County Technical Assistance Service

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Compensable Hours

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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Compensable Hours

Reference Number: CTAS-981

Compensable time refers to the hours of work for which an employee must be paid under the FLSA. This topic is covered in the regulations found at 29 C.F.R. part 785. Compensable hours of work include all times during which the employee is on duty or on the employer's premises available for work or time spent away from the employer's premises under conditions that prevent the employee from using the time for personal activities. The concept of "hours worked" is a crucial determining factor in complying with the FLSA. An employee must be compensated for "all time spent in physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer." *Tennessee Coal, Iron & R.R. Co. v. Muscoda Local No. 123*, 321 U. S. 590 (1944). Employees who, even though voluntarily, continue to work after their shift is over are engaged in compensable working time. The reason for the work is immaterial; as long as the employer "suffers or permits" employees to work on its behalf, proper compensation must be paid. Management must make certain that overtime work it does not want performed is not in fact performed. Mere promulgation of a rule to that effect is not sufficient to avoid compensation for additional hours worked.

Work not requested or required by the employer but allowed or permitted is work time under the FLSA. This rule also applies to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that work is being performed, the work must be counted as hours worked.

In an Opinion Letter dated August 11, 1993 (FLSA-1112), the DOL stated that training and care of a police dog at home by a canine patrol officer is considered part of the officer's principal activities and is therefore compensable work time under the FLSA. However, DOL noted that this kind of work does not necessarily have to be compensated at the same rate of pay as paid for law enforcement activities, and that the employer and employee can work out a reasonable agreement as to compensable hours worked at home.

Sleep Time

Reference Number: CTAS-982

There are two different rules applicable to sleep time, one for firefighters and law enforcement personnel under the § 7(k) exemption,[1] and one for all other employees.[2] The rules governing sleep time for all other employees differ from the rules for firefighters and law enforcement personnel under the § 7(k) exemption only with respect to employees whose shifts are exactly 24 hours – sleep time may be excluded from hours worked by employees whose shift is exactly 24 hours and who are not under the § 7(k) exemption. All other requirements for exclusion of sleep time are the same as those for public safety employees under the § 7(k) exemption.

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[1] 29 C.F.R. § 553.222.
[2] 29 C.F.R. § 785.20 *et seq.*

On Call Time

Reference Number: CTAS-983

Whether or not the time an employee is on call must be counted as compensable working time depends upon the employee's freedom while on call. If an employee is required to remain on call on the employer's premises or so close that he or she cannot use the time effectively for personal purposes, the employee is working while "on call." An employee who is not required to remain on the employer's premises and is free to engage in his or her own pursuits, subject only to the understanding that the employee leave word at his or her home or with the employer where he or she can be reached by the employer, is not working while "on call." When an employee is called out on the job assignment, only the time spent making the call is counted as hours worked. Of course, if calls are so frequent or the readiness conditions are so

restrictive that the employee is not really free to use the intervening periods effectively for his or her own benefit, the employee may be considered as “engaged to wait” rather than “waiting to be engaged.”

An employee who is “on call” may be required to remain at home to receive telephone calls when the employer’s office is closed. If the employee is uninterrupted for long periods of time, any reasonable agreement of the parties for determining the number of hours worked will be accepted. The agreement should take into account not only actual time spent in answering the calls, but also some allowance for the restriction on the employee’s freedom to engage in personal activities resulting from the duty of answering the telephone.

Waiting Time
Reference Number: CTAS-984

Whether waiting time is compensable depends on the particular factual circumstances.[1] The FLSA requires compensation for all time during which employees are required to wait while on duty even if allowed to leave the job site. The FLSA requires compensation because these waiting periods are of such short duration that the employees cannot use them for their own benefit. Employees who wait before starting their duties because they arrived at the place of employment earlier than the required time are not entitled to be paid for the waiting time. However, if an employee reports at the required time and then waits because there is no work to start on, the waiting time is compensable work time. Waiting by an employee who has been relieved from duty need not be counted as hours worked, if:

1. The employee is completely relieved from duty and allowed to leave his or her job; or
2. The employee is told he or she is relieved until a definite specified time; or
3. The relief period is long enough for the employee to use the time as he or she sees fit depending upon the circumstances in each case.

