

DOL Explains Compensable Time for Teleworkers

PUBLISHED ON
January 11, 2021

In the new world of remote working, a new opinion letter from the U.S. Department of Labor tries to lay out what is and isn't paid work time for those who are working in a hybrid atmosphere.

The DOL addressed this pandemic-related issue - how does the "continuous workday" rule come into play with remote employees? - with [an opinion letter](#) released on the last day of 2020. The department considered what time qualifies as compensable work time for an employee who teleworks from home for part of her day and travels to her employer's regular worksite for part of the day, when the employee has time between those working periods to do personal business. In its analysis, the DOL reiterated that compensable worktime is only that time spent "primarily for the benefit of the employer," and if the employee is completely relieved of duties for a sufficient period of time such that it may effectively be spent for her own purposes, this latter time is not compensable worktime. The DOL also reminds us that normal commute time - whether to or from the workplace - is not compensable worktime.

The opinion letter gives two examples, both of which involve an employee with a one-hour commute to and from her office who normally works Monday through Friday from 8 a.m. to 4:30 p.m. The employee performs no work during her commutes.

Example One

In the first example, the employee leaves the office at 1 p.m., drives to a parent-teacher conference, attends the conference for 45 minutes, then drives home and works at home the remainder of the day. The question is whether the time spent driving from the office to the school and from the school to home is compensable, assuming that the employee resumes working after returning home.

The DOL advised that only the time spent working at the office or working at home is compensable. The travel time is normal commute time, and the personal time is not primarily for the benefit of the employer and is long enough to effectively be spent for the employee's own purposes. Moreover, this is NOT the "worksite-to-worksite" travel that is considered compensable under the regulations. The employer is not requiring that the employee travel as part of her work duties; rather, she is traveling of her own volition and for her own personal purposes.

Example Two

In the second scenario, the employee begins working from home from 5 a.m. to 6 a.m., then drives to a doctor's appointment, and then drives to the office to work the remainder of the day. As with the first example, the DOL advised that none of the employee's travel time is compensable- only the time spent working- at home or at the office- is compensable. The employer did not require the employee to work from 5 a.m. to 6 a.m. which is important, because the outcome may be different if the employer mandates when the work had

to be done (DOL does not address this situation when the employer mandates worktime). Rather, the employee chose to work at this time before undertaking personal tasks. The import of this conclusion is that an employee should not be empowered unilaterally to convert a commute into compensable time merely by deciding to perform a daily routine in a particular manner.

Takeaway

Opinion letters can be relied upon as a defense to wage claims even if they are later modified or withdrawn. It's very possible that President-elect Biden will withdraw this opinion letter. However, employers should be aware since they may provide a safe harbor for as long as they exist.

If you have any questions on the opinion letter or how it could affect your business, please [contact me](#) or any member of the [Barley Snyder Employment Practice Group](#).