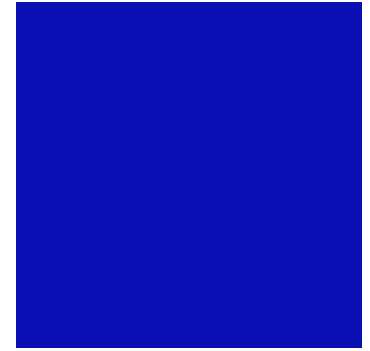
# Practical considerations

- Requiring employee to report to main office at the start of the day to check in or clock in and/or at the end of the day to check in or clock out.
- Practical considerations: employee who reports to client sites or employer's offices. Should he be required to clock in a main office before and after the day?
- This will add to the hours worked and probably create inefficiencies.

# Example

- Joe normally finishes his work on the premises at 5:00 p.m. but is sent to another job. He arrives at 6:00 p.m., finishes at 8:00 p.m., and is required to return to his employer's premises arriving at 9:00 p.m.
  - All of the time (5:00 p.m. – 9:00 p.m.) is working time.
  - 5:00 p.m. – 6:00 p.m.: All in a day's work – paid
  - 6:00 p.m. – 8:00 p.m.: Time actively working – paid
  - 8:00 p.m. – 9:00 p.m. – All in a day's work – paid
- What if Joe headed home at 8:00 p.m. instead of heading back to the office?
  - The travel after 8:00 p.m. is home-to-work travel and is not hours worked.

# Out of Town Travel



- Definition: Out of town travel, aka travel away from home is travel that keeps an employee away from home overnight.
- Rule: Travel away from home is work time when it cuts across the employee's workday.
- The employee is simply substituting travel for other duties.
- The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on nonworking days.
- Example: Joe regularly works from 9:00 a.m. to 5:00 p.m. Monday – Friday.
  - The travel time during these hours is work time on Saturday and Sunday as well as on the other days.

# Out of Town Travel (cont.)

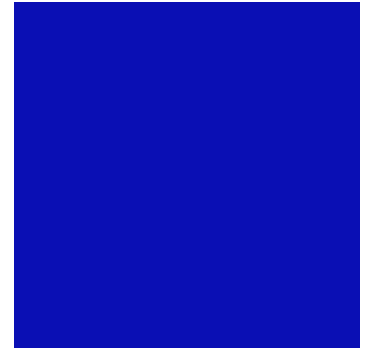
- If an employee is offered public transportation but requests permission to drive his car instead, the employer may count as hours worked either the time spent driving the car or the time he would have had to count as hours worked during working hours if the employee had used the public transportation.
- Example: Joe could take a plane from St. Louis to Chicago, which would take 3 hours. He chooses to drive instead, and that takes 5 hours.
  - The employer can pay him for only 3 hours.
- Another example: Joe could take a plane from St. Louis to Memphis, which would take 5 hours. He chooses to drive instead, and that takes 4 hours.
  - The employer can pay him for only 4 hours.

# Miscellaneous Issues

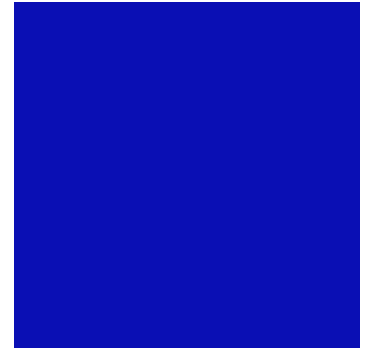
- You can always deduct for regular meal time.
- Flying between time zones. You cannot look at the clock, you have to pay based on actual hours.
- An employee is working at remote site 90 minutes from home. He can drive home every night or stay in a hotel near the worksite. Question: if he drives home, is that travel time compensable? Or travel home on weekends. If the employer did not offer a per diem during non-work days, then travel home was not purely voluntary.
  - Travel time is not compensable if it is voluntary.

# Employee Morale

- You can always pay more than the law requires.
- There may be good reasons for doing so.
  - Employee morale
  - Avoid arguments and conflicts



# Thank you for attending!



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