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Client Alert: Department of Labor Clarifies When Commuting Time Is and Is Not Compensable Under the Fair Labor Standards Act

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The U.S. Department of Labor's Wage and Hour Division (DOL) recently issued two opinion letters addressing a deceptively simple question: **When does an employee's commute become compensable work time?** The two opinion letters, FLSA2026-9 and FLSA2026-10, are particularly relevant as employers continue to offer flexible and hybrid work arrangements. Together, they provide helpful guidance for determining when travel between an employee's home and workplace remains an unpaid commute and when work performed before or during that travel may turn some or all of the travel into compensable time.

The Good News for Hybrid Work: A Mid-Day Commute Can Still Be Unpaid

In FLSA2026-9, the DOL addressed non-exempt employees who split their workday between home and the office. The employer wanted to give employees flexibility to work from home for part of the day and commute at their convenience but was concerned that once an employee began working at home, the Fair Labor Standards Act's (FLSA's) "continuous workday" rule might require the employer to pay for the employee's later trip to the office. The DOL concluded that it generally does not.

According to the DOL, an ordinary commute between home and work does not become compensable merely because it occurs in the middle of the employee's workday. If the travel remains an ordinary commute that primarily benefits the employee, the employer generally does not need to count it as hours worked. For example, an employee who normally works from 9:00 a.m. to 5:00 p.m. might ask to work from home from 8:00 a.m. to 10:00 a.m., drive to the office after rush hour, work there for part of the day, and then drive home early to finish the workday remotely. The DOL concluded that in this scenario, the home-to-office and office-to-home travel can remain non-compensable commuting time.

The same principle applies where an employee asks to perform additional work from home before commuting to the office or asks to leave the office early enough to catch the last bus and then finish working from home. Provided the employee is not performing work during the commute and the arrangement and timing of the commute are primarily for the employee's benefit, the commuting time in these scenarios is similarly non-compensable.

The DOL expressly concluded that all three arrangements presented in FLSA2026-9 involved ordinary commuting time that did not have to be recorded or paid.

This is welcome guidance for employers that have been hesitant to give non-exempt employees the same hybrid work flexibility commonly offered to exempt employees. Under the DOL's interpretation, allowing an employee to begin the day at home **does not automatically start a clock that continues running until the employee finishes work for the day**. An ordinary home-to-work commute may remain unpaid even though it falls between two periods of compensable work.

Notably, the DOL went beyond simply applying existing rules. It expressly identified an ordinary home-to-work or work-to-home commute occurring during the workday as a "third category" of time that can be excluded from "hours worked," alongside bona fide meal periods and off-duty time.

But Not Every Trip From Home to Work Is an "Ordinary Commute"

FLSA2026-10 illustrates the limits of the DOL's newly identified "third category." In that letter, the DOL examined a field service engineer who, using a company vehicle, traveled from home directly to customer locations for purposes of installing and servicing MRI systems. The employee's regular paid shift began at 8:00 a.m. and ended at 5:00 p.m., and his first appointment could be as early as 8:00 a.m. Before arriving at the first customer site, the employee received service requests via the employer's paging system and called customers to schedule appointments. The employee sometimes also coordinated the schedules of other field engineers.

As an initial matter, the DOL drew an important distinction between simply receiving an assignment and performing substantive work before or during the commute. Because receiving the pages took only seconds and was considered merely incidental to the employee's use of an employer-provided vehicle for commuting, rather than part of the employee's principal work activities, the DOL concluded that this minimal activity was not compensable.

However, the DOL concluded that calling customers, arranging appointments, and coordinating other engineers was different. Those activities were substantive work that directly furthered the employee's job responsibilities and therefore constituted compensable work. On days when the employee spent most of the hour before leaving home performing those required activities and then immediately traveled to the first customer site, the DOL concluded that the travel time was also compensable.

