

(2) What Is Considered Hours Worked?

Under the FLSA's provisions, employees are required to be paid for all hours they work. Unfortunately, employers typically fail to include, in determining hours worked, various periods of time that are compensable. As a result, employees frequently receive less compensation than they are entitled to receive. Many times, the employer's failure to count all hours worked results in a loss of overtime payment to the employee.

Common examples of hours worked, but frequently not counted by employers, are as follows:

Standard Work Time

Typically, any job related time spent by an employee for the benefit of the employer is considered hours worked. This time can take the form of "on the clock" work, as well as "after hours" or "off the clock work." The FLSA provides that if an employer knows, or should know, that the employee is working, and continues to allow the employee to work, the employer will be responsible for paying for the work time. This is true regardless of whether the work performed actually is approved by the employer beforehand. Simply put, the law states that an employer cannot accept the benefits of time worked by its employees without counting that time in computing an employee's pay.

Lunch/Break Deductions

Employers frequently violate the FLSA by automatically deducting for lunch periods that are not actually taken by their employees. Specifically, many employers automatically deduct thirty (30) minutes of time each day for lunch, regardless of whether the employee actually takes a break or not. Many employees do not take any lunch break, while others simply eat at their desk and continue to perform work for their employer. This time generally is considered hours worked, and may not be deducted by the employer. Therefore, an employee who actually works forty-two and one-half hours per week (42.5) but only gets paid for forty (40) because a thirty (30) minute lunch period automatically is deducted, may be entitled to recover the two and one-half (2.5) hours of unpaid overtime for each week during which the improper deductions were made.

Similarly, if an employee takes legally required breaks during the day, the employer may not deduct this time from hours worked. Employees who are subjected to a break deduction from their hours worked by their employers likewise may be entitled to recover unpaid compensation for such deductions.

Travel Time

The Commute

In most circumstances, travel time between home and work is not considered compensable working time so long as the employee is not performing any work during the commute. There are, however, situations in which travel time must be considered as compensable time by the employer. For example, if the employee is required to pick-up co-employees or materials prior to arriving at work, or to stop at a certain job site or location prior to reporting, the employee typically is entitled to receive compensation for travel time spent once the initial pick-up or stop is made. Additionally, an employee may be entitled to additional compensation when he/she uses a company vehicle to commute, and: (1) is required to travel outside the normal commuting area for the employer's business; and (2) there is no agreement between the employer and employee that the additional travel is not excluded as compensable time.

Travel During Working Hours

In general, travel during an employee's regularly scheduled hours must be counted as "hours worked." This is true regardless of whether the employee is required to travel on weekends or holidays (so long as the hours of travel match the typical hours of work for the employee) Therefore, if, during an employee's workday, he/she travels to meet with vendors, co-employees, or customers, or travels from job site to job site, the time spent traveling to and from these meetings and job sites is compensable.

"After-Hours" Travel

Whether an employee is entitled to compensation for time spent traveling "after hours" depends on the particular situation. For example, if the employee travels solely as a passenger on a plane, train, boat, bus or automobile, the travel time will not be compensable, unless the employee performs work during the time spent traveling (reports, telephone calls, etc). If the employee is the driver, however, the travel time is compensable, regardless of whether the employee is actually performing work other than driving.

Out of town travel for the day

Generally, when an employee travels for a daily assignment out of town, that does not involve an overnight stay, the time spent traveling (and working) is considered "hours worked." This includes time that occurs before, during, and after the employee's regular working hours for the day. Bona fide meal periods and travel between the employee's home and the airport/train station need not be counted as hours worked.

Overnight Out of Town Travel

Typically overnight out of town travel time is not considered "hours worked." If, however, as discussed above, the employee is driving the vehicle or performing work for the employer during this travel time, that time will be compensable.

Off the Clock Work

Very commonly, employers fail to include working time spent by employees performing work activities outside of their normal shifts as "hours worked." For example, many employees arrive prior to their scheduled shifts and begin working before they can actually clock in to work. As this work is for the benefit of their employer, it is considered compensable time, and an employer must include such hours in its pay computations. Another common example of "off the clock" work is when employers require employees to attend meetings prior to, or after, their scheduled work shift. Employers typically do not allow employees to stay on the clock for these meetings resulting in the loss of "hours worked". Most usually, employers require employees to punch out at the end of their shift (or do not allow the employees to punch in before their shift), yet the employer requires the employee to continue to work. This work typically includes cleaning equipment, doing paperwork, dropping off mail or depositing checks, taking phone calls on the way home or at home, or simply taking work home for the evening. Remember, employees are entitled to recover compensation for "hours worked," and it does not matter whether that work occurs on the clock, or off. If the work performed by the employee benefits the employer, and the employer knows, or should know, that the work is being performed, the employee is entitled to be paid for that time.

On-Call Time

There are very specific rules governing whether an employee is entitled to be paid for "on call" or waiting time. Employees such as police officers, firefighters, and other emergency personnel typically are subjected to "on call" time compensation issues. Generally speaking, if an employee is "on call" but is free to use his or her time for their own purposes (read a book, go to the mall, go the park with the kids), then the time probably will not be considered "hours worked." If however, the employee is not free to use the time as he or she wishes, the "on call" time may be compensable. Every "on call" situation and the factors applied to that situation are different. Therefore, if you have any questions regarding your particular "on call" situation is compensable, contact a qualified FLSA lawyer to discuss the issue.
