



Fair Labor Standards Act Corner – Paying for Employee Commuting

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Employer’s Question: *I have a non-exempt employee who recently told me that she does work-related tasks at home in the morning from her laptop and cell phone before she drives to work. The employee told me that she should get paid for her drive to work now. Is she right?*

Answer: Under the Fair Labor Standards Act, an employer must pay an employee, who is not exempt from the Act’s minimum wage and overtime requirements, for all “hours worked.” Generally, an employer does not have to pay an employee for ordinary travel from home to work in the morning, because this time spent commuting is not considered “hours worked.” If the employee **commences work** for the employer’s benefit **before she begins her morning commute**, the Department of Labor may consider her drive into the workplace compensable “hours worked.” Whether the commute time is compensable depends on if her work at home in the morning is substantial (and therefore compensable) or so insignificant as to be “de minimis” (non-compensable). When deciding if activities at home like checking voicemail and email, printing documents, synching devices, and talking to the office are substantial, courts have looked at the amount of time the employee spends on the tasks, whether the employee regularly performs the tasks, and if the tasks are part of the employee’s principal job activities. So, your employee may be right depending, in part, on what exactly she is doing at home, how often she does it, how long it takes her, and whether you require her to do it at home.

If you have any questions about the Fair Labor Standards Act or other employment laws, please contact Karl W. Butterer at 616-726-2212 or kbutterer@fosterswift.com.

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