

Seventh Circuit: Travel Time During Normal Working Hours Is Compensable for Employees on Remote Assignment

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Takeaways:

- The appeals court held that employees working away from home overnight are entitled to compensation for travel time that occurs during their regular working hours, and the travel time must also be counted toward overtime pay calculations.
- The decision is an important reminder that different FLSA rules apply to travel time compensation when overnight stays are required.
- Employers need to carefully consider the nature of their employees' travel and work arrangements to ensure FLSA compliance.

Related link:

- [*Walters v. Professional Labor Group, LLC*](#)

Employees who work away from home overnight on assignments lasting several days or weeks are entitled to compensation under the Fair Labor Standards Act (FLSA) for time spent traveling to such assignments when the travel occurs during their regular working hours, the U.S. Court of Appeals for the Seventh Circuit has ruled. [*Walters v. Professional Labor Group, LLC*](#), No. 23-3346 (Oct. 30, 2024).

Their travel time on *non-working* days also is compensable if it takes place during what would otherwise be considered the employees' usual working hours, the court held.

The appeals court also held that the employees' travel time should have been counted as hours worked when computing their overtime pay.

The Seventh Circuit has jurisdiction over Illinois, Indiana, and Wisconsin.

Travel to Client Jobsites

Professional Labor Group, LLC (PLG) supplies skilled tradespersons to construction contractors and other clients for temporary assignments. PLG employees are unable to return home each workday. They stay at the client's remote jobsite through the duration of the job, which lasts from a few days to several weeks. PLG provides per diem payments and reimburses employees for their mileage.

It does not pay them for the time spent traveling to and from the jobsites, however, and it does not count their travel time as hours worked when calculating overtime pay due.

FLSA Claims

A former PLG employee, James Walters, filed a putative collective action alleging the

time he spent traveling to remote work assignments during the normal workday was compensable under the FLSA. He also asserted this travel time should have counted as hours worked for overtime purposes.

The district court granted summary judgment to Walters, concluding that travel on overnight work assignments “during normal work hours” is compensable. A Seventh Circuit panel affirmed the decision.

No “Ordinary Commute”

Under 29 C.F.R. § 785.39, the FLSA rule that addresses travel “that keeps an employee away from home overnight,” an employee must be compensated for travel to a remote jobsite “when it ‘cuts across’ his ‘workday.’”

The employer argued, however, that the employees were engaged in routine, noncompensable commute time. It pointed to 29 C.F.R. § 785.35, under which commuting time between the home and workplace, whether “at a fixed location or at different job sites,” is noncompensable.

The appeals court observed that traveling to different jobsites can amount to an ordinary (and therefore noncompensable) commute. Ordinary commuting for purposes of 29 C.F.R. § 785.35, however, means leaving and returning home on the same workday, it explained. (Although PLG cited the U.S. Supreme Court’s recent *Loper Bright* decision overturning judicial deference to federal agency rules, the appeals court applied the Department of Labor regulations on compensability of travel time without analyzing whether such deference was warranted.) In this case, the employees were away from home overnight for the duration of their assignments — days or weeks at a time — so their travel time, the court said, was not “ordinary commuting.”

The court rejected PLG’s argument that the ordinary commute is defined by what is usual in the particular work relationship and that for this mobile workforce of skilled tradespersons, who have no fixed place of business, overnight commuting to remote client jobsites is the industry norm.

Portal-to-Portal Act Did Not Apply

According to PLG, the employees’ travel did not cut across their workdays because, under the Portal-to-Portal Act, the “workday” did not begin until they arrived at a job site, and their travel “necessarily occurred outside of that time.”

The Portal-to-Portal Act, however, applies only to ordinary commuting and “does not apply to out-of-town, overnight travel scenarios,” the court noted.

Takeaways

The Seventh Circuit’s decision is an important reminder that different rules apply to compensation of travel time when overnight stays are required. While normal commuting is noncompensable, travel that keeps an employee away from home overnight is compensable if it cuts across the workday.

The decision underscores the need for employers to carefully consider the nature of their employees’ travel and work arrangements to ensure compliance with the FLSA.

Please contact your Jackson Lewis attorney if you have questions about the compensability of travel time under the FLSA.

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