The Work Week

News from the Bassford Remele Labor & Employment Practice Group

**August 24, 2026**

**What Employers Need to Know About Paid Travel Time in Hybrid Work Arrangements**

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Hybrid work has created a deceptively simple wage-and-hour question: when is the drive between home and work just a commute, and when does it become paid time? The U.S. Department of Labor's Wage and Hour Division recently addressed that issue in two opinion letters. FLSA2026-9 focuses on office employees who split the day between home and the workplace. FLSA2026-10 looks at a field service engineer with no office at all. Taken together, the letters give employers useful guideposts for one of hybrid work's most persistent gray areas.

**The Midday Commute Usually Stays Unpaid**

Many employers have been cautious about letting non-exempt employees work part of the day at home and part at the office. The concern is understandable: if an employee works at home, drives to the office, and keeps working there, does that drive become paid worksite-to-worksite travel under 29 C.F.R. § 785.38? In FLSA2026-9, DOL says not necessarily.

The letter considers three common scenarios: an employee who works from home until 10:00 a.m. to avoid rush hour, an employee who volunteers for extra project work at home before her regular shift, and an employee who catches the last bus home and finishes his assignment there. In each case, the travel remains an ordinary commute and is not treated as hours worked.

The important point is not just the answer; it is the reasoning. DOL describes ordinary commuting as a third category of non-compensable time inside the continuous workday, alongside bona fide meal periods and off-duty time. Ordinary commuting was never compensable, even before the Portal-to-Portal Act, so its exclusion does not depend on the travel falling outside the workday. What makes the commute "ordinary" is control: the employee chooses the timing and receives the primary benefit.

There are two practical limits. First, work actually performed during a commute is still hours worked. Second, DOL noted that the result in the voluntary pre-shift scenario would be the same even if the early-morning work were mandatory, so long as the employee chose to perform it at home rather than at the office.

**Pre-Shift Calls May Start the Paid Workday**

The companion letter, FLSA2026-10, reaches a different result on different facts. It involves a field service engineer who installs and services MRI systems, reports to no office, drives an employer-provided SUV, and spends the 7:00 a.m. hour receiving pages and calling clients.

DOL draws a meaningful line between passive and active tasks. Accepting a page, which takes about 15 seconds, is incidental to commuting in an employer-provided vehicle under the Employee Commuting Flexibility Act and is not compensable. Calling clients to schedule appointments, or calling other engineers to cover requests, is different. Those calls are integral and indispensable to the engineer's principal work of servicing equipment at client sites, so they are compensable.

That distinction drives the travel analysis. If the engineer spends most of the 7:00 a.m. hour on calls at home and then leaves immediately for the first site at the employer's direction, the drive is not an ordinary commute. He has no meaningful choice about departure time, route, or how to use the time. If he makes the calls from the vehicle instead, the workday begins with the first call, and the time from that call through arrival at the first appointment is paid. The time before the first call remains unpaid.

**What Employers Should Do Now**

- Audit what employees actually do before leaving home, and whether they have real discretion about when to do it. A twelve-hour window to close out paperwork is not the same as a required 7:00 a.m. hour of client calls.
- Separate passive receipt of assignments from the work performed in response to them.
- If you allow midday commuting, document that it is the employee's option and confirm that your timekeeping system captures hours worked at both locations.
- For at-home work that is genuinely hard to measure, consider whether a reasonable written agreement under 29 C.F.R. § 785.23 makes sense.
- Remember that these letters interpret federal law only. Analyze the same facts separately under any applicable state wage-and-hour standards.

The Bassford Remele Labor and Employment Law Group is here to support employers in complying with wage and hour laws. Please reach out with any questions.

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