



Hours Worked and Compensation

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

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Table of Contents

Hours Worked and Compensation	3
On-Call Time Under FLSA	3
Breaks and Meals	4
Sleep Time	5
Meetings, Lectures & Training Programs.....	5
Travel Time	6
Compensable Working Time.....	7
Non-Compensable Time	8
Other Compensable Time - Show-up, Stand-by, On-Call or Reporting Time	9
Stand-By Time	9
Waiting Time	9

Hours Worked and Compensation

Reference Number: MTAS-939

All employees not exempted or excluded from the FLSA must be paid a minimum wage for all hours worked. 29 C.F.R. §785.5. Hours worked has been defined as “all hours that an employee is ‘suffered or permitted to work’ for the employer.” 29 C.F.R. § 785.11. Hours worked include any time in which the employee is required to be on the employer’s premises, on duty or at a prescribed work place. 29 C.F.R. § 785.7.

Understanding the concept of “hours worked” is crucial to complying with the FLSA. According to the U.S. Supreme Court (*Tn. Coal, Iron & R.R. Co. v. Muscodol Local No. 123*, 321 U.S. 590 (1944)), an employee must be compensated for “all time spent in physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer.” Working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, in such activities as waiting for work, remaining “on call”, traveling on the employer’s business or to and from workplaces, and in meal periods and rest periods are regarded as working time and some are not. 29 C.F.R. § 778.223.

The courts and DOL have recognized that insubstantial or insignificant periods of time outside scheduled working hours, which may not be precisely recorded, may be disregarded in recording working time. 29 C.F.R. § 785.47. The rule applies only where a few minutes of work are involved and where the failure to count such time is due to considerations justified by “operational realities.” Such time is called “*de minimis*”, i.e., minor or trivial. The Portal-to-Portal Act of 1947 helps clarify the working time issue.

Employees, who, with the knowledge or consent of their employer, continue to work after their shifts are over, though voluntarily, are engaged in compensable working time. The reason for the work is immaterial; as long as the employer “suffers or permits” employees to work on its behalf, overtime compensation may be due. 29 C.F.R. § 785.11. This is true whether the work takes place at the place of business or the employee’s home. For example, preliminary activities such as filling out time, material or requisition sheets; checking job locations; removing trash; and fueling cars are all compensable work if done at the employer’s behest and for the employer’s benefit. This broad definition of hours worked may require employers to compensate employees for time worked that the employer may not consider “working time,” such as waiting time, travel time, certain meals and training time.

On-Call Time Under FLSA

Reference Number: MTAS-964

On-call time is time spent by employees, usually off the working premises, in their own pursuits, where the employee must remain available to be “called back” to work on short notice. 29 C.F.R. § 785.17. The FLSA requires employers to compensate their workers for on-call time when such time is spent “predominantly for the employer’s benefit.” The regulations state that:

“... an employee who is required to remain on call on the employer’s premises or so close thereto that he cannot use the time effectively for his own purpose is working while “on call. An employee who is not required to remain on the employer’s premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call.”

It is important to note that on-call payments may alter an employee’s regular rate of pay. If the employer chooses to pay the employee for on-call time (for example, a \$50 on-call payment per eight hour shift) that would not otherwise be considered hours worked under the regulation, that \$50 compensation nevertheless must be included in the employee’s rate of pay calculation for overtime. 29 C.F.R. § 778.221(b). Of course, “all payment for time actually worked must also be included in the regular rate calculation.” 29 C.F.R. § 778.223. Once the employee arrives at work after being called into service, all working time must be compensated. If this pushes the hours worked over 40 in a week or any other permitted schedule, overtime must be paid.

