

M E M O R A N D U M

STATE OF CALIFORNIA

Department of Personnel Administration

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TO: Personnel Management Liaisons

THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:

Personnel Officers
Employment Relations Officers

FROM: Department of Personnel Administration
Labor Relations Division

Subject: Fair Labor Standard Act (FLSA) Travel Provisions

A number of the recently ratified Memoranda of Understanding (MOU) contain travel provisions which make reference to Sections 785.34 through 785.41 of title 29 of the Code of Federal Regulations.

These federal regulations describe the conditions under which an employee's travel time is considered compensable time worked. The regulations are summarized on pages 16 and 17 of the September 1986 Department of Personnel Administration's (DPA) Policy Guidelines on the FLSA. This summary is still accurate and may safely be used to determine if you are applying the new MOU provisions correctly.

Many department personnel and employee relation offices do not have access to Title 29 of the Federal Code and have requested copies of the relevant regulations. For their convenience, the regulations are attached.

If you have questions, please call the DPA Labor Relations Officer assigned to the bargaining unit at issue or Bruce Crain of the DPA Policy Office. The Labor Relations Officers may be reached on (916) 324-0477, Mr. Crain on (916) 324-0530.



Rick McWilliam
Chief of Labor Relations



TITLE 29

TRAVELTIME

§ 785.33 General.

The principles which apply in determining whether or not time spent in travel is working time depend upon the kind of travel involved. The subject is discussed in §§ 785.35 to 785.41, which are preceded by a brief discussion in § 785.34 of the Portal-to-Portal Act as it applies to traveltime.

§ 785.34 Effect of section 4 of the Portal-to-Portal Act.

The Portal Act provides in section 4(a) that except as provided in subsection (b) no employer shall be liable for the failure to pay the minimum wage or overtime compensation for time spent in "walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities." Subsection (b) provides that the employer shall not be relieved from liability if the activity is compensable by express contract or by custom or practice not inconsistent with an express contract. Thus traveltime at the commencement or cessation of the workday which was originally considered as working time under the Fair Labor Standards Act (such as underground travel in mines or walking from time clock to workbench) need not be counted as working time unless it is compensable by contract, custom or practice. If compensable by express contract or by custom or practice not inconsistent with an express contract, such traveltime must be counted in computing hours worked. However, ordinary travel from home to work (see § 785.35) need not be counted as hours worked even if the employer agrees to pay for it. (See *Tennessee Coal, Iron & RR. Co. v. Muscoda Local*, 321 U.S. 590 (1946); *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 690 (1946); *Walling v. Anaconda Copper Mining Co.*, 66 F. Supp. 913 (D. Mont. (1946).)

§ 785.35 Home to work: ordinary situation.

An employee who travels from home before his regular workday and returns to his home at the end of the workday is engaged in ordinary home to work travel which is a normal incident of employment. This is true whether he works at a fixed location or at different job sites. Normal travel from home to work is not worktime.

§ 785.36 Home to work in emergency situations.

There may be instances when travel from home to work is overtime. For example, if an employee who has gone home after completing his day's work is subsequently called out at night to travel a substantial distance to perform an emergency job for one of his employer's customers all time spent on such travel is working time. The Divisions are taking no position on whether travel to the job and back home by an employee who receives an emergency call outside of his regular hours to report back to his regular place of business to do a job is working time.

§ 785.37 Home to work on special one-day assignment in another city.

A problem arises when an employee who regularly works at a fixed location in one city is given a special 1-day work assignment in another city. For example, an employee who works in Washington, D.C., with regular working hours from 9 a.m. to 5 p.m. may be given a special assignment in New York City, with instructions to leave Washington at 8 a.m. He arrives in New York at 12 noon, ready for work. The special assignment is completed at 3 p.m., and the employee arrives back in Washington at 7 p.m. Such travel cannot be regarded as ordinary home-to-work travel occasioned merely by the fact of employment. It was performed for the employer's benefit and at his special request to meet the needs of the particular and unusual assignment. It would thus qualify as an integral part of the "principal" activity which the employee was hired to perform on the workday in question; it

is like travel involved in an emergency call (described in § 785.36), or like travel that is all in the day's work (see § 785.38). All the time involved, however, need not be counted. Since, except for the special assignment, the employee would have had to report to his regular work site, the travel between his home and the railroad depot may be deducted, it being in the "home-to-work" category. Also, of course, the usual meal time would be deductible.

§ 785.38 Travel that is all in the day's work.

Time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the work place is part of the day's work, and must be counted as hours worked regardless of contract, custom, or practice. If an employee normally finishes his work on the premises at 5 p.m. and is sent to another job which he finishes at 8 p.m. and is required to return to his employer's premises arriving at 9 p.m., all of the time is working time. However, if the employee goes home instead of returning to his employer's premises, the travel after 8 p.m. is home-to-work travel and is not hours worked.

