

OVERTIME PAY EXEMPT & NON-EXEMPT EMPLOYEES

CFR 551.422 – Time Spent Traveling – non-exempt employees.

1. Time spent traveling shall be considered hours of work if:
 - a. An employee is required to travel during regular working hours;
 - b. An employee is required to drive a vehicle or perform other work while traveling;
 - c. An employee is required to travel as a passenger on a one-day assignment away from their official duty station;
 - d. An employee is required to travel as a passenger on an overnight assignment away from his or her official duty station during non-workdays that correspond to the employee's regular working hours.
 - e. An employee travels directly from home to a temporary duty location outside the limits of his or her official duty station. (NOTE: The normal commuting time from an employee's residence to his or her official duty station will be deducted from the time spent traveling to the TDY site to determine entitlements to hours of work for traveling.)
2. An employee who travels from home before the regular workday begins and returns home at the end of the workday is engaged in normal "home to work" travel; such travel is not hours of work. When an employee travels directly from home to a temporary duty location outside the limits of his or her official duty station, the time the employee would have spent in normal home to work travel shall be deducted from hours of work as specified above.
3. An employee who is offered one mode of transportation, and who is permitted to use an alternative mode of transportation, or an employee who travels at a time other than that selected by the agency, shall be credited with the lesser of:
 - a. The actual travel time which is hours of work under this section; or
 - b. The estimated travel time, which would have been considered hours of work under this section had the employee, used the mode of transportation offered by the agency; or traveled at the time selected by the agency.
4. Excepted as provided in paragraph 2 above, an agency may prescribe a mileage radius of not greater than 50 miles to determine whether an employee's travel is within or outside the limits of the employee's official duty station for determining entitlement to overtime pay for travel under this part. However, an agency's definition of an employee's official duty station for determining overtime pay for travel may not be smaller than the definition of "official station and post duty" under the Federal Travel Regulation issued by the General Services Administration.

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CFR 550.112 – Time Spent Traveling – exempt employees.

Time in Travel status. Time in travel status away from the official duty-station of an employee is deemed employment only when:

- a. It is within his regularly schedule administrative workweek, including regular overtime work; or
- b. The travel –
 - (1) Involves the performance of actual work while traveling;
 - (2) Is incident to travel that involves the performance of work while traveling;
 - (3) Is carried out under such arduous and unusual conditions that the travel is inseparable from work; or
 - (4) Results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of the employee to his or her official-duty station.

TRAVEL HOURS OF WORK FOR NON-EXEMPT EMPLOYEES

When non-exempt employees travel, they are paid for the hours spent in a travel status that are determined to be hours of work under *either* Section 5542(b)(2) of Title 5, United States Code, and/or Section 7 of the Fair Labor Standards Act (FLSA).

Time in a travel status under any of the following conditions constitutes hours of work:

RULE	TITLE 5 (Regulated Under 5 CFR 550.112(g) and (j))	FLSA (Regulated under 5 CFR 551.422)
1	Employee travels during normal duty hours (including regularly scheduled overtime).	Same
2	Employee works while traveling.	Same, but considers driving as work.
3	Employee must travel in order to work while traveling.	(No comparable provision)
4	The travel cannot be administratively controlled (i.e., travel is not controlled by any entity of the Executive Branch of the Government).	(No comparable provision)

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RULE	TITLE 5 (Regulated Under 5 CFR 550.112(g) and (j))	FLSA (Regulated under 5 CFR 551.422)
5	(No comparable provision.)	Employee is a passenger on a one-day assignment away from the duty station.
6	(No comparable provision.)	Employee travels on an overnight assignment on non-workdays during corresponding duty hours.
7	(No comparable provision.)	Employee chooses to use an alternate mode of travel or to travel at another time than offered or selected by the Agency - hours of work will be the lesser of either (a) the actual hours of travel, or (b) the estimated hours of travel using the Agency-authorized mode of travel
8	The travel time to and from a temporary duty location exceeds the travel time to and from the employee's permanent duty station. NOTE: For this rule to apply, an employee must meet one of the conditions listed in rules 1 through 4.	The travel time to and from a temporary duty location exceeds the travel time to and from the employee's permanent duty station.
9	The travel is under arduous conditions.	(No comparable provisions.)

Time spent in travel that meets any of the conditions listed above must be compensated as either straight time or overtime, whichever is appropriate. Employees who travel at night or on Sunday do not receive night differential or Sunday premium pay unless they are regularly scheduled to work at night or on Sunday.

PT-1, Travel as Hours of Work for Nonexempt Employees EXAMPLE (Travel as Hours of Work for Non-exempt Employees)

Rule 1:

A truck driver is required to attend a one-day training course offered by the University of Hardknocks in another city. The course is scheduled for Tuesday from 9:30 a.m. to 4:00 p.m. The employee's regular tour of duty is Monday through Friday, 8:00 a.m. until 4:30 p.m. The employee leaves work on Monday, midmorning and arrives at the university about 3:30 p.m. On the return trip, the employee leaves at 8:30 a.m. on Wednesday and arrives at his home at 4:00 p.m.