Breaks and Meals

Reference Number: MTAS-940

Break periods, such as lunch or dinner meals or rest periods, may or may not be compensable depending on whether the employee is relieved from duty and the amount of time allocated for the activity. The FLSA does not require that employees be given rest periods, but if rest periods are provided, they must be counted as hours worked if they last 20 minutes or less (*Mitchell v. Grienetz*, 235 F. 2d 621, 13 W.H. Cases 3 (C.A. 10th Cir. 1956)). Coffee and snack breaks are compensable rest periods and cannot be excluded from hours worked as meal periods. Whether rest periods that last longer than 20 minutes are compensable depends upon an employee's freedom during the breaks. 29 C.F.R. 785.18

"A bona fide meal time, when the employee is completely relieved from duty, is not work time. Short periods, such as coffee breaks or snacks, are not considered meal time. Of course, if an employee works during the meal, the time is compensable. Whether or not an employee's meal period can be excluded from compensable working time depends on the employee 'freedom meal test'." 29 C.F.R. § 785.19(a).

Unless all of the following three conditions are met, meal periods must be counted as hours worked:

1. The meal period generally must be at least 30 minutes, although a shorter period may qualify under special conditions. In *Blain v. General Electric Company*, 371 F. Supp. 857 (W.D. KY, 1971), the court approved an 18-minute meal period, because the employees agreed to it in return for leaving earlier in the day.
2. The employee must be completely relieved of all duties. If the employee must sit at a desk and incidentally answer the telephone, for example, this would be compensable time.
3. The employee must be free to leave his/her duty station. There are no requirements, however, that the employee be allowed to leave the premises or work site. 29 C.F.R. § 785.19(b).

"Meal time spent out of town on business trips is not generally compensable time." 29 C.F.R. § 785.39. If, however, an employee works during his/her meal, such time is compensable. "Any work done voluntarily during meal periods must be counted as compensable working time if the employer knows or has reason to believe the work is being performed. If the employer does not know of the work, and the employee's work during meal time is essentially de minimis, no compensation is required." *Baker v. United States*, 218 Cl. Ct. 602 (1978). "Public agencies may exclude meal time from hours worked on tours of duty of 24 hours or less, provided that the 207(k) employee is completely relieved of duty during the meal period." 29 C.F.R. § 553.223(b). "The meal period of safety personnel who are on call more than 24 consecutive hours can be excluded from working time under certain criteria." 29 C.F.R. § 553.223(d).

Firefighters required to remain at their work station during meal time and obligated to respond to incoming calls are not completely relieved from duty, therefore, their mealtime is compensable. *Rotondo v. Georgetown*, S.C., 869 F. Supp. 369 (D.S.C. 1994). However, in *Albee v. Village of Bartlett*, Ill., 861 F. Supp. 680 (N.D. Ill. 1994), the courts determined that occasional interruptions in a police officer's meal break did not entitle the officer to compensation. The bottom line seems to be whether the officer's time and attention are occupied primarily by private pursuit (procurement and consumption of food) or whether the officer's time and attention are taken up primarily by official responsibilities that prevent the officer from comfortably and adequately enjoying the meal.

"If a public agency elects to pay overtime compensation to firefighters and law enforcement personnel in accordance with section 207(k) of the act, the public agency may exclude meal time from hours worked if all the tests in §785.19 above are met." 29 C.F.R. § 553.223(a). If a public agency elects to use the section 7(k) exemption, "the public agency may exclude meal time from hours worked on tours of 24 hours or less, provided that the employee is completely relieved from duty during the meal period." 29 C.F.R. § 553.223(b).

With respect to firefighters employed under the section who are confined to a duty station, "meal time cannot be excluded from the compensable hours of work where the firefighter is on a tour of duty of less than or exactly 24 hours." 29 C.F.R. § 553.223(c). On the other hand, where law enforcement personnel are required to remain on call in barracks or similar quarters, or are engaged in extended surveillance activities (e.g., stakeouts) for 24 hours or less, they are not considered to be completely relieved from duty, and any such meal period would be compensable. In the case of police officers and firefighters

who are on a tour of duty of more than 24 hours, meal time may be excluded from compensable hours of work.

Sleep Time

Reference Number: MTAS-1526

“Under certain conditions an employee is considered to be working even though some of his/her time is spent sleeping.” 29 C.F.R. § 785.20. The regulations provide for two general policies regarding sleeping time. The first is for employees whose tour of duty is less than 24 hours. The other is for those employees whose tour of duty is 24 hours or more.

