



## Travel Time

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Dear Reader:

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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.

Sincerely,

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**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 Clemens Pottery Co.* 328 U.S. 680(1946) (*superseded by statute*) *Fegley v. Higgins*, 19 F.3d 1126, 128 Lab.Cas.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.

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