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All of the employee's travel time counts as hours of work since all the travel occurred during the employee's normal duty hours.

Rule 2:

Two Wage Grade employees were required to travel to a satellite installation two hours away from the main base to repair air conditioning units. The supervisor directed the employees to travel by government vehicle and to be at the alternate worksite at 7:00 a.m. Monday morning. The employees' regular duty hours are from 7:00 a.m. until 3:30 p.m. The first employee left his home on Sunday at 3:30 p.m. and drove to the base to pick up the government vehicle. He then drove to the second employee's home arriving there at 4:30 p.m. The two proceeded to the alternate worksite arriving there at 6:30 p.m. The two returned to their permanent duty station on Wednesday, leaving at 8:00 a.m. and arriving at 10:00 a.m.

First Employee: The hours between 3:30 and 6:30 p.m. on Sunday are considered hours of work; under FLSA, driving is considered work. The hours spent traveling on Wednesday are hours of work under rule 1.

Second Employee: None of the hours on Sunday are hours of work since the employee was riding as a passenger. The hours spent traveling on Wednesday are hours of work under rule 1.

Rule 3:

A Federal Marshal in New York City must pick up a prisoner in Chicago and escort him back to New York to testify before the Grand Jury on Monday. The Marshal left New York on Sunday on a 7:30 a.m. flight. He returned to New York and relinquished responsibility for the prisoner at 11:30 p.m. the same day. The Marshal does not receive premium pay for administratively uncontrollable overtime. His regularly scheduled duty hours are 8:00 a.m. until 5:00 p.m. Monday through Friday.

The entire period from the time the Marshal left home (including the travel to the airport and the time spent waiting for the plane) until he relinquished responsibility for the prisoner are considered hours of work. The travel to pick up the prisoner is time spent traveling in order to work while traveling (rule 3) and the time spent escorting the prisoner back to New York is work while traveling (rule 2). He does not receive travel time on the way home after relinquishing the prisoner because it's not work, not traveling to work while traveling, and not traveling during corresponding duty hours, but is controlled by an Agency of the Executive Branch.

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Rule 4:

A research assistant, GS-7, must travel on a holiday evening to assist with a presentation for a conference sponsored by the University of Michigan. The presentation is scheduled to begin at 8:00 a.m. on Tuesday. The employee left home at 7:30 p.m. on Monday (a holiday) and arrived at the conference at 11:30 p.m. The employee's regularly scheduled duty hours are 7:30 a.m. until 4:30 p.m. Monday through Friday.

Even though the research assistant did not travel during corresponding hours on Sunday, all four hours of her travel time will be considered hours of work because the event could not be administratively controlled by an Agency of the Executive Branch. If the event were controlled by either the legislative or the judicial branches, the employee would also be entitled to the travel time.

Rule 5:

A group of Wage Grade employees were sent to assist with an emergency in a neighboring state. They left work at 12:00 noon and were transported by government vehicle to the site 120 miles (193km) away. Their normal work schedule is 6:00 a.m. until 4:30 p.m., Tuesday through Friday. They worked until 8:00 p.m. and returned to the permanent duty station at 11:30 p.m.

The employees' hours of work were from 6:00 a.m. until 11:00 p.m. Even though the return trip took place outside normal duty hours, the assignment lasted only one day.

Rule 6:

After a disaster at a distant installation, two carpenters were sent TDY to help repair the damage. Their normal duty hours were 7:00 a.m. until 3:30 p.m. The employees left their homes at 10:00 a.m. on Sunday and drove to the base. They took a military flight, which left at noon and arrived at the TDY location at 5:00 p.m. They worked at the TDY site for two weeks and returned home on Friday afternoon. They departed the TDY site at 2:00 p.m. on Friday and arrived at the permanent duty station at 8:00 p.m. They arrived home at 8:45 p.m.

The hours between 10:00 a.m. and 3:30 p.m. Sunday (rule 6) plus the hours between 2:00 p.m. and 3:30 p.m. on Friday (rule 1) are hours of work. The employees are not entitled to the hours spent traveling outside their normal duty hours because it was not a one-day assignment and they did not work while traveling.

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Rule 7:

An employee is sent TDY to a location four hours driving distance from her home. The installation authorized travel by plane and scheduled her to depart on Sunday at 12:30 p.m. (A one-hour flight). The employee decided she would rather have a car at the temporary location and drove instead of flying. She left her home at 11:00 a.m. and arrived at the TDY site at 3:00 p.m. Her normal duty hours are 7:00 a.m. until 4:00 p.m., Monday through Friday.