Importantly, the DOL did not reach that conclusion merely because the employee had performed work before beginning his commute. Rather, under the totality of the circumstances, the travel no longer had the characteristics of an "ordinary" commute primarily benefiting the employee. Unlike the voluntary arrangements in FLSA2026-9, the timing and manner of the employee's travel were driven primarily by the employer's needs: the employee performed substantial required work immediately before traveling and then had to proceed directly to the first worksite. As a result, the employee lacked much of the freedom ordinarily associated with commuting, including flexibility over departure time and the ability to use the time for personal purposes.

The DOL also contrasted that situation with employees who may have some administrative work to complete at home but have a substantial window in which to perform it. In that situation, the commute may remain an ordinary, non-compensable commute because the employee retains meaningful flexibility over when to perform the work and when to travel.

Similarly, if the employee begins driving before performing substantive work and then starts making required work calls during the drive, the portion of the commute before the first call may remain unpaid, while travel after the employee begins performing the required work may be compensable. The DOL cautioned, however, that it was not deciding how a smaller or more occasional amount of work during a commute would affect the analysis.

Practical Takeaways

The two opinion letters do not mean that every task performed before a commute makes the commute compensable. Instead, they reinforce the fact-specific nature of the analysis and the importance of considering who primarily benefits from the travel and how much control and flexibility the employee retains.

Employers should keep in mind that:

- **Hybrid work does not automatically make commuting time compensable.** A non-exempt employee may work at home, commute to the office, and work again without necessarily being paid for the commute.
- **Employee choice matters.** An arrangement requested by an employee for personal convenience is much more likely to involve an ordinary, unpaid commute.
- **Work performed during a commute must generally be paid.** Employers should be cautious about expecting non-exempt employees to make calls, respond to substantive messages, participate in meetings, or perform other work while commuting. The time actually spent working is compensable, and, depending on the nature and extent of the work, the work may also cause some or all of the surrounding travel time to become compensable.
- **Substantial required work immediately before a commute can change the analysis.** If the employer dictates when an employee must work at home and requires the employee to travel immediately afterward, the resulting trip may no longer qualify as an ordinary commute.
- **Minor or incidental activities do not necessarily have the same effect.** As FLSA2026-10 illustrates, simply receiving an assignment while using an employer-provided vehicle does not necessarily transform an otherwise ordinary commute into paid travel time.
- **Accurate timekeeping remains essential.** Employers permitting non-exempt employees to split their days between home and the workplace should have procedures for recording all actual work performed at either location and should make clear that employees are expected to remain relieved of work during unpaid commuting periods.
- **State law may impose different requirements.** These opinion letters address employers' obligations under the federal FLSA. Employers should also consider applicable state wage-and-hour laws, which may impose different or more stringent requirements regarding compensable travel time.
- **Policy updates may be necessary.** Employers with hybrid non-exempt employees, field personnel,

technicians, sales employees, or others who routinely perform work from home before traveling to a worksite should consider reviewing their remote work, travel-time, and timekeeping practices in light of the DOL's new guidance.

Bottom Line

The DOL's new guidance gives employers more room to offer flexible work arrangements to non-exempt employees without automatically creating additional compensable travel time. The key distinction is between flexibility and employer control. When an employee chooses to shift an ordinary commute into the middle of the day for the employee's own convenience and the employee performs no work while traveling, the commute generally remains unpaid. But when an employer requires substantial work immediately before or during the trip and significantly controls the timing or manner of the employee's travel, the trip may lose its character as an ordinary commute and become compensable.

We encourage clients to review these opinion letters and assess their workforce arrangements in light of the DOL's updated guidance. Please do not hesitate to reach out to Kate Decker or a member of Shumaker's Labor & Employment Service Line with any questions about how these developments may affect your business.

Looking Ahead: Year-End Wage & Hour Compliance

For employers looking to get ahead of their year-end wage-and-hour compliance to-do list, join us on **November 10 from 12:00–1:00 p.m. ET** for **The Wage & Hour Countdown: What to Fix Before the Ball Drops.** This practical webinar will cover common compliance trouble spots and issues employers should review and address before heading into 2027. The one-hour program will be followed by an optional 15-minute Q&A.

Register here.

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