For an employee whose tour of duty is less than 24 hours, periods during which the employee is permitted to sleep are compensable working time, as long as the employee is on duty and must work when required. For example, a telephone operator who is required to be on duty for specified hours is working even though the employee is permitted to sleep when not busy answering calls. It makes no difference whether the employee is furnished facilities for sleeping or not. The employee’s time is controlled by the employer. The employee is required to be on duty and working, thus, the time is work time. 29 C.F.R. § 785.21.

“When an employee’s tour of duty is longer than 24 hours, up to eight hours of sleep time can be excluded from compensable working time.” 29 C.F.R. § 785.22(a) The regulations provide that the eight hours of sleep time are excluded if:

1. An expressed or implied agreement excluding sleeping time exists (where no expressed or implied agreement to the contrary is present, the 8 hours of sleeping time and lunch periods constitute hours worked).
2. Adequate sleeping facilities for an uninterrupted night’s sleep are provided
3. At least five hours of sleep are possible during the scheduled sleeping periods
4. Interruptions to perform duties are considered hours worked.

There also are special rules for police officers and firefighters who are compensated under the § 207(k) exemption of the act. “For sleep time to be excluded for such employees, they must work a shift of more than 24 hours.” 29 C.F.R. § 553.222(c). Therefore, a tour of duty of 24 hours and 10 minutes is sufficient to constitute “more than 24 hours on duty.” “If the sleep period is longer than eight hours, only eight hours of sleep time can be credited.” 29 C.F.R. § 785.22(a). The regulations provide that “the five hours of sleep do not have to be consecutive and that sleep time does not necessarily have to be at night. Additionally, there must be a voluntary agreement between the employer and employees excluding sleep time. Without an agreement the sleep time must be counted as hours worked.” 29 C.F.R. § 785.22(a).

If the sleep period is interrupted by a call to duty, the interruption must be counted as hours worked. “If the sleep period is interrupted so frequently that the employee cannot get a reasonable night’s sleep (5 hours), then the entire period must be counted as working time.” 29 C.F.R. § 553.222(b).

Meetings, Lectures & Training Programs

Reference Number: MTAS-941

The regulations (29 C.F.R. § 785.27) identify when an employee’s time spent in training programs, lectures or meetings is compensable. The time cannot be counted as working time if **all** the following four criteria are met:

1. Attendance occur outside the employee’s regular working hours;
2. Attendance is in fact be voluntary;
3. The employee does no productive work while attending; and
4. The program, lecture, or meeting does not directly related to the employee’s job.

“Attendance is not voluntary if it is required by the employer. It is also not voluntary if the employee is led to understand or believe that his/her present working conditions or the continuance of his/her employment would be adversely affected by nonattendance.” 29 C.F.R. § 785.28.

29 C.F.R. § 785.29 establishes “that training is directly related to the employee’s job if it is designed to make the employee handle his/her job more effectively, as distinguished from training the employee for another job, or to a new job or additional skills.” Where a training course is instituted for the bona fide purpose of preparing for advancement through upgrading the employee to a higher skill, and is not intended to make the employee more efficient in his present job, the training is not considered directly related to the employee’s job even though the course incidentally improves the employee’s skill in doing regular work. “Attending an independent trade school or pursuing a correspondence course outside regular working hours is not compensable work, regardless of whether it is job related. Taking courses in a public school or training in a government sponsored on-the-job training program is also not compensable.” *Price v. Tampa Electric Co.*, 806 F.2d. 1551 (1987); 29 C.F.R. § 785.30.

DOL regulations make clear, however, that “attendance at a bona fide fire or police academy or other training facility, when required by the employing agency, constitutes engagement in law enforcement or fire protection activities” as outlined in 29 C.F.R. § 553.226(c). Therefore, basic and advanced training are considered part of the employee’s law enforcement or fire protection activities. Time spent in actual training constitutes compensable hours of work. Time spent studying or in other personal pursuits is not compensable even if the employee is confined to campus or to barracks 24 hours a day. (Wage and Hour Opinion, February 5, 1990) “Police officers and firefighters who attend a police or fire academy or other training facility are not considered to be on duty during the time they are not in class or training, as long as they are free to use such time for personal pursuits.” 29 C.F.R. § 553.226(c). Moreover, re-certification training of paramedics that is state mandated and outside the regular working hours also is non-compensable (Wage and Hour Opinion, February 5, 1990).

