

## Planes, Trains and Automobiles: Employer Responsibility For Non-Exempt Employee Travel Time

10/24/16

In today's digital workplace, employers and employees have more choices than ever before to meet and communicate with one another. Even with multiple options, there are times that face-to-face is the only way to get the job done. In those circumstances, when must an employer compensate non-exempt employees for travel time? The Fair Labor Standards Act and analogous state laws, for example the New Jersey Wage and Hour law, govern the circumstances when employers must pay for non-exempt employee travel.

### Work Day Travel Between Locations

Generally, travel to and from work is not compensable. In other words, an employer does not have to pay for an non-exempt employee to commute to and from work. However, travel time is generally reimbursable if an employee is required to travel from one office or work location to another during the work day. For example, if a nurse is required to work half of the day in one office location and the rest of the day at a second office location, the nurse must be paid for travel time between the first and second offices.

### Employee Meet Up and Travel

What if non-exempt employees meet at one central location and then travel to a worksite? Must the employer pay for the travel to the worksite? The rule of thumb is that if non-exempt employees are engaged and on the job before traveling to a second location, the travel time is compensable. For example, if a group of construction workers arrive at company headquarters to load equipment or materials and receive assignments before departing for the worksite, they must be paid for their travel time. But, if the construction workers simply arrive at a central work location to be transported to the worksite, but no work whatsoever is performed prior to their departure, the employer does not have to compensate them for travel to the worksite. This rule is not always so clear cut however, because whether or not a non-exempt employee is engaged in work prior to departing for the worksite may sometimes be open to interpretation.

### Business Trips

What about compensation for a non-exempt employee's travel time on business trips? Generally the hours spent in authorized travel not involving an overnight stay is considered time worked for pay purposes. However, an employer does not have to compensate a non-exempt employee for time spent during meal times or for the time that an non-exempt employee spends commuting between the his or her home and the airport, railroad or bus station.

In travel involving an overnight stay, employers must pay non-exempt employees for travel time during their regular working hours and in the regular work week. For example, a dental hygienist who regularly works from 9:00 a.m. to 5:00 p.m. takes the train to another office location to work at that location through the day and leave the following evening. The hygienist leaves on the trip at 8:00 a.m., arrives at the second office at 11:00 a.m. and works until 6:00 p.m. The employer must pay the hygienist for all time, including travel time, from 9:00 a.m. until 6:00 p.m. Meal times at the second office location need not be counted as hours worked unless the hygienist is required to attend the meal, in which case the employer must pay for that time. If the hygienist then works 9:00 a.m. through 5:00 p.m. on the second day and leaves at 5:00 p.m. to board the train, the

employer is required to pay the hygienist for working from 9:00 a.m. to 5:00 p.m., because he would not be compensated for time traveling home after his normal work hours.

### **Weekends and Holidays**

Weekend and holiday travel time must also be compensated. Travel time on Saturdays, Sundays and holidays during hours that correspond to the employee's regular working hours must be counted as time worked for pay purposes. However, an employer does not have to pay an employee for time spent on personal activities during this time, such as eating or sleeping, as long as the employee has no work duties or responsibilities.

Employers should keep the above guidelines in mind when requiring non-exempt employees to travel in order not to run afoul of federal and state wage and hour laws.

### **Attorney**

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