

Insights

U.S. DEPARTMENT OF LABOR CLARIFIES WHEN COMMUTING, TRAVEL, AND PRE-SHIFT ACTIVITIES ARE COMPENSABLE UNDER THE FLSA

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On July 22, 2026, the U.S. Department of Labor's Wage and Hour Division ("DOL") issued two opinion letters addressing when commuting, travel, and pre-shift activities are compensable under the Fair Labor Standards Act (FLSA). Opinion Letter FLSA2026-9 addresses mid-day travel between an employee's home and office in hybrid work arrangements, while Opinion Letter FLSA2026-10 addresses pre-shift communications and travel for field employees who report directly to customer locations.

Taken together, the opinion letters provide useful guidance for employers managing hybrid, flexible, and mobile workforces. The analysis depends heavily on the nature of the employee's activities and the purpose of the travel: employee-driven travel that substitutes for an ordinary commute may remain non-compensable, while substantive work performed before or during a commute may begin the compensable workday and affect whether subsequent travel must be paid. Although opinion letters are not binding on courts, they provide useful insight into how the DOL may analyze similar travel-time and pre-shift work issues.

Opinion Letter FLSA2026-9: Mid-Day Travel in Hybrid Work Arrangements

The employer requesting Opinion Letter FLSA2026-9 maintained a workforce of non-exempt office employees who generally did not travel as part of their job duties. Although many employees were permitted to telework, the employer historically prohibited employees from working both at home and in the office on the same day because of concerns that travel occurring after work had begun could become compensable under the FLSA's continuous workday doctrine.

The DOL concluded that certain mid-day travel between home and the office qualified as normal or ordinary commuting time and therefore was not compensable. The DOL emphasized that ordinary commuting does not automatically become compensable merely because it occurs between periods of productive work, so long as the travel primarily benefits the employee and serves as a substitute for the employee's normal commute.

Examples Addressed by the Opinion Letter

The DOL analyzed three employee-driven arrangements:

- **Avoiding Rush-Hour Traffic.** An employee begins work at home, commutes to the office later in the morning to avoid traffic, works in the office, and returns home mid-afternoon to finish the workday remotely.
- **Working Extra Hours Before a Scheduled Shift.** An employee voluntarily performs additional work at home before commuting to the office for a regularly scheduled shift.

- **Completing Work at Home After Leaving the Office.** An employee leaves the office to catch the last available bus home and completes remaining work remotely, resulting in overtime hours.

In each scenario, the DOL determined that the home-to-office or office-to-home travel remained ordinary commuting and was not compensable.

Opinion Letter FLSA2026-10: Pre-Shift Communications and Travel for Field Employees

Opinion Letter FLSA2026-10 involved a field service engineer responsible for servicing and installing MRI equipment at hospitals and imaging centers. The employee did not report to a central office, but instead traveled directly from home to customer locations, moved between client sites during the day, and returned home after the final appointment.

Before leaving home, the employee received service requests through the employer's internal paging system, accepted assignments electronically, contacted customers to schedule appointments, and occasionally coordinated work with other field engineers. The DOL distinguished among these activities and reached different conclusions depending on whether the activity was merely incidental to commuting or constituted substantive work integral to the employee's principal duties.

1. Receiving and Accepting Assignments

The DOL concluded that merely receiving and accepting page notifications was not compensable work time. These activities were incidental to the employee's use of an employer-provided vehicle for commuting and therefore did not, by themselves, begin the compensable workday.

2. Calling Customers and Coordinating Work

The DOL reached a different conclusion regarding substantive communications with customers and co-workers. Time spent calling customers, coordinating schedules, and arranging service appointments was compensable because those tasks were integral and indispensable to the employee's principal job duties and directly supported the employee's core responsibility of servicing customer equipment.

3. Travel to the First Customer Location

The DOL further explained that once an employee begins performing principal activities, subsequent travel may no longer qualify as ordinary home-to-work commuting. Under the facts presented, if the employee spends a substantial portion of time before or during the commute performing compensable scheduling and coordination activities, the travel to the first customer location may itself become compensable under the continuous workday doctrine.

Key Takeaways for Employers

- The timing of travel is not dispositive. Mid-day travel does not automatically become compensable simply because it occurs after an employee has performed work, and travel from home to a first job site is not automatically non-compensable simply because it resembles an ordinary commute.
- Employee-driven flexibility may preserve ordinary commuting treatment. Where an employee voluntarily splits the workday between home and the office for personal convenience, the resulting travel may remain non-compensable when it substitutes for the employee's normal commute.

- Substantive pre-shift work can change the analysis. Customer calls, scheduling, and coordination activities that are integral and indispensable to the employee's primary duties may constitute compensable principal activities and may cause subsequent travel to become compensable. Merely receiving or accepting electronic assignments may remain non-compensable depending on the facts.
- The analysis is highly fact specific. Differences in who benefits from the travel, whether the arrangement is voluntary, and the nature and duration of activities performed before or during travel may affect the result.

Recommended Employer Action Items

Employers with non-exempt employees who commute throughout the workday should consider the following:

- Review hybrid-work policies to ensure they do not unnecessarily prohibit voluntary split-day arrangements based solely on concerns that mid-day travel will become compensable, and document when such arrangements are employee-driven for personal convenience.
- Evaluate field-employee practices to determine whether employees perform substantive pre-shift work such as customer calls, scheduling, dispatch communications, or coordination with co-workers before or during travel to their first assignment.
- Ensure timekeeping systems capture all compensable work performed remotely, through mobile devices, or while traveling, regardless of where the work occurs.
- Train managers and periodically audit pay practices to distinguish ordinary commuting and incidental activity from compensable work, and to account for any broader state wage-and-hour requirements.

Bottom Line

Opinion Letters FLSA2026-9 and FLSA2026-10 illustrate that FLSA travel-time questions turn on more than whether an employee has already performed work or is traveling from home. Employee-driven travel that functions as a substitute for an ordinary commute may remain non-compensable even when it occurs in the middle of the workday. By contrast, substantive pre-shift activities that are integral and indispensable to an employee's principal duties can begin the compensable workday and may make subsequent travel compensable. Employers should review hybrid and mobile-workforce practices with these distinctions in mind and ensure that their timekeeping systems capture compensable work wherever it occurs.

If you have questions about the updated guidance or need help assessing your compliance practices, please contact Marsha Jean-Baptiste, Amy J. Adolay, Nancy J. Townsend, or any other member of Krieg DeVault's Labor and Employment Practice.

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