

SMITH DOLLAR
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COMPENSABLE TIME:
No Such Thing as “Off the Clock”



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Contractors and other businesses in California already know we have the most pro-worker labor laws in the country. Built into our state constitution is the requirement that when laws are in conflict or vague, all doubts “should be liberally construed in favor of the employee.”

Some recent California decisions have made clear that there is no flexibility when it comes to what is “compensable time.” A simple formula is this:

Hours worked = compensable time

Compensable time= paid time

All paid time must = at least the minimum wage

So what do we mean by this exactly? Here are some examples of when you must pay for compensable time:

- You have employees come to the yard in the morning to pick up materials or require them to carpool to the job site. All time spent at the yard and traveling to the site is compensable.
- If the required carpool takes employees back to the yard, that travel time is compensable time.
- If you have a tailgate/safety meeting at the site in the morning before work starts, that is compensable time.
- If you make employees come to the office or yard to pick up their paychecks, that is compensable time.
- If employees are required to park at a specific parking lot for the job site, and then get a shuttle bus to work location, that is compensable time.
- If an employee comes into work, but there is no work that day (because of rain or other reasons) an employer must pay a minimum 2 hours of “show up pay.”

- And now, a recent case may suggest that a requirement that on-call employees call in the night before to see whether they are to work the next day, also requires “show up pay.”
- “In on your time, out on our time” policies are illegal.

Construction workers are covered under California Industrial Wage Order 16. All construction employers should have a copy of this wage order and read it carefully. The examples above are covered by section 5 of that wage order.

Note: If you are signatory to a labor union, you can have a provision that provides for the payment of travel time at a lesser wage. Otherwise, all travel time must be paid at the employee's regular hourly rate. Say you pay your workers \$20 per hour at the construction site. You'll need to pay that rate for travel time as well. If they do need to travel in a company vehicle or carpool from the yard to the job site, you have to pay that \$20 per hour. But if you have a collective bargaining agreement, you can pay that travel time at California's current minimum wage of \$11.00 per hour for the travel time portion (or \$12.00 per hour if you have more than 25 employees, if you have a CBA expressly stating this). The CBA must expressly state this per Wage Order-16, Section 5 (D). This complies with Labor Code sections 510, 1194 and Wage Order 16, section 4.

If the employee drives from home directly to the job site, the travel time is NOT compensable. But if you require employees to come to the yard or shop first thing in the a.m., once they get there they should be “on the clock.” If workers don't need to come there first, you should have them go directly to the job site unless you are willing to pay for that time.

California's labor laws can be daunting, especially if you do public works construction as well. Call us anytime if you have questions related to your labor and employment law practices. We're here to help.

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