

<b>HUMAN RESOURCES MEMORANDUM 95-013</b>		DATE ISSUED: 4/10/1995
SUBJECT: <b>FAIR LABOR STANDARDS ACT (FLSA) TRAVEL POLICY FOR SPECIFIED CLASSES</b>		REFERENCE: None
TO: INTERIM DIRECTOR; DEPUTY DIRECTORS; OFFICE CHIEFS; EXECUTIVE OFFICE MANAGERS; CLIENT AGENCY – EXECUTIVE DIRECTORS AND OFFICERS; ADMINISTRATIVE ASSISTANTS; ATTENDANCE CLERKS		SUPERCEDES: HR Memo 94-018

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**PLEASE ENSURE THAT THIS INFORMATION IS SHARED WITH YOUR EMPLOYEES**

Attached is the revised policy to be used in determining the compensated hours of travel for employees covered by the Fair Labor Standards Act (FLSA). All offices must immediately comply with this policy; this policy supersedes the policy which was dated November 4, 1994 (PO 94-18).

Attached to the policy is a listing of the affected classifications utilized by your office. At this time, only employees in these classifications are subject to this policy. Please distribute this policy to managers and supervisors who have employees in the classifications shown on the attached listing.

The attached policy includes several revisions; most notable is the 25-mile provisions which assists management in determining when travel is considered "out-of-town" and "compensable." All revisions to this policy are indicated by a bar in the right margin.

Questions regarding this memorandum should be directed to your assigned Personnel analyst.

EINER P. CHRISTENSEN  
Personnel Manager

cc: Personnel Analysts  
Labor Relations Analysts  
Personnel Transactions Staff

## FLSA TRAVEL POLICY COMPENSABLE HOURS WORKED

### 1. COMMUTING (785.35)<sup>1</sup>

- A. Ordinary home-to-work and work-to-home commuting is not compensable hours worked.

Each employee, regardless of geographic location, may have a commute time that differs from other employees because of a variety of factors. These factors include:

- Location of employee residence
- Method of commuting
- Time of day the commute is made
- Routes available for the commute
- Weather and road conditions during the commute
- Public transit equipment failure and delays
- Starting and finishing work sites

The Fair Labor Standards Act (FLSA) regulations state that ordinary travel from home to work and vice versa need not be counted as compensable time worked, regardless of whether or not the employee commutes to a fixed work site. Thus, the commute time and distance traveled may vary significantly between employees and may vary significantly for the same employee over the duration of a year. Ordinary travel is not an average or fixed amount of time, but rather is the actual time necessary to travel from home to work and back home again.

B. Home as Headquarters

When an employee's residence is assigned by the appointing power as his/her headquarters, ordinary home-to-work travel will depend on where the employee starts the day's work.

For example, if the employee's regular working hours are 8:00 a.m. to 5:00 p.m. and the first assignment of the day is at another location, travel to that location is considered ordinary home-to-work travel.

On the other hand, if an employee works at home for any significant amount of time before traveling to a different work site, that travel is compensable and must be counted as hours worked.

When the employee ends the work day (5:00 p.m.) at a work site away from home, the return to home is considered ordinary work-to-home travel. Time spent by an employee in travel from job site to job site during the work day, must be counted as compensable hours worked.

<sup>1</sup>Refers to Code of Federal Regulations at Title 29 (i.e., 29CFR 785.35)

C. Commuting While Away from Home (785.39)

When an employee is out of town overnight on business, the hotel, motel, apartment, or home at which he or she is staying becomes the employee's residence. Travel, before the 8:00 a.m. start time, to the out-of-town work site is ordinary home-to-work travel. Travel after the 5:00 p.m. quitting time to the temporary out-of-town residence is also ordinary work-to-home travel. (If the driver is working while driving, that time, of course, is compensable.) It is the responsibility of the employee to choose out-of-town accommodations that minimize the commute time to the out-of-town work location.

D. Call Back Travel (785.36)

If an employee who has gone home after completing the day's work is called back later to the regular place of work, the travel time is not counted as compensable hours worked. However, if the employee is required to travel to another work site, substantially farther than the regular place of work (at least 25 miles from headquarters), the travel time is considered work time and is compensable. (Given the call-back provision in most contracts, however, this does not become an issue until the total time involved—driving to the job site, doing the work, returning to home—exceeds four hours.)

2. ONE-DAY TRAVEL TO ANOTHER CITY (785.37)

A. Distance From Headquarters

When an employee travels to another city and returns home during the same day, most of the travel time will be considered as compensable time worked. (DPA has determined that under normal circumstances travel to a work location within 25 miles of an employee's headquarters must be considered ordinary home-to-work and work-to-home travel and is not compensable time worked. Exceptions to this standard may be allowed when highly unusual conditions justify the travel be considered one-day travel to another city. Exceptions must be submitted to your Personnel analyst for approval by the Classification and Compensation Division of the Department of Personnel Administration.)

B. Deduction of Commute and Mid-Day Meal Times

When an employee travels on a one-day assignment to another city, the employee's normal commute time and mid-day meal period is deducted from the total compensable time.

For example, an employee who works in San Francisco with regular working hours of 8:00 a.m. to 5:00 p.m. and a one-hour lunch period is assigned to work in Sacramento the next day. The employee's normal commute time is 30 minutes each way to and from the regular work site. The employee leaves home at 6:00 a.m. and drives to Sacramento, arriving at 8:00 a.m. The employee takes the regular one-hour lunch and works until 5:00 p.m. The employee then drives back to San Francisco, arriving home at 7:00 p.m. The time between 6:00 a.m. and 7:00 p.m. minus one-hour commute time

and one-hour lunch (11 hours) must be considered compensable hours worked.

