

Travel Time for Overtime-eligible Employees

Hours of Work & Overtime

State Personnel Department
2016



Overview

- Provisions in the FLSA defining compensable hours of work have not changed.
- Information about those provisions is being shared at this time because more employees are being designated as overtime-eligible.
- If an agency is already compliant, any policy changes should be done judiciously, weighing in the balance service, cost, and morale.



Application

- Employees who are eligible for overtime under the Fair Labor Standards Act (FLSA) must be compensated for all hours worked.
- Rate of pay will be calculated on number of hours worked in the calendar week. Hours worked in excess of 40 in a calendar week are compensated at a premium rate.*
- Time spent in work-related travel by overtime-eligible employees may be compensable in the following situations.

**Exceptions to the 40-hour standard and weekly work period apply to law enforcement and firefighters.*



Application

- Financial Management Circulars (FMC) issued by State Budget Agency and Indiana Department of Administration are the authority for questions about travel-related matters such as
 - Per diem,
 - Mileage and lodging reimbursements, and
 - Procedures for securing approval for use of state, rental, or private vehicles.
- Find the most recent FMC entitled “Travel, Moving and Interviewing Policies for State of Indiana” at <http://www.in.gov/sba/2512.htm>.



Hours of Work - Travel Time

The principles which apply in determining whether time spent in travel counts as hours of work depends upon the kind of travel involved:

- Home to Work on a Special One-Day Assignment in Another City
- Home to Work Travel
- Travel That is All in a Day's Work
- Travel Away from Home Community



Examples of Travel Time

Home to Work on a Special One-Day Assignment in Another City: An employee who regularly works at a fixed location in one city is given a special one day assignment in another city and returns home the same day. The time spent in traveling to and returning from the other city is work time, except that the employer may deduct/not count that time the employee would normally spend commuting to the regular work site.

- If an overtime-eligible employee's commute to/from the regular work site is 30 minutes, and the commute to/from the one-day assignment is 90 minutes, then the employee's compensable travel time is only 60 minutes.
- If overtime-eligible employees are traveling together to the same one-day assignment, compensable time for each begins
 - at the usual work site if they meet there to leave, or
 - when the driver picks-up each co-worker at other locations, minus their usual commute if it is less than the actual time required to commute from home to the work assignment.



Examples of Travel Time

Home to Work Travel: An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.

- The time spent traveling by an overtime-eligible employee who is assigned to travel around a geographic area (e.g., a district or region) to the first stop each day and home after the last stop of the day may be considered non-compensable commute time.



Examples of Travel Time

Travel That is All in a Day's Work: Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.

- Once an overtime-eligible employee begins compensable work time on a day, any travel from assignment to assignment during that shift is compensable.



Examples of Travel Time

Travel Away from Home Community: Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. As an enforcement policy the Division will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

- An overtime-eligible employee who works M-F 8a-4:30p and leaves on Sunday at 3p for a training that begins on Monday must be paid 1.5 hours for that time on Sunday that is during regular work hours. Travel time outside 8a-4:30p that is spent as a passenger not performing any work is not required to be compensated.



Training at a Site Away from Home Community

Q: If an employee is in training for 3 days and lodging is provided but he chooses to drive home every night instead of staying onsite will the travel time to/from every day be compensated?

A: If lodging is provided and an employee chooses to travel away rather than use that lodging, that choice to travel does not make that time compensable. Note that if the return home every evening is due to a disability and is needed as a reasonable accommodation (eg, need for daily treatment by doctor/use of equipment that cannot be reasonably transported to the training site), then the travel time will be compensable. That would be the exceptional situation, not the norm.



24-hour Assignments

Sleeping Time and Certain Other Activities: An employee who is required to be on duty for less than 24 hours is working even though he/she is permitted to sleep or engage in other personal activities when not busy. An employee required to be on duty for 24 hours or more may agree with the employer to exclude from hours worked bona fide regularly scheduled sleeping periods of not more than 8 hours, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. No reduction is permitted if the employee cannot get at least 5 hours of sleep.

- An employee taking students or residents on an overnight field trip is on duty for the entire 24 hour period. No more than 8 hours can be deducted as sleeping time (if employee actually gets 8 consecutive hours of sleep time without performing any duties). No time may be deducted if the employee does not have at least 5 consecutive hours of uninterrupted sleep time or no adequate sleeping facilities are furnished.



Using Private Vehicles

When private automobile is used in travel away from home community: 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 conveyance.

- Overtime-eligible employee is assigned to attend a conference in another state. The opportunity to fly leaving at 3p on Sunday is offered, but employee wants to drive his own car, also starting at 3p. Employee's regular shift is 8a-4:30p Monday-Friday.
 - Compensate employee for 1.5 hours of time spent whether flying or driving.



Examples of Travel Time

- Travel time to/from an emergency assignment that occurs outside an employee's regular schedule should be compensated.
- If an emergency call-out assignment to the employee's regular worksite lasts into the employee's next scheduled shift, then the time spent traveling to the assignment is compensable, but his commute home at the end of that regular shift is not compensable.



Using State Vehicles

Compensability is based on type of travel as previously described, not on whether the travel is in a state vehicle.

- The commute to/from work is not compensable just because a state vehicle is used.
- Travel would be compensable if state vehicle is a police car assigned to a sworn police officer or something like a bucket truck that is not generally used for commuting.



Implementation

Operational Needs

- Travel must be
 - Necessary
 - An efficient use of resources
 - Properly documented
 - Properly compensated
- Travel arrangements and compensation may
 - Need to be modified to reasonably accommodate an employee under the Americans with Disabilities Act (ADA).
 - Call HR Representative to discuss any ADA concerns.



Resources

- SPD web site
 - <http://www.in.gov/spd/2396.htm> Standardized Policies
 - **See Policies and Procedures:** Hours of Work & Overtime
- Financial Management Circulars (FMC)
on Budget's INTRAnet page: www.in.gov/sba/2512.htm
 - Job Classifications Normally Eligible for Premium Overtime
 - Compensatory Time Off for Normally-Exempt Employees
 - Traveling, Moving and Interviewing Policies for the State of Indiana
- Your HR Representative



Thank you

