DOL Explains When Employees Must Be Paid for Travel Time

R. Douglas Taylor, Jr.
July 6, 2018

Eighty years ago the Fair Labor Standards Act (FLSA) established federal minimum wage and overtime requirements for hourly employees. The law's basic tenet seems straightforward: Employers must pay employees for their "work." Yet for many employers, compliance with the FLSA on issues such as employee travel time continues to be problematic because the FLSA does not really explain when an employee is at "work."

The FLSA and Portal-to-Portal Act

The Supreme Court initially explained that "work" time means when an employee's activities are controlled or required primarily for the benefit of the employer. Congress subsequently added some specifics to the Supreme Court's expansive definition. The Portal-to-Portal Act, an amendment to the FLSA, provides that employee work time does not include:

(1) Travel to and from the actual place of performance of the principal activity the employee is employed to perform; or

(2) Activities that are undertaken before or after the employee's principal work activity.

Three Scenarios and DOL's Opinion Letter FLSA 2018-18

Recently, the U.S. Department of Labor (DOL) issued an opinion letter in response to a company's questions about travel time pay for a group of hourly employees who repair, inspect and test construction cranes. The employees do not have a fixed work location; they travel to various customer locations each day. They usually work eight to twelve hour days servicing cranes, and generally start work at around 7:00 a.m. Depending on the availability of parts and other factors, the employees may need to stay in a hotel overnight and return in the morning to complete a job. Employees are provided company vehicles that may be used for both work and personal matters.

Three travel time scenarios were considered by the DOL:

(1) Employee travel time from home to the company's office, using a company vehicle, to obtain a job itinerary and then continue on to various customer locations. Travel time from home to office varies from 15 minutes to an hour, depending on where the employee lives.

(2) Employee travel time from home directly to a customer location; and

(3) Employee travel time by plane on a Sunday from home to an out-of-state destination for a company training that begins at 8:00 a.m. on Monday. The training continues through Friday, with return travel home on Friday after class, or occasionally
on Saturday, depending on flight availability.

The first two scenarios involve common commutes to and from work. Under the Portal-to-Portal Act, employees do not need to be paid for time spent commuting between home and work. This generally holds true, even when the employee travels directly from home to different job sites, unless the commute time involved is extraordinary. Once the employee has arrived at the job, however, FLSA regulations require payment for all travel time between job sites during the day. Use of a company-provided vehicle within the normal commuting area typically does not convert the employee’s ordinary commute into compensable work time.

Scenario three implicated how to account for employee travel time away from home, both on the weekend and overnight. Travel away from home is clearly worktime when it cuts across the employee’s usual work day; the employee is simply substituting travel for usual job duties. This also includes travel time on Saturday and Sunday that corresponds to the employee’s normal working hours on other days of the week. The DOL also noted that an employee must be paid for all time the employee is actually required to work while on travel, irrespective of whether or not it falls within the employee’s regular work day.

What Does this Mean to You?

Calculating employee travel time can pose a significant challenge for many employers. There are multiple factors you must take into account, even when an employee is traveling within his home territory. There are no bright lines to establish when an employee has strayed outside his normal commuting area, converting what would have been an unpaid commute into time on the clock. The FLSA requires employers to maintain accurate time records for employees; a failure to do so can result in significant statutory damages and attorneys’ fees.

If you find yourself facing such employee travel circumstances as described here, the employment law attorneys at Bean, Kinney & Korman can assist in evaluating your company’s particular environment and help craft a reasonable solution that will address the situation.