LEGAL UPDATE

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HIGHLIGHTS

- On July 22, 2026, the DOL issued Opinion Letter FLSA2026-10, addressing whether time spent by an employee receiving pages, calling clients and other workers to schedule appointments, and driving from home to the first client appointment is work time under the FLSA that employers must track and pay.
- The DOL confirmed that work that is incidental to an employee's use of an employer-provided vehicle is likely not compensable hours worked. The department also clarified that drive time that would otherwise be ordinary commute time can become compensable when the employee is required to perform, immediately before or during the drive, activities integral and indispensable to their principal job duties.

DOL Addresses Compensability of Certain Commute Time Activities

On July 22, 2026, the U.S. Department of Labor (DOL) issued Opinion Letter FLSA2026-10, addressing whether time spent by an employee receiving pages, calling clients and other workers to schedule appointments, and driving from home to the first client appointment is work time under the Fair Labor Standards Act (FLSA) that employers must track and pay.

Background

The FLSA generally requires employers to pay employees at least the federal minimum wage for every hour worked and 1.5 times their regular pay rate for each hour worked over 40 in a workweek. Work time is compensable whenever an employee is suffered or permitted to work—even if the work was not formally requested, approved or scheduled—so long as the employer knows or has reason to believe that the work is being done. Compensable time may occasionally include the employee's travel time. Time spent by employees in travel as part of their principal activity must be counted as hours worked. However, under the Employee Commuting Flexibility Act (ECFA), the use of an employer-provided vehicle for travel before or after the workday, and activities incidental to that use for commuting, are not considered principal activities under the FLSA.

Key Highlights

The employee at issue was a field service engineer responsible for installing and servicing magnetic resonance imaging systems. The employee performed these services at client locations (hospitals or imaging sites) instead of reporting to an office. Every day, the employee drove from home to their first client appointment, from jobsite to jobsite and then home after their last appointment.

The employee's paid shift began at 8 a.m. and ended at 5 p.m. The employee received client service requests remotely from their employer via the employer's internal messaging system between 7 a.m. and 8 a.m. On average, the employee received three to five pages each morning, and it took about 15 seconds to accept a page. The employee generally called each client within 15 minutes of accepting each page to schedule an appointment. The employee would also schedule other field service engineers if the employee was unable to cover the service request or needed assistance with it. The employer provided the employee with a vehicle and paid for its fuel, parking and maintenance.

The employee requested guidance from the DOL for the following scenarios:

- The employee receives all pages and contacts all clients to schedule appointments between 7 a.m. and 8 a.m. before leaving home to drive to the first client location; and
- The employee leaves home before the 8 a.m. start of their shift and receives pages and makes some or all of the calls while driving to the first appointment.

Receiving Pages and Making Calls

The DOL confirmed that the time the employee spent receiving pages, whether performed at home or during the commute, before performing any other work-related activities, was incidental to the use of an employer-provided vehicle for commuting under the ECFA and therefore likely not compensable. However, the DOL advised that the time the employee spent calling clients to schedule appointments (or other engineers to cover service requests) was integral and indispensable to the employee's principal job of installing and servicing equipment and therefore compensable regardless of whether the employee conducted the calls at home or in the employer-provided vehicle.

Drive Time

The DOL concluded that the employee's drive time was compensable when the employee completed pre-shift work before leaving home to drive to the first appointment because it occurred during the workday and was not an ordinary commute. The department reasoned that the employee's travel was not an ordinary commute because the time and manner of the travel were based primarily on the employer's needs rather than the employee's choice. In addition, the employer required the employee to engage in substantial work both immediately before the travel, when the employee spent most of an hour engaged in phone calls, and immediately after the travel, when the employee worked at the day's first worksite.

Whether the employee's drive time was compensable when the employee left home before their shift started and did some or all pre-shift work while driving depended on when the employee started making work calls. The drive time before the employee made the first work call was ordinary home-to-work travel and, therefore, not compensable. However, once the employee started calling clients, their workday had begun, and the rest of the travel time from the first client call to the first appointment was compensable because calling clients was the employee's first principal activity of the day and the employee was required to perform that activity throughout the travel. The DOL did not consider whether—or at what point—a less extensive amount of time spent on calls while traveling to the employee's first worksite might affect whether the entire travel time after the first call would constitute hours worked.

Employer Takeaway

Opinion letters provide the DOL's official position on how labor and employment standards apply in specific situations. Employers that rely on opinion letters may be able to establish a "good-faith defense" under the law. Employers should review the scenarios discussed in the opinion letter and determine whether the guidance affects their employment or payroll practices. This opinion letter confirms that work that is incidental to an employee's use of an employer-provided vehicle is likely not compensable hours worked. The letter also clarifies that drive time that would otherwise be ordinary commute time can become compensable when the employee is required to perform, immediately before or during the drive, activities integral and indispensable to their principal job duties.