Whether waiting time is time worked under the FLSA depends upon the particular circumstances. A stenographer who reads a book while waiting for dictation, firefighters who watch television while waiting for alarms and police officers who are required to wait at home to be summoned to court are all working during their periods of inactivity. Generally, periods during which an employee is completely relieved from duty and which are long enough to enable the employee to use the time effectively for his or her own purposes are not hours worked.

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[1] See *Skidmore v. Swift & Co.*, 323 U. S. 134, 65 S. Ct. 161 (1944).

Show-up, Call-in, Roll Call or Reporting Time
Reference Number: CTAS-985

If an employee is required to wait ten or fifteen minutes before being advised that no work is available, this time is compensable.

Stand-By Time
Reference Number: CTAS-986

Workers who are required to stand by their posts ready for duty, whether during lunch periods, during machinery breakdowns, or during other temporary work shut-downs, must be paid for this time. Such periods of time are usually of short duration and their occurrence is not predictable. Since the employee is controlled by the employer during these periods, and is not able to use the time for his or her own purposes, this is working time.

Meal Periods
Reference Number: CTAS-988

Meal time when the employee is completely relieved from duty is not work time. For an employee’s meal periods to be excluded from compensable working time:

1. The meal period generally must be at least 30 minutes; and
2. The employee must be completely relieved of all duties (if the employee must sit at a desk and incidentally answer the telephone, for example, this would be compensable time); and
3. The employee must be free to leave his or her duty post. However, there is no requirement that the employee be allowed to leave the premises or work site.

All voluntary work done during meal periods must be counted as compensable working time if the employer knows or has reason to believe work is being performed. Meal time spent out of town on business trips is generally not compensable time. Of course, if an employee works during the meal, such time is compensable.

A special meal time rule applies to law enforcement personnel using the special § 7(k) exemption. Under these circumstances, the county may exclude meal time from hours worked on tours of duty of 24 hours or less, provided that the employee is completely relieved from duty during the meal period, and all the other tests are met. On the other hand, where law enforcement personnel are required to remain on call in barracks or similar quarters, or are engaged in extended surveillance activities (e.g., “stakeouts”), they are not considered to be completely relieved from duty, and any such meal periods would be compensable.

With respect to firefighters employed under the § 7(k) exemption, who are confined to a duty station, meal time cannot be excluded from the compensable hours of work where (1) the firefighter is on a tour of duty of less than 24 hours, or (2) the firefighter is on a tour of duty of exactly 24 hours. In the case of police officers or firefighters who are on a tour of duty of more than 24 hours, meal time may be excluded from compensable hours of work provided that the regular tests are met and the employer and employees agree.

Rest Periods or Breaks

Reference Number: CTAS-987

The FLSA does not require that employees be given rest periods or breaks, but if rest periods are provided, they must be counted as hours worked. Coffee and snack breaks are compensable rest periods and cannot be excluded from hours worked as meal periods. Periods of greater than 30 minutes might become meal periods or off time, and if so could be excluded from compensable time.

Training Time

Reference Number: CTAS-989

The rules governing compensability of training time[1] for employees are often confusing. The general rule is that attendance at lectures, meetings, training programs, and similar activities must be considered working time *unless* the following four requirements are met:

1. Attendance is outside the employee’s regular working hours;
2. Attendance is voluntary;
3. The course, lecture, or meeting is not directly related to the employee’s job; and
4. The employee does no productive work while attending.[2]

