

**CLIENT ALERT: DOL Issues Opinion Letter on Compensation for Travel Time
January 22, 2021**

Under the Fair Labor Standards Act (“FLSA”) employers must compensate non-exempt employees for all hours worked, independent of daily commuting time. During the pandemic, some employers have questioned how these compensation rules apply to remote work and flexible work schedules for non-exempt employees. On December 31, the Department of Labor (“DOL”) issued an [opinion letter](#) examining compensation for mid-workday travel when an employee has a flexible work schedule, which we summarize below. For more information, please contact Peter Lowe at plowe@brannlaw.com or Hannah Wurgaft at hwurgaft@brannlaw.com.

Is commuting time compensable?

Employees are not entitled to compensation for the time spent traveling to and from the worksite for their daily commute. However, time spent traveling *during* the workday, such as between worksites or to and from an off-site meeting, is compensable.

The DOL considers hours worked to be all the time that an employee’s actions are undertaken “primarily for the benefit of the employer.” Employees are not owed compensation once they are completely relieved from their work duties for a long enough period of time such that they may “pursue their own purposes.”

Under the continuous workday doctrine, employees are entitled to compensation for the time worked between their first and last principal activities of the workday. Depending on the nature of the job, principal activities might include a daily meeting or muster, connecting to the employer’s computer network, or tasks that are “integral and indispensable” to their work performance.

Are mid-day commutes compensable?

The DOL’s opinion letter offers the classic “it depends” answer.

The letter addresses two hypothetical scenarios where employees commute in the middle of their work day, concluding that neither of these mid-day commutes are compensable. In both examples, employees are not required to perform work immediately before or immediately after their commute. Rather, the employee chooses when they start or resume working and is not required to perform work at any particular time during the workday. The DOL stated that in both scenarios, the continuous workday doctrine did not apply because the employee’s workday was interrupted by personal time where they were completely relieved of their job responsibilities.

The first example involves an employee who begins her workday in the office, leaves after lunch to travel to her child's parent-teacher conference, travels home, and then works remotely for a few hours in the evening. In total, the employee spends one hour commuting in the middle of her work day. The DOL concluded that this employee's mid-day commuting time is not compensable because the employee is free to choose how to spend her personal time and the time when she resumes working. Additionally, the DOL stated that the commuting time is not compensable because the employee's travel was not required by the employer as part of her work; she was traveling on her own accord for personal reasons.

In the second example, an employee works remotely in the early hours of the morning, travels to a doctor's appointment, and then travels to their worksite for the remainder of the workday. The employee spent 45 minutes driving to the appointment and then 15 minutes driving to work. Here, while the employee's time spent working at home in the morning is compensable, their commuting time is not because they were effectively off-duty. Like in the first example, the employee was traveling for their own personal reasons, not as part of their job responsibilities. Additionally, the employee was free to choose when they resumed working.