When an employee does not travel by the authorized mode of travel or she is entitled to the lesser of the (a) actual hours in travel status, or (b) constructed hours the employee would have been in a compensable travel status had he or she traveled as authorized. The employee is authorized one hour of travel time plus the time she would have spent traveling to the airport and a reasonable waiting period.

Rule 8:

On a regular duty day, an employee is required to report to an alternate work site outside his normal duty station. It takes the employee three hours to drive to the TDY site and two and one-half hours to return home at the end of the day. It usually takes the employee 30 minutes each way to drive to and from work.

The time an employee spends in normal home-to-work travel is deducted from the travel time of an employee who travels to an alternate duty site outside his or her normal duty station. Therefore, one hour would be deducted from the employee's total travel time of five and one-half hours. Four and one-half hours would be considered hours of work.

Rule 9:

An electrician was sent to a remote radar site at the top of a mountain to repair some circuits that had been knocked out due to a recent snowstorm. The radar site was accessible only by an unimproved trail and required an all-terrain vehicle. The employee rode as a passenger in a Government vehicle and left at 1:00 p.m. for what would normally be a two-hour drive. Because of the weather conditions on the mountain, the employee did not arrive at the radar site until 6:00 p.m., two hours after the end of the normal duty day. The electrician remained overnight, repaired the circuit and drove back the next day traveling within the normal duty hours.

The five hours spent on the trip to the TDY site were hours of work since the travel was performed under arduous conditions. If the conditions had been arduous, only the travel time between 1:00 p.m. and 4:00 p.m., (the end of the duty day) would have been hours of work. The travel time back to the permanent duty station falls under rule 1.

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Rule 10: Miscellaneous

The installation was running short of overtime funds but needed to send an employee TDY where had to travel during corresponding duty hours on the weekend. The installation wanted to give compensatory time to the employee instead of overtime.

A nonexempt employee may not be required to accept compensatory time off in lieu of overtime pay even if the overtime entitlement is earned as the result of travel. A nonexempt General Schedule employee may request compensatory time off. Such a request must be in writing. A Wage Grade employee is not entitled to compensatory time off unless he or she is covered by a flexible work schedule established under 5 U.S.C. 6122. Such an employee may request compensatory time off in lieu of overtime pay for irregular or occasional overtime work, including travel time (5 CFR 551.331).

SITUATION:

Two employees are in charge of the radio stations located on mountaintops in various locations throughout the state. They start work 1 hour early to travel to the site. They work for eight hours and return 1 hour later. The supervisor says it is cheaper to pay them 2 hours of overtime rather than allow them to stay overnight and pay per diem, etc. One employee is exempt and one is non-exempt. Which employee would be entitled to overtime pay?

NON-EXEMPT EMPLOYEES UNDER FLSA:

- Under FLSA, for the non-exempt employee, FPM Chapter 551 states: In general, authorized travel time outside regular working hours is "hours of work" under FLSA if an employee (1) *performs work while traveling*, (2) *travels as a passenger to a temporary duty station and returns during the same day*, or (3) *travels as a passenger on non-work days during hours which correspond to his/her regular working hours*. Thus, whether time spent traveling outside regular working hours is considered "hours of work" under FLSA depends upon the travel involved.
- FLSA FPM Chap 551, paragraph E2 states, *Travel as a passenger to and returning from a temporary duty station outside the limits of the official duty station during the same day is viewed as a part of the employee's principal duties for that particular day. The time spent in authorized travel as a passenger (by common carrier or by automobile) during the one-day assignment is considered working time.*

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- Title 29, Part 785, Section 785.37 - Home to work on Special One-Day Assignment in Another City, states: *When an employee who regularly works at a fixed location in one city is given a special 1-day work assignment in another city, such travel cannot be regarded as ordinary home-to-work travel occasioned merely by the fact of employment. It was performed for the employer's benefit and at his special request to meet the needs of the particular and unusual assignment. It would thus qualify as an integral part of the "principal" activity, which the employee was hired to perform on the workday in question.*

EXEMPT EMPLOYEE UNDER TITLE 5

- Under Title 5, for the exempt employee, FPM Chap 551 states: For travel time outside regular working hours to be considered "hours of work" under Title 5, the purpose of the condition for the travel must meet one of the four criteria of section 5542(b)(2) of Title 5, United States Code.
- Title 5, 5542,(b)(2) states: *Time spent in a travel status away from the official duty station of an employee is not hours of employment unless:*
 - a. *The time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or*
 - b. *The travel (1) involves the performance of work while traveling, (2) is incident to travel that involves the performance of work while traveling, (3) is carried out under arduous conditions, or (4) results from an event which could not be scheduled or controlled administratively.*

ANSWER:

1. The non-exempt employee would receive the overtime pay for the travel.
2. The exempt employee would not receive the overtime pay for the travel, however, if the supervisor schedules the overtime in advance the employee would receive overtime pay.