Attendance is not voluntary if it is required by the employer or if the employee is led to believe that his employment would be adversely affected if he does not attend.[3] Training is considered to be directly related to the employee’s job if it is designed to help the employee perform his present job more effectively. On the other hand, training to learn a new job or an additional job skill or training for the purpose of advancement to another position is not considered directly related to the employee’s job, even though it may incidentally improve the employee’s skill in doing his regular job.[4] There is an exception to the requirement that an employee be paid for training directly related to the employee’s job – if an employee on his own initiative voluntarily attends a public school or takes training in an employer-sponsored on-the-job training program outside working hours, the time is not considered hours worked even if the courses are job related.[5]

Questions about employee training often arise in the context of firefighters and law enforcement officers. The regulations are reasonably clear that when firefighters and law enforcement officers attend training at a bona fide fire or police academy or other training facility that is required by the employing agency, the time is compensable. However, it is only the time actually spent in classes or training that is compensable

time; law enforcement officers or firefighters who are in attendance at a police or fire academy or other training facility are not considered to be on duty during those times when they are not in class or at a training session if they are free to use their time for personal pursuits.[6]

With regard to non-required training for law enforcement officers, in a letter dated January 2, 1987, the DOL addressed a question concerning the compensability of work-related training sessions for police officers. The police officers attended state-certified training programs on a voluntary basis, sometimes during scheduled shifts and sometimes on their days off. The topics covered at these sessions included fingerprint analysis, accident investigation techniques, high-speed pursuit driving techniques and other law enforcement related training. The DOL noted that these training sessions are not compensable working hours only if the following criteria are met:

1. Participation in the training is outside the employee's regular working hours;
2. Participation is in fact voluntary;
3. The training is not directly related to the employee's job; and
4. The employee does not perform any productive work during such participation.

The DOL found that the first criterion was not met in some instances and the third criterion was not met at all. The training sessions were directly related to the employee's job, according to DOL. Therefore, the hours attending the police training sessions were compensable working hours, whether attendance was on a work day or not. Since the training program was work related, all hours of attendance were compensable under the FLSA.

In a Wage and Hour Opinion Letter dated February 16, 2001, the DOL was asked to address whether corrections deputies who "ride along" with road patrol deputies to gain experience for advancement opportunities must be paid for their time. The DOL found that because the deputies were providing hands-on assistance to the patrol deputies in the form of assistance in searching for weapons, handcuffing, etc., the fourth requirement that the employee not perform any productive work was not met and the time was compensable.

Finally, there are regulations setting out special situations in which employees of state and local governments do not have to be compensated for training time. These regulations state that while time spent attending training required by the employer is normally considered compensable time, state and local government employees do not have to be compensated for time spent in training under the following limited circumstances:

1. Attendance outside of regular working hours at specialized or follow-up training, that is required by law for certification of public and private sector employees within a particular governmental jurisdiction (e.g., certification of public and private emergency rescue workers), does not constitute compensable hours of work for public employees within that jurisdiction and subordinate jurisdictions.
2. Attendance outside of regular working hours at specialized or follow-up training, that is required for certification of employees of a governmental jurisdiction by law of a higher level of government (e.g., where a state or county law imposes a training obligation on city employees), does not constitute compensable hours of work.
3. Time spent in the training described in 1 and 2 above is not compensable, even if all or part of the cost of the training is borne by the employer.[7]

The intent of the foregoing regulation is far from clear, but in an Opinion Letter dated September 30, 1999, the DOL found that this regulation allows a law enforcement agency to deny compensation for time spent on tests for promotion administered to law enforcement officers by the civil service board. The tests were required by the state for an officer to become a commissioned police officer, they were voluntarily taken, and they occurred outside the regular hours of work.

The regulations discussed above are confusing, and the opinion letters interpreting them are not always consistent. In situations where it is not clear whether payment for attendance at training sessions is required under the regulations, it may be best to remember that an employer may choose to pay for training time even when it is not required by the FLSA. Before denying compensation for attendance at job-related training, the employer should discuss the matter with the county attorney.

