



HIGHLIGHTS

- On May 28, 2026, the DOL issued Opinion Letter FLSA2026-8, addressing the compensability of preshift activities and waiting time, the applicability of the de minimis doctrine and the permissibility of time rounding policies under the FLSA.
- The DOL concluded that the employer's timekeeping practices raised substantial questions as to whether employees were being paid for all compensable hours.

DOL Clarifies Preshift Activities, Waiting Time, De Minimis Doctrine and Rounding Practices in Hospital Settings

On May 28, 2026, the U.S. Department of Labor (DOL) issued Opinion Letter [FLSA2026-8](#), addressing the compensability of preshift activities and waiting time, the applicability of the de minimis doctrine and the permissibility of time rounding policies under the Fair Labor Standards Act (FLSA). The letter addresses a situation involving a nonexempt employee working at a public hospital with approximately 18,000 nonexempt employees.

Background

The FLSA generally requires employers to pay nonexempt employees at least the federal minimum wage for every hour worked and 1.5 times their regular rate of pay for each hour worked over 40 in a workweek. It also requires employers to pay employees for all hours they are “suffered or permitted to work,” even if the work is not requested, authorized or scheduled, where the employer knows or has reason to know the work is being performed. These hours are known as compensable time and include all hours an individual spends performing productive work or is required by their employer to remain available for the next assignment. Employers must pay employees for all compensable work that they know or have reason to know is being performed.

Preliminary and Postliminary Activities

The Portal-to-Portal Act of 1947 (Act), which amended the FLSA, clarifies that certain activities are generally not compensable working time under the law. The Act excludes certain preliminary and postliminary activities, such as ordinary commuting, from an employee's compensation. However, compensable time under the Act includes:

- All hours employees are engaged in principal activities; and
- Any time spent performing preliminary and postliminary activities that are an integral and indispensable part of a principal activity (e.g., performing mandatory equipment checks, donning and doffing required protective equipment).

Preliminary and postliminary activities are an integral and indispensable part of principal activities if employees must perform them to perform their principal activities. The nature of an employer's business and the occupation of each employee determine which preliminary or postliminary activities are an integral part of each employee's principal activities.

Waiting Time

Whether waiting time is considered hours worked under the FLSA depends on whether employees are engaged to wait or waiting to be engaged. The time an employee spends engaged to wait is considered work time, while time spent waiting to be engaged is not.

De Minimis Doctrine

While the FLSA requires employers to pay employees for all hours worked, insubstantial or insignificant periods of time beyond the scheduled working hours that cannot be

precisely recorded for payroll purposes may be disregarded. The de minimis doctrine applies only to uncertain and indefinite periods involving a few seconds or minutes, and where the failure to count the time is justified by industrial realities. Whether time is de minimis is a fact-specific analysis that considers the practical administrative difficulty of recording the time, the aggregate amount of compensable time involved and the regularity with which the work occurs.

Rounding Practices

DOL regulations allow employers to practice time rounding, but only under specific circumstances. For example, employers may round employee time to the nearest fraction of an hour. However, rounding must not result in a failure to compensate employees properly for all the time they have actually worked. Rounding practices must be facially neutral and not consistently favor the employer when averaged over time.

Key Highlights

According to the opinion letter, employees were permitted to clock in up to seven minutes early to avoid tardiness because of the limited number of timekeeping stations. The limited number of timekeeping stations sometimes led to employees clocking out after their shifts ended. In both instances, the employer's timekeeping system rounded times to the scheduled shift times (i.e., rounding a 6:53 a.m. clock-in to 7 a.m. and a 7:07 p.m. clock-out to 7 p.m.). However, some employees regularly engaged in preshift work activities after clocking in, which were integral to their principal job duties, even when clocking in early. The employer did not compensate employees for preshift work. The DOL concluded that at least some of the preshift activities were integral and indispensable and, therefore, were compensable hours worked (e.g., respiratory therapists receiving handoff reports regarding patient status). However, the time employees spent waiting in line to clock in and out was not compensable because it was not integral and indispensable to their jobs.

The DOL clarified that work that is performed daily before paid shifts is unlikely to be de minimis. The agency advised that employers should be careful about how and to what extent they apply the de minimis doctrine, given the technological advances that allow employers to track employees' work time with increasing precision. Consequently, employers should expect exacting scrutiny of de minimis claims where employees regularly perform off-the-clock work. However, given the breadth of the hospital employees' occupations and principal activities, the DOL was unable to reach definitive conclusions about the compensability of preshift work or the applicability of the de minimis doctrine.

The DOL noted that there was not enough information to conclude that the employer's prohibition of early clock-outs constituted non-neutral rounding or affected the calculation of hours worked. However, the DOL noted that the employer's rounding policy at the start of the day was not neutral because it only benefited the employer without ever benefiting employees, to the extent that employees performed compensable work during this time.

Employer Takeaway

Opinion letters provide the DOL's official position on how labor and employment standards apply in specific situations, and employers that rely on them may be able to assert a good-faith defense. Employers should review the scenario discussed in the opinion letter and determine whether the guidance affects their employment and payroll practices. Employers that fail to properly compensate their employees for all hours worked may face costly legal penalties under the FLSA. Therefore, employers should ensure they understand and comply with the FLSA's compensable time requirements.