Travel Time

Reference Number: MTAS-965

Whether travel time is compensable or not depends entirely on the kind of travel involved. The general rule of thumb is that “time spent by an employee in travel as part of the employer’s principal activity must be counted as hours worked.” 29 C.F.R. § 785.38. Under the Portal-to-Portal Act, “the employer generally is not responsible for time spent by the employee in walking, riding, or otherwise traveling to and from the actual place of performance of the principle activities.” 29 U.S.C. § 254(a).

The court have found that “the time actually required to walk the distance between the plant entrance and work stations and back was compensable (*Anderson v. Mt. Clemens Pottery Co.* 328 U.S. 680(1946) (*superseded by statute*) *Fegley v. Higgins*, 19 F.3d 1126, 128 Lab.Cas. P 33,088, 1 Wage & Hour Cas.2d (BNA) 1638, 1994 Fed.App. 0129P (6th Cir.(Mich.) Apr 26, 1994).” Consequently, excluding normal commuting time, the general rule is that employees should be compensated for all travel unless it is overnight, outside the regular working hours, on a common carrier, or where no work is done. 29 C.F.R. § 785.39. Generally, an employee is not at work until he or she reaches the work site. But “if an employee is required to report to a meeting place where he or she is to pick up material, equipment or other employees, or to receive instructions before traveling to the work site, compensable time starts at the meeting place.” 29 C.F.R. § 785.38.

An employee who drives a company car or vehicle does not have to be compensated for commute time simply because he or she is operating the employer’s vehicle, so long as it is for the employee’s convenience. Field Operations Handbook § 31c01(a). According to the Wage and Hour Letter, April 13, 1995, an employee does not have to be compensated if all of the following conditions are met:

1. Driving the employer’s vehicle between the employee’s home and the work site is strictly voluntary and not a condition of employment;
2. The vehicle involved is the type of vehicle that would normally be used for commuting;
3. The employee incurs no cost for driving the employer’s vehicle or parking it at home; and
4. The work sites are within the normal commuting area of the employer’s establishment.

Travel time during the workday might present some problems. When an employee travels from job site to job site during the day and then travels to the place of work, the employee must be compensated for

all the travel time. If, however, the employee leaves home on the way to a work site but stops at the home office for his or her own convenience, the time traveling from the office to the site is not compensable. 29 C.F.R. § 785.38. Had the stop been made for the employer's convenience, the time would have been compensable.

In certain rare emergency situations, the regulations (29 C.F.R. § 785.36) provide that "an employee must be compensated for home-to-work travel time." Generally, if after completing a day's work, an employee is called at home and must travel a "substantial distance" to perform an emergency job, the travel time is compensable.

Out-of-town travel is a bit more complicated because DOL takes the position that out-of-town travel is not ordinary home-to-work travel. Because the travel is performed for the employer's benefit and at the employer's request, the employee must be compensated. Not all the travel, however, needs to be counted as hours worked. DOL specifically permits the employer to "exclude the travel time between the employee's home and the airport, bus or railroad station." 29 C.F.R. § 785.39. The regulations provide that travel time is compensable work time when it occurs during the employee's regular working hours. "DOL does not count as working time overnight travel that occurs outside of regular working hours as a passenger on an airplane, train, boat, bus, or car and where the employee is free to relax." 29 C.F.R. § 785.39. It is advantageous to most employers; therefore, to have their nonexempt employees travel after working hours.

"If an employee is required to drive or required to ride as an assistant or helper in an automobile, the employee must be compensated for the travel time" (29 C.F.R. § 785.41) except when the employee is on a bona fide meal break or is provided sleeping facilities. If, however, "an employee is offered the option of public transportation, but chooses to drive, the employer may count as hours worked either the time spent driving or the time that would have had to be counted if public transportation was taken." 29 C.F.R. § 785.40. If the travel is overnight and done outside work hours, the travel time is not compensable.

