



Assessing The Risk:

Wage and Hour Tip Of The Week

Hi-Ho, Hi-Ho, Are Your Field Employees Working From Home Before They Go?

TIP: Limit the work-related activities your field employees can perform before they arrive at their first job assignment and after leaving their last assignment to avoid unintended exposure for potential off-the-clock work.

Meet Jack. Jack is a field employee (e.g., insurance claims adjuster, cable installer, deliveryman, service repairman, salesman, etc.) who drives a company-owned vehicle directly from his home to his field assignments. Under the federal Employee Commuting Flexibility Act (also known as ECFA), Jack's commute time generally is not compensable if: (i) he uses a company-provided vehicle; (ii) he drives no further than the normal commuting area to his first appointment of the day; (iii) he has an agreement with his employer regarding his use of the company-provided vehicle; and (iv) he does not incur out-of-pocket expenses for driving, parking, or maintaining the company-provided vehicle.

If, however, Jack performs work-related activities from his home before beginning his commute, such as accessing information on his job assignments for the day, mapping out his route to his first appointment, or sending and responding to work-related e-mails and phone calls—then both the time Jack spends performing the work-related activities at his home and his subsequent commute time may become compensable. Jack's commute time may become compensable in this scenario even if he does not perform any work during his commute because under the "continuous workday" doctrine, once the workday begins, any subsequent activities, including commuting, count as compensable time within that same workday.

So when did Jack's workday begin and how can you tell if Jack performed sufficient work at his home to make all of his commute time compensable?

While there is no bright-line test, the more work-related activities performed at home and the longer the amount of time spent on such pre-commute activities, the more likely the pre-commute activities and the subsequent commute will be considered compensable time. The same can be said with respect to the commute home and work-related activities performed at home after the commute.

To minimize the risk of Jack's at-home activities and commuting time becoming compensable, employers should limit at-home activities by field employees like Jack as much as possible. The following are some best practices for doing so:

- To The Extent Possible, Prohibit Field Employees From Performing Work-Related Activities At Home: Implement policies instructing field employees that they should only send and respond to e-mails, make and receive phone calls, complete paperwork, and perform other work-related activities while in the field—i.e., after they arrive at their first appointment and before leaving their last appointment. If some very limited amount of work-related activities cannot be handled in the field, make clear to field employees that they need not perform such activities immediately before their morning commute or immediately after their evening commute.
- Provide Time During The Workday For Work-Related Activities: Leave unscheduled time in the workday for field employees to perform all of their work-related activities from the field, such as responding to e-mails and phone calls, completing paperwork, reporting to supervisors, having maintenance done on the company-provided vehicle, restocking the vehicle with supplies and tools, ordering supplies and tools, and planning out their driving route for the next day's first appointment. If your field employees have parts, supplies, tools, or other work-related items shipped to their homes, instruct them to leave the items in the unopened shipping boxes until they arrive at their first job assignment of the day.
- Provide Appointment Information To Field Employees While They Are In The Field Or Through An Automated Download Process: If possible, provide field employees with information on their first appointment, if not all appointments, before the end of their prior workday, and provide them with information on subsequent appointments for the following day as the workday progresses. Alternatively, if you have the technology to do so, provide field employees with real-time downloads of appointment information. The goal is to avoid field employees spending time at home obtaining appointment information and mapping out driving routes.
- Train Your Supervisors To Respect Field Employees' Time At Home And During Commutes As Personal Time: Train your field employees' supervisors not to call or e-mail the field employees before they arrive at their first assignment or after leaving their last assignment. Supervisor communications with field employees while they are at home or commuting could make the commute time compensable.

These best practices can help field employers minimize work-related activities at home that could extend their compensable workday to include commuting time. Of course, even with these best practices in place, employers must compensate employees for work-related activities performed at home that are of more than a *de minimis* nature (see 8/21/13 *Tip of the Week* for *de minimis* factors). Finally, keep in mind that some states have travel or commute time laws that are stricter than federal law and that may make a field employee's commute time compensable—even if all of the above best practices are followed.

Disclaimer: The above are "best practice" suggestions and are in no way meant either to guarantee that use of them creates a litigation risk-free environment or, alternatively, to suggest that any specific practice or policy maintained by an employer violates the law or is indefensible in litigation.

By: [Louisa J. Johnson](#) and [Kendra K. Paul](#)

[Louisa J. Johnson](#) is located in Seyfarth Shaw's Atlanta office and [Kendra K. Paul](#) is located in the firm's Houston office. If you have questions please contact your Seyfarth attorney, Louisa Johnson at lojohnson@seyfarth.com or Kendra Paul at kpaul@seyfarth.com.

www.seyfarth.com

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