



NO. 78 — May 2007

ARE YOU REQUIRED TO PAY YOUR EMPLOYEES FOR TRAVEL TIME?

By Robin N. Kelleher

In This Issue

- ◆ Are You Required To Pay Your Employees For Travel Time?
- ◆ Notice to Washington, DC SHRM Annual Conference Attendees



Seaton | Beck | Peters
The Lawyers for Employers

Alec J. Beck
Robin N. Kelleher
Michael L. McCain
Jon S. Olson
Gregory L. Peters
Thomas R. Revnew
Douglas P. Seaton
Sara G. Sidwell
Corie J. Tarara
Tana S. VanGoethem
Robert L. Grossman,
of counsel
Linda C. Schwartz,
of counsel

7300 Metro Blvd, #500
Minneapolis, MN 55439
Tel 952-896-1700
Fax 952-896-1704
www.seatonlaw.com

*The Upper Midwest's premier
management labor and
employment law firm.*

If you are like most employers, you probably don't have all of the Fair Labor Standards Act ("FLSA") travel time rules memorized. You are, after all, running a business, not studying wage and hour law. Paying employees for travel time is an issue that employers often struggle with, and, frankly, many employers do it wrong. In fact, the U.S. Department of Labor reports that the amount of back wages it collected due to violations grew by 30% between 2001 and 2006. Also, the number of employees receiving back wages increased by 14% during the same time period. For this reason, we thought we should provide answers to some of the most commonly asked travel time pay questions.

1. Must an employer pay employees for ordinary travel time from home to work, and from work to home?

No. Ordinary home to work travel need not be counted as hours worked. This is true even if the employer's worksite is a moving site that covers a large geographic area.

2. If an employee is required to report to a central location to receive instructions, perform work there, or pick-up or carry tools, materials or supplies, must the employer compensate the employee for travel from this central location to the designated place of work?

Yes. Once an employee engages in any activities on behalf of the employer, the employer is required to compensate the employee for any subsequent travel time.

3. Must an employer compensate employees who travel to and from work in company owned vehicles?

No. An employer need not compensate an employee for this travel time, so long as: (1) the arrangement is strictly voluntary and not a condition of employment; (2) the vehicle is of the type that would normally be used for commuting; and, (3) the driver incurs no costs for driving or parking the vehicle, and the work sites are within the normal commuting area of the employer's business.

4. Is an employer required to compensate employees who merely ride in a carpool from the central location to the jobsite?

No. An employer is not required to compensate employees who merely ride in employer-furnished vehicles from a central location to a jobsite, so long as reporting to the central location is voluntary, and the employees do not

perform work at the central location or receive assignments, tools or equipment.

5. Must the employer compensate the drivers of carpools?

No. The Wage and Hour Administrator has opined that drivers of carpools need not be compensated, so long as: (1) the transportation is provided primarily for the benefit of participating employees; (2) participation in the carpool is entirely voluntary; (3) the employee driver is chosen by the employees; (4) the pick-up time is chosen by the employees; and, (5) the employer has no control over the carpool arrangement.

6. Must an employer compensate employees for travel from jobsite to jobsite during the workday?

Yes. Time spent by an employee in travel as part of the employee's principal job duties, such as travel from jobsite to jobsite, must be counted as hours worked.

7. Must an employer compensate employees for travel time which requires that they stay overnight, away from their home?

No. An employer is not required to compensate an employee for travel time resulting in an overnight stay unless the employee is traveling during their normal working hours. Employee travel on Saturdays, Sundays and holidays, during times which correspond to the employee's normal working hours on regular work days must, however, be compensated. In addition, meal periods may be excluded.

8. Must an employer compensate an employee for travel time when the employee normally works at a fixed location, but is required to travel to another city for the day for a special assignment?

Yes. Such travel is not regarded as ordinary home to work travel occasioned merely by employment. If an employee does not normally work at a fixed location, compensation for travel time would not be required.

9. Must an employer compensate an employee for travel time when the employee does not normally work at a fixed location, but is required to travel to another city for the day for a special assignment?

No. Although the Wage/Hour Regulations are not entirely clear on this issue, we believe that this travel should be considered ordinary home to work travel, regardless of the distance of the travel involved, because the employee has no fixed work location.

10. Must an employer pay employees for compensable travel time at their regular rate of pay?

No. The employer may pay employees for travel time and other non-productive work time, such as training, inventory or other ancillary activities, at a different rate of pay, as long as the rate is previously known to and accepted by employees in writing before the work is performed. In addition, if the written policy so states, the employer may pay the employee for overtime work at the travel rate established for the type of work he/she is performing during the overtime hours, rather than the weighted average of the two rates.

For more information on travel time requirements under wage and hour law, or if you would like help in drafting a legally compliant policy which also allows you to achieve your company objectives, call Robin Kelleher (952-921-4611), or any Seaton, Beck & Peters, P.A. attorney at 952-896-1700.

NOTICE TO WASHINGTON, DC SHRM ANNUAL CONFERENCE ATTENDEES

If you are attending the 2007 Society for Human Resource Management (SHRM) conference, look for the presentations on "*The Eight Deadly Workplace Legal Risks of the 21st Century*," at 2:15 p.m. on June 26, 2007, or at 11:30 a.m. on June 27, 2007, by our fellow Worklaw Network attorney, Jathan Janove of the Bullard Smith Law Firm in Portland, Oregon, author of the SHRM-acclaimed "*Managing to Stay Out of Court*." For more information, please contact Coni Crone at 503-248-1134 or ccrone@bullardlaw.com

Fax, E-mail or "None of the Above?"

If you are receiving this *LawFax*, you or another member of your organization is a client, a member of one of the trade associations or chambers of which we are also members, or have requested a subscription to our periodic *LawFax*. If you'd rather receive our *LawFax* by e-mail, or if you no longer wish to receive it, please e-mail us at firm@seatonlaw.com or call toll-free at 800-268-5008.