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[1] Training for current employees should be distinguished from true trainees who have not yet been employed and who may be excluded from coverage under the FLSA if all of the following six conditions are met: (1) the training is similar to that which would be given in a vocational school; (2) the training is for the benefit of the trainees; (3) the trainees do not displace regular employees but work under close observation; (4) the employer providing the training derives no immediate advantage from the activities of the trainees and on occasion his operations may actually be impeded; (5) the trainees are not necessarily entitled to a job at the completion of the training period; and (6) the employer and the trainees understand that the trainees are not entitled to wages for the time spent in training. *See* Wage and Hour Opinion Letter dated Jan. 6, 1969. This type of arrangement is rarely encountered in county government.

[2] 29 C.F.R. § 785.27.
[3] 29 C.F.R. § 785.28.
[4] 29 C.F.R. § 785.29.
[5] 29 C.F.R. §§ 785.30 and 785.31.
[6] 29 C.F.R. §§ 553.214 and 553.226(c). A law enforcement agency may be able to enter into an agreement allowing it to recoup some of the cost of training a new officer if he or she leaves employment within a specified time after training as long as certain conditions are met, including not reducing the officer's pay below minimum wage or reducing overtime payments for earned overtime. *See Heder v. City of Two Rivers*, 295 F.3d 777 (7th Cir. 2002); Wage and Hour Opinion Letter FLSA2005-18 (May 31, 2005).
[7] 29 C.F.R. § 553.226.

Travel Time
Reference Number: CTAS-990

Whether travel time is compensable depends entirely on the kind of travel involved. The regulations governing travel time are found at 29 C.F.R. § 785.33 *et seq.* The employer generally is not responsible for time spent by the employee in traveling to the place of principal activity (home-to-work). This rule is true even if the employer provides transportation. Traveling by an employee from one job site to another job site during the work day is compensable work. Also, traveling from an outlying job at the end of the scheduled work day to the employer's premises is compensable.

Generally, an employee is not at work until he or she reaches the work site. But if an employee is required to report to a meeting place to pick up materials, equipment, or other employees, or to receive instructions, before traveling to the work site, compensable time starts at the time of the meeting. Also, when an employee is called back to work after going home for the day, the travel time to the job site is considered compensable.

When an employee who regularly works at a fixed location in one city is given a special one-day work assignment in another city, travel requires special consideration. For example, an employee who works in Nashville with regular working hours from 8 a.m. to 4:30 p.m. may be given a special assignment in Knoxville with instructions to leave Nashville at 7 a.m. The employee arrives in Knoxville three hours later ready for work. The special assignment is completed three hours later, and the employee arrives back in Nashville at 6:30 p.m. Such travel cannot be regarded as ordinary home-to-work travel occasioned merely by the fact of employment. It was performed for the employer's benefit and at the employer's special request to meet the needs of the particular and unusual assignment. It would thus qualify as an integral part of the principal activity that the employee was hired to perform on the work day in question. However, if the employee took an airplane to Knoxville, the travel to the airport could be treated like regular home-to-work travel since it is in the same city. Also, of course, the usual meal time would be deductible.

Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's work day. The employee is simply substituting travel for other duties. The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on non-working days. Thus, if an employee regularly works from 9 a.m. to 5 p.m. from Monday through Friday, the travel time during these hours is work time on Saturday and Sunday as well as on the other days. Regular meal period time is not counted. As an enforcement policy the DOL will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger, on an airplane, train, boat, bus or automobile.

Any work that an employee is required to perform while traveling must, of course, be counted as hours worked. An employee who drives a truck, bus, automobile, boat or airplane, or an employee who is required to ride therein as an assistant or helper, is working while riding, except during bona fide meal periods or when the employee is permitted to sleep in adequate facilities furnished by the employer.

De Minimis Time
Reference Number: CTAS-991

The courts and the DOL have recognized that insubstantial or insignificant periods of time outside scheduled working hours may be disregarded in recording working time. This rule applies, however, only where a few minutes of work are involved and where the failure to count such time is due to rounding off prac-

tices or considerations justified by operational realities. Such time is considered *de minimis*, i.e., minor or trivial. Counties rely on this exclusion at their peril.[1]

[1] See 29 C.F.R. § 785.