

# Employers Need Not Pay for Certain Travel Time Between Office, Telework Locations, DOL Says

HRDive | Ryan Golden | 12-31-2020



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## Dive Brief:

- An employee who chooses to telework for part of the day and work in an office for part of the day, and who has sufficient time to perform personal tasks in between, need not be compensated for travel time between the two locations, the U.S. Department of Labor (DOL)'s Wage and Hour Division said in one of two opinion letters published Dec. 31.
- The letter cited two examples. In one, the employee leaves the office midday to attend a parent-teacher conference and receives permission to work from home for the remainder of the day. In the other, the employee receives permission to work from home prior to attending a doctor's appointment before working the rest of the day at her regular office location.
- Travel time in either scenario would not be compensable time under the Fair Labor Standards Act (FLSA), according to DOL, because the employee in the scenarios is either off duty or engaged in normal commuting. The travel time also would not count as compensable "worksite-to-worksit travel," nor would it

count as compensable time under the FLSA's continuous workplace doctrine, the agency said.

### **Dive Insight:**

The FLSA specifies that time periods in which covered employees are relieved from duty and which are long enough to enable the employee to use the time "effectively for [the employee's] own purposes" do not count as hours worked under the law.

Though travel time "must be counted as hours worked" under the FLSA if the time is part of an employee's principal activity, the employee described in the Dec. 31 letter's scenarios "is traveling of her own volition for her own purposes during her off-duty time," DOL said.

DOL did note, however, that some court decisions analyzing situations in which employees may be required to perform work immediately before commuting to or immediately after commuting from a worksite "may appear to be to the contrary" of its conclusion. The employer addressed in the opinion letter stated that the employee in the scenarios was not required to perform her work at any particular time.

The letter is the latest in a series of DOL documents weighing in on remote work. Earlier this week, the agency published guidance stating that employers may satisfy their posting obligations under the FLSA or Family and Medical Leave Act via electronic posting under certain circumstances. In August, an agency field assistance bulletin detailed whether an employer must pay employees for work performed remotely if the employer has rules against doing certain work remotely.

A second opinion letter published Dec. 31 addressed an employer's query about overtime payments to caregiver employees who work live-in and extended shifts of 24 hours or more.