



HIGHLIGHTS

- On July 22, 2026, the DOL issued Opinion Letter FLSA2026-9, addressing whether an employer must consider an employee's midday travel time between their home and work office as compensable under the FLSA where the employee performs work at both locations and the midday travel is offered as a voluntary alternative to unpaid commuter travel that would otherwise occur before or after the employee's workday.
- The DOL confirmed that an employee's midday travel qualifies as normal or ordinary commuter travel if the travel primarily benefits the employee.

DOL Addresses Compensability of Midday Travel Between an Employee's Home and Work

On July 22, 2026, the U.S. Department of Labor (DOL) issued Opinion Letter [FLSA2026-9](#), addressing whether an employer must consider an employee's midday travel time between their home and work office as compensable under the Fair Labor Standards Act (FLSA) where the employee performs work at both locations and the midday travel is offered as a voluntary alternative to unpaid commuter travel that would otherwise occur before or after the employee's workday.

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, an employee who travels from home before the regular workday and returns home at the end of the same workday is engaged in ordinary home-to-work travel or commuting, which is not compensable work time.

Key Highlights

The employees at issue were nonexempt administrative support staff, bookkeeping clerks and other similar corporate office-based employees. These employees did not regularly travel as part of their job duties, aside from general commuting between their homes and the employer's offices. The employer allowed many of its employees to telework; however, employees were not permitted to work in more than one location (e.g., home and office) on the same day to avoid having to travel between home and the office in the middle of the workday.

The employer requested guidance from the DOL regarding the following scenarios:

- A nonexempt employee requests to shift their commute later and earlier to avoid rush hour while working the same total hours by working from home in the morning before driving to the office and then working again after returning home from the office;
- A nonexempt employee volunteers to work additional hours for a special project, but only if they can perform the additional work from home before their regular shift at the office, rather than coming into the office early or staying late; and
- A nonexempt employee who commutes by city bus requests permission to bring work home to complete the work upon arriving home in order to catch the last bus home.

For these scenarios, the employees are fully relieved of work-related tasks during their midday travel, the travel time is 20 minutes or longer, and the employer has appropriate

timekeeping policies and practices to capture and record all worktime regardless of the work location.

While the reasoning differed slightly in each scenario, the DOL confirmed that the midday home-to-work (or work-to-home) travel in all three scenarios qualifies as normal or ordinary commuter travel and, therefore, does not qualify as hours worked under the FLSA. According to the department, an employee's midday travel qualifies as ordinary commuter travel if the travel primarily benefits the employee. The DOL also noted that while excludable commuter travel typically takes place before or after an employee's regular workday, otherwise-ordinary travel between home and work does not become compensable worktime simply because it occurs during the workday (i.e., at some point in between an employee's first and last "principal activities"). Rather, when an employee engages in ordinary commuting, the commute is not compensable work time under the FLSA. The DOL emphasized that some travel may be compensable, such as worksite-to-worksite travel during the workday, work performed while commuting, emergency call travel after the workday or special one-day assignment travel to another city.

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 midday home-to-work travel, or vice versa, is normal commuter travel if the travel is primarily for the employee's benefit.