

FLSA-745

April 15, 1981

Thank you for your letter asking on behalf of a client, whether the Fair Labor Standards act requires that employees be compensated for travel time to jobsites. We will respond to each situation in the order presented.

Situation No. 1:

The employees work an eight-hour day (7:00 a.m. to 3:30 p.m.) with a half-hour uncompensated lunch period. At the conclusion of the workday at 3:30 p.m., the construction foreman (hourly paid, nonexempt employee) drives his automobile to the business office in town while on his way home and drops off various receipts, tickets and timecards from that day's work. Occasionally, he may also pick up from the office any papers, etc., which he may need at the worksite the next morning. In the morning he drives directly from his home to the worksite. You ask where this would be compensable hours of work and, if so, how should he be paid for such time.

The enclosed copy of 29 CFR Part 785 constitutes the official interpretation of the Department with respect to compensable hours of work. Sections 785.33 through 785.41 of Part 785 discuss the compensability of time spent by an employee in travel status for an employer.

As indicated in section 785.38 of Part 785, time spent by an employee in travel as part of his or her principal activity must be counted as compensable hours worked. Such compensable travel would include that time an employee spends in delivering timecards, tickets, etc., to the employer's premises.

There is nothing in the Act which prohibits an employer from paying an employee at different rates of pay for work at different times or for various types of work as long as no less than the statutory minimum wage is paid. As explained in section 778.115 of 29 CFR Part 778, copy enclosed, where an employee in a single workweek works at two or more different types of work for which different hourly rates of pay (of not less than the applicable minimum wage) have been established, his or her regular rate for that week is the weighted average of those rates. This is determined by computing the employee's total compensation during the workweek from all such rates, and dividing by the total number of hours worked at all jobs. An exception to this method of computing overtime compensation is provided by section 7(g)(2) of the Act. Section 7(g)(2) allows, under specified conditions, the computation of overtime pay based on one and one-half times the hourly rate in effect when the overtime work is performed. Sections 778.415 - 778.421 of Part 778 describe the requirements of computing overtime pay pursuant to section 7(g)(2).

Situation No.2:

The construction area is located on the outskirts of town, approximately 30 minutes from the Company's headquarters. Hourly paid, nonexempt employees are required to be at the jobsite at 7:00 a.m. and work an eight-hour day until 3:30 p.m. (including an uncompensated 30-minute lunch period). For the most part, employees report to the office in town at approximately 6:30 a.m. and ride in Company pickup trucks and vehicles to the jobsite, and begin work at 7:00 a.m. Employees are not required to report to the headquarters, they may go directly to the worksite in their own vehicles. The trucks in which the employees ride from the office to the jobsite are used on the jobsite and are also used to transport tools to the jobsite. It is assumed that the employees who report to the Company headquarters for transportation to the jobsite do not report for the purpose of receiving job instructions or to perform services of any nature. You ask if the travel for the riders and the driver is compensable work and, if so, how should such travel time be compensated.

Section 785.34 of Part 785 provides, among other things, that ordinary travel from home to work need not be counted as hours worked even if the employer agrees to pay for it. Under the facts stated above, it is our opinion that employees who elect to ride as passengers from the company headquarters to a jobsite are not working while traveling.

We would, of course, consider the driver of the company furnished transportation as working while traveling. In this connection see section 785.41 of Part 785. The compensation principles discussed with reference to Situation No.1 would also be applicable here.

Sincerely,

Herbert J. Cohen
Assistant Administrator

Enclosures