

DOL Clarifies that Not All Travel Time is Compensable in the Era of Telework

Labor & Employment Law Update

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On the last day of 2020, the US Department of Labor (DOL) issued an opinion letter impacting employers using telework arrangements in light of the COVID-19 pandemic. While a vaccine is now rolling out and we will hopefully get the pandemic under control in 2021, this opinion letter provides guidance to employers that have had to institute remote and hybrid work policies and/or arrangements with their workforce.

Specifically, the opinion letter addressed two general scenarios:

1. Employee has a parent-teacher conference in the middle of the day and works from the office, attends the conference and then goes home to finish her workday in her “home office”; and
2. Employee has doctor’s appointment scheduled for mid-morning. She works a couple of hours from home, goes to her appointment and then travels to her office for the rest of the day. At the end of the day, she returns home.

So is the employee’s travel time compensable? The opinion letter concludes *it is not*. Travel time under either scenario is deemed “off duty” or normal commuting time. Even if travel time occurs during the regular work or “office hours,” the employee is interrupting her work time to attend to personal matters. The time is off-duty and the employee “is free to use her time effectively and for her own purposes before resuming work.”

The opinion letter also finds that the travel time at issue is not compensable pursuant to the worksite-to-worksite travel or continuous workday doctrine. First, for the worksite-to-worksite travel analysis to apply travel must be part of the employee’s principal activity – here the employee is not being required to travel as part of her job so it is not compensable. Second, while regulations “contemplate that the period between an employee’s first and last principal activities will ‘in general’ be compensable,” this will not be the case when the employee uses the time for her own purposes. To support its opinion, the DOL examines a number of court decisions that emphasize the employee’s flexibility and freedom to use time for their own purposes. As may be appropriate, employers should consult with competent counsel to ensure that these policies and arrangements comply with relevant law.

In light of the “new normal” that has emerged in response to the COVID-19 pandemic, employers are encouraged to examine policies and/or telework arrangement to make sure that despite the flexibility such documents are intended to provide, it is clear to employees that time “effectively used for their own purposes” during their workday will not be compensable.

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