Illing v. Mid-Continent Pipe Line Co., 143 F. 2d 308 (C. A. 10, 1944))

§ 785.39 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 worktime when it cuts across the employee's workday. The employee is simply substituting travel for other duties. The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on nonworking days. Thus, if an employee regularly works from 9 a.m. to 5 p.m. from Monday through Friday the travel time during these hours is worktime on Saturday and Sunday as well as on the other days. Regular meal period time is not counted. As an enforcement policy the Divisions will not consider as worktime that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

§ 785.40 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.

§ 785.41 Work performed while traveling.

Any work which an employee is required to perform while traveling must, of course, be counted as hours worked. An employee who drives a truck, bus, automobile, boat or airplane, or an employee who is required to ride therein as an assistant or helper, is working while riding, except during bona fide meal periods or when he is permitted to sleep in adequate facilities furnished by the employer.

§ 785.50 Section 4 of the Portal-to-Portal Act.

Section 4 of this Act provides that:

(a) Except as provided in paragraph (b), of this section, no employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Davis-Bacon Act, on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any of the following activities of such employee engaged in, on, or after May 14, 1947:

(1) Walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and

(2) Activities which are preliminary to or postliminary to said principal activity or activities, which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday which he ceases, such principal activity or activities.

(b) Notwithstanding the provisions of paragraph (a) of this section which relieve an employer from liability and punishment with respect to an activity the employer shall not be so relieved if such activity is compensable by either:

(1) An express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or

(2) A custom or practice in effect, at the time of such activity, at the establishment or other place where such employee is employed, covering such activity, not inconsistent with a written or nonwritten contract, in effect at

the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

(c) For the purposes of paragraph (b) of this section, an activity shall be considered as compensable, under such contract provision or such custom or practice only when it is engaged in during the portion of the day with respect to which it is so made compensable.

(d) In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended, of the Walsh-Healey Act, or of the Davis-Bacon Act, in determining the time for which an employer employs an employee with respect to walking, riding, traveling, or other preliminary or postliminary activities described in paragraph (a) of this section, there shall be counted all that time, but only that time, during which the employee engages in any such activity which is compensable within the meaning of paragraphs (b) and (c) of this section.

Department of Personnel Administration
Policy Manual
September 1986

A. Travel Time

1. Home to Work

Ordinary travel from home to work need not be counted as hours worked under the FLSA even if the employer agrees to pay for it. This is true whether the employee works at a fixed location or at a different job site each day. Time spent by an employee in travel from job site to job site during the workday, must be counted as hours worked.

2. Call Back Travel

If an employee who has gone home after completing the day's work is called back later to their regular place of work, the travel time need not be counted as hours worked. However, if the employee is required to travel to another work site, substantially further than the regular place of work, the travel time is work time.

3. One-Day Assignment to Another City

Generally on one-day travel to another city most of the time is counted as hours worked as in the following examples:

- (a) An employee who works in Sacramento with regular working hours of 8:00 a.m. to 5:00 p.m., with a one hour lunch period, is directed to work in Los Angeles the next day. The employee leaves home at 6:15 a.m. and takes the 7:00 a.m. flight to Los Angeles arriving at the work site at 9:00 a.m. The employee works until 5:00 p.m. and returns to Sacramento on a 6:00 p.m. flight arriving at 7:15 p.m.

This travel is not regarded as ordinary home to work travel and is counted as hours worked. However, the travel time between home and the airport and the noon meal time may be deducted from the hours worked. Therefore, in this instance, the employee is working from 7:00 a.m. until 7:15 p.m. minus the one hour noon meal time.

- (b) An employee who works in San Francisco with regular working hours of 8:00 a.m. to 4:30 p.m. with a one-half hour lunch period is directed to work in Sacramento the next day. The employee's normal commute time is 30 minutes each way to and from the regular work site. The employee leaves at 6:00 a.m. and drives a State (or private) car to Sacramento arriving at 8:00 a.m. The employee works until 5:00 p.m. and drives back to San Francisco arriving home at 8:00 p.m.

Again this travel is not regarded as ordinary home to work travel. The time between 6:00 a.m. and 8:00 p.m. minus one hour normal commute time and one-half hour meal time is considered hours worked.



4. Overnight Assignment to Another City

Travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile need not be counted as hours worked. If the travel away from home occurs during the employee's normal working hours, including travel on holidays, weekends, or the employee's regular scheduled days off, it is considered hours worked.

If an employee is offered commercial transportation, but requests permission to drive his/her car or a State car instead the employer may count as hours worked either the time spent driving the car during working hours or the time the employer would have had to count as hours worked, during working hours, if the employee had used commercial transportation.

5. Work Performed While Traveling

If an employee is required to work while traveling, the time involved must be counted as hours worked. For example, an employee whose job is either to drive a truck, bus, boat, or pilot an airplane, or to ride in such a vehicle as a helper or assistant is working while riding, except during bona fide meal periods or periods in which the employee is permitted to sleep in adequate facilities that the employer furnishes. Passengers in such vehicles are not considered to be working during such trips except during that part of the trip that occurs during the regular scheduled working hours excluding meal time.