However, if an employee returns later in the evening and stops for an evening meal for 30 minutes or longer, this time is not considered compensable.

### C. Travel by Public Transit

On one-day travel to another city, when an employee is using public transit, the compensable-hours-worked clock will start at the time the employee is required to be at the departure location of the public transportation.

For example, commercial airlines ask that a passenger check in 30 minutes to one hour before flight departure. Consequently, the compensable-hours-worked clock will start at check-in time. The travel time necessary to get to the airport is normally considered ordinary home-to-work travel. Likewise, when the employee leaves the airport after the return flight home at the end of the day, the compensable-hours-worked clock stops and the trip to the residence is ordinary work-to-home travel. However, when the public transit terminal is located more than 25 miles from headquarters and more than 25 miles from the employee's home, the compensable-hours-worked clock starts at the 216th mile; likewise, the trip home at the end of the day is compensable until the employee is within 25 miles of home.

As an example, an employee who works in Sacramento with regular working hours of 8:00 a.m. to 5:00 p.m. with a one-hour lunch period is assigned to work in Los Angeles the next day. The employee is required to check in for the flight at 7:00 a.m. and leaves home at 6:15 a.m. The employee completes his/her work in Los Angeles and returns to Sacramento on a flight arriving at 7:15 p.m. The time between 7:00 a.m. and 7:15 p.m. minus one hour for lunch (11.25 hours) is counted as compensable time worked. The travel time to and from the airport is ordinary home-to-work and work-to-home travel.

## 3. OVERNIGHT TRAVEL TO ANOTHER CITY (785.39)

### A. Travel Time

Travel away from home outside of the employee's regularly scheduled work hours as a passenger on an airplane, train, bus, boat, or auto is not counted as compensable hours worked. If the travel occurs during the employee's normal working hours, including travel during normal working hours on holidays, weekends, or the employee's regularly scheduled days off, it is considered compensable hours worked. On the other hand, the travel time of the driver of an automobile, whether it is a state or privately owned vehicle, when the vehicle is used as the means of travel to another work site, is counted as compensable hours worked for all driving time except the employee's regular commute.

For example, an employee who works in Sacramento with normal working hours of 8:00 a.m. to 5:00 p.m., flies to Los Angeles on a 10:00 a.m. flight

after working an hour in the office. The flight arrives in Los Angeles at 11:30 a.m. The employee eats lunch and reports to work at 1:00 p.m. in the Los Angeles office, finishing the workday at 5:00 p.m. The employee is credited with 8 hours of compensable time worked for the day. The employee flies back to Sacramento on the following Saturday, arriving at the L.A. airport at 3:00 p.m. and landing in Sacramento at 5:00 p.m. The employee receives two hours of compensable time worked because the travel time was during his/her normal working hours of 8:00 a.m. to 5:00 p.m.

If an employee is scheduled to take public transportation, but requests permission to drive his/her car or a state car instead, the appointing power shall only count as compensable hours worked those hours that would have been traveled during the regular work hours if the employee had used the public transportation offered. (785.40)

#### B. Off Duty Hours

Department of Labor regulations state that periods during which an employee is relieved from duty and which are long enough to enable him/her to use the time effectively for his/her own purpose are not compensable hours worked. This is true for an employee that is out of town on business as well as for an employee working at the regular work location at home.

An employee who is working out of town and must spend an evening, multiple evenings or the weekend away from home is still free to pursue his/her own interests after the work day ends. The fact that an employee is out of town during regular working hours on the weekend does not mean these are compensable hours worked. The employee is off duty from the time he/she ends the workday on Friday until returning to work on Monday. The fact that the employee is continuing to receive per diem during the weekend has no bearing on whether the employee is on duty or off duty.

#### C. Travel Delays

It is possible that employees traveling to and from out-of-town assignments may occasionally suffer travel delays because of errors in travel arrangements, weather or road conditions, or equipment breakdowns. Additional time spent in travel because of these or related circumstances are not compensable hours worked unless the travel occurs during the employee's regularly scheduled working hours.

It is permissible for the appointing power to authorize informal time off for an employee immediately following arduous and extended travel to recognize the inconvenience the delay may have caused. However, under no circumstances should compensating time off (CTO) be accrued for use at a later date or cash compensation be paid in lieu of the informal time off.

#### D. Work Performed While Traveling (785.41)

If an employee is required to work while traveling, the time must be counted as hours worked except during meal periods or periods during which the employee is off duty and/or sleeping in adequate facilities provided by the

employer. Passengers riding in vehicles are not considered to be working during such trips except during that part of the trip that occurs during regularly scheduled working hours, excluding meal time, or if the employee is in fact engaging in State work while riding as a passenger.

For example, an employee whose regular job includes the specific task of operating or driving a truck, bus, or boat, or piloting a plane as part of their regular day-to-day responsibilities is working while traveling. A bus driver is working while carrying passengers from one location to another between cities; a worker driving a truck carrying a load of supplies or equipment to a different city after the normal work day, unloading the material and driving back the next day is working while traveling. Likewise, employees assigned to accompany the drivers as helpers or assistants in either sharing the driving or assisting in loading or unloading the vehicle are also working while traveling.

An employee that is permanently assigned a vehicle to use as transportation to different work sites during the day or week is working as he/she drives between the various work locations during the normal working hours. However, if the employee uses the vehicle to drive to and from work, that travel time is considered ordinary commute time.

#### E. Using Special Vehicles for Transportation.

Employees driving or riding in motor vehicles carrying or towing special equipment that results in substantially longer travel time may be considered working while traveling for that portion of the trip beyond normal travel time. To be considered compensable the extended travel time must be a result of restricted travel routes or limited vehicle speeds rather than travel delays as described in Section 3C.