Compensable Working Time

Reference Number: MTAS-942

Following are examples of working time for which an employee is entitled to be compensated. (This list is not all inclusive.)

- Time spent by budget or fiscal employees required to remain until an official audit is finished. 29 C.F.R. § 785.15.
- Caring for tools that are a part of principal activities, such as fire hoses by firefighters and guns by police officers. 29 C.F.R. § 553.221(b).
- Charitable work requested or controlled by the employer. 29 C.F.R. § 785.44.
- Cleaning and oiling machinery. 29 C.F.R. § 785.24(b)(1).
- Driving van pools when the driver is chosen by the employer and under the control of the employer. Field Operations Handbook § 31c02(c).
- Emergency work/travel time. 29 C.F.R. § 785.36.
- Fire drills or other disaster drills, whether voluntary or involuntary, either during or after regular working hours. Field Operations Handbook § 31b15.
- Meal periods, if:
 - Employees are not free to leave their posts
 - Or the time is too short to be useful to employees. 29 C.F.R. § 785.19.
- Medical attention during working hours at the employer's direction. 29 C.F.R. § 785.43.
- On-call where liberty is restricted. 29 C.F.R. § 785.17.
- Preparatory work that is a part of the principal activity. *Lindow v. United States*, 738 F.2d 1057 (9th Cir 1984).
- Principal activities. 29 C.F.R. § 790.8.

- Rest periods of 20 minutes or less. 29 C.F.R. § 785.18.
- Show-up time of 10 to 15 minutes, if the employees are required to remain on the premises that long before being sent home. 29 C.F.R. § 778.220.
- Stand-by time during short plant shutdowns. 29 C.F.R. § 785.15.
- Training in regular duties to increase efficiency. 29 C.F.R. § 785.29.
- Training programs required by the employer. 29 C.F.R. § 785.27.
- Travel (but not performing work) from one work site to another or traveling out of town during working hours. 29 C.F.R. § 785.38, § 785.39.
- Cleaning and laundering uniforms or other distinctive clothing required by the employer, at least to the extent it cuts into the minimum wage. *Marshall v. S.F. of Ohio, Inc.*, 25 Wage and Hour Cas. (BNA) 227 (S.D. Ohio 1981).
- Waiting for work after reporting time or while on duty. 29 C.F.R. § 785.15.
- Washing up or showering, if it is required due to the nature of the work. *Steiner v. Mitchell*, 350 U.S. 247 (1956).
- Cleaning and maintaining police vehicles, if the officers are responsible for those tasks. Wage and Hour Opinion Letter, Dec. 30, 1985.

Non-Compensable Time

Reference Number: MTAS-943

Following are examples of work-related matters for which an employee need not be compensated.

- Absences (including sick leave, annual leave, holidays, funerals and weather-related absences). 29 C.F.R. § 778.218(d).
- Athletic contest involvement as a participant, official or scorer, even if sponsored by the employer, so long as it is voluntary and not a condition of employment. Field Operations Handbook § 31b05.
- Changing clothes, if the change is for the employee's convenience. 29 U.S.C. § 203(o).
- Charitable work done voluntarily outside the working hours. 29 C.F.R. § 785.44.
- Clothes changing at home. Field Operations Handbook §31b13.
- Holidays on which an employee does not work. 29 C.F.R. § 778.218(d).
- Jury duty. 29 C.F.R. § 778.218(d).
- Meal periods involving no duties and lasting one-half hour or longer. 29 C.F.R. § 785.19(a).
- Medical attention outside or working hours, or not at the direction of the employer. 29 C.F.R. § 785.43.
- On-call time where the employee merely leaves a telephone number and is not restricted. 29 C.F.R. § 785.17.
- Operation of an employer's motor vehicle for the employee's own commuting convenience. Field Operations Handbook § 31c02.
- Sleep time up to eight hours under a contract if the tour of duty is 24 hours or longer. 29 C.F.R. 785.22(a).
- Shutdowns for regular, customary equipment maintenance where the employee is free to leave the premises. 29 C.F.R. § 785.15.
- Time spent before, after or between regular working hours. 29 C.F.R. § 790.7.
- Trade school attendance, which is unrelated to present working conditions. 29 C.F.R. § 785.30.

- Training program voluntarily attended that are unrelated to regular duties and involve no productive work. 29 C.F.R. § 785.27.
- Travel:
 - From home to a work site, and vice versa. 29 C.F.R. § 785.35. Or
 - On overnight trips during non-working hours, except while performing duties or other work. 29 C.F.R. § 785.39.
- Voting time, as long as state laws do not require compensation. 29 C.F.R. § 778.218(d). Wage and Hour Opinion Letter, Nov. 9, 1944.
- Waiting time:
 - In a paycheck line
 - To check in or out, and (c) to start work at a designated period. 29 C.F.R. § 790.7(g).
- Washing up or showering under normal conditions. 29 C.F.R. § 790.7(g).

Other Compensable Time - Show-up, Stand-by, On-Call or Reporting Time

Reference Number: MTAS-2085

The determination of whether show-up, stand-by, on-call or reporting time are compensable is dependent on a number of variables. Employees may be "engaged to wait" or they may be "waiting to be engaged". "If an employee reports for duty and is required to wait before being assigned work or told that no work is available, the waiting time is compensable. In such instances, the employee is "engaged to wait" (29 C.F.R. § 785.14). If the employee reports for duty and is required to wait before work is completed on a vehicle, then that employee is "waiting to be engaged". 29 C.F.R. § 785.15 and 29 C.F.R. § 785.16(b). In either event, the employee is unable to use the time effectively for his/her own purposes. It belongs to and is controlled by the employer.

Stand-By Time

Reference Number: MTAS-2086

"Workers, who must 'stand by' their posts ready for duty, whether during lunch periods, during machinery breakdowns or during other temporary work shutdowns, must be paid for this time." 29 C.F.R. § 785.15. Since the employee's time is controlled by the employer, and the employee is not able to use the time for his/her own purpose, the time is working time.

This rule applies also to employees who work away from the employer's place of business. "For instance, a repairman is working while he/she waits for the employer's customer to make the premises ready. The time is working time, even though the employee is allowed to leave the premises or the job site during such periods of inactivity." 29 C.F.R. § 785.15.

Waiting Time

Reference Number: MTAS-2084

Whether waiting time is compensable depends on the particular circumstances. The FLSA requires compensation for all time during which employees are required to wait while on duty or performing their principle activities. 29 C.F.R. § 785.15. This is particularly true where waiting periods are of such short duration that employees cannot use them for their own benefit.

Under the regulations (29 C.F.R. § 785.16), waiting time by an employee who has been relieved from duty need not be counted as hours worked, if:

1. The employee is completely relieved from duty and allowed to leave the job; or
2. The employee is relieved until a definite, specific time; and

3. The relief period is long enough for the employee to use the time as he or she sees fit.

A street department employee who must wait for a vehicle to be removed from the road, a firefighter who watches television at the firehouse while waiting for alarms, and a worker who talks to fellow employees while waiting for equipment to be repaired, all are working during their periods of inactivity. The rule applies also to an employee who works away from the employer's premises.

Employees who wait before starting their duties because they arrived at the workplace earlier than the required time are not entitled to be paid for the waiting time. However, if an employee reports at the required time and then waits because there is no work to start on, the waiting time is compensable work time. 29 C.F.R. § 785.15.

DOL has defined "off duty" as:

... period[s] during which an employee is completely relieved from duty and which are long enough to enable the employee to use the time effectively for his/her own purpose are not hours worked. The employee is not completely relieved from duty and cannot use the time effectively for his/her own purposes unless the employee is definitely told in advance that he or she may leave the job and that the employee will not have to commence work until a specified hour has arrived. 29 C.F.R. § 785.16(a).

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