

what and when of “comp” time, consider time-and-a-half “comp” time.

- More than the number of hours for which an employee is scheduled, but still 40 or less? FLSA doesn't apply.
- Does your employee work for another department within the organization? Add together the number of hours worked in both departments to determine whether FLSA rules apply. If they do, the amount of compensation could be an issue if the employee receives two different rates of pay. That can require a complicated calculation.
- Be sure you consult your human resources department for accurate information.

The Indiana case: “hours worked”

The problem for the Penn-Harris-Madison School District was that it's not always clear when some employees are actually “working” for FLSA purposes. The 20 bus drivers who filed the FLSA claim that landed in an Indiana court alleged that mandatory bus inspections, as well as their drive time to their first morning pick-up and from their last student drop-off, should be counted as hours worked under the FLSA.

Amendments to the FLSA provide that employers are not obligated to compensate employees for “walking, riding, or traveling to and from the actual place of performance” of their main functions. In contrast, travel that is “part of [an employee's] principal activity” constitutes compensable hours worked.

The U.S. Supreme Court has held that “activities performed either before or after the regular work shift . . . are compensable. . . if those activities are an integral and indispensable part of the principal activities for which [the employees] are employed.” *Steiner v. Mitchell*, 350 U.S. 247, 256 (1956).

The school district conceded that pre-trip inspections are compensable working time. They also agreed that for drivers who park their buses at the transportation center, getting to and from student pick-up and drop-off points constitutes hours worked. And, where drivers are required to park at home because their homes are closer than the transportation center to their first pick-up or last drop-off, their time “on the clock” begins whenever they conduct a safety inspection before they leave for the first route. Similarly, the drivers' trips back to their homes constitute “working time” if they conduct a safety inspection upon arrival at their homes.

Truth, continued from page 1

- Accurate records can make or break employer defendants
- Claims can be “contagious” in an organization. School districts that have struggled with overtime issues in response to claims and lawsuits, rather than proactively, have learned this lesson. One staff member's complaint can quickly lead to non-exempt employees throughout the organization pouring over past records to see if they have a claim too. Often, they do.

The consequences

- Back wages and attorneys' fees are recoverable in a lawsuit.
- Willful violations can result in significant fines and penalties and, in very unusual cases, they can result in personal liability, and even imprisonment.
- While cases are often settled, the cost of such settlements in Mississippi school districts may be more than \$20 to \$25 million dollars, according to one Mississippi school lawyer.

The controversy

Since the district conceded all of this, where's the disagreement? The district argued that the drivers received pay for “down-time” which should be set-off against any money due them for inspections and pre- and post-route driving time. In fact, the parties' collective bargaining agreement established that drivers would be paid for one-half hour of maintenance activities.

The court found that drivers who could accomplish the necessary inspections in less than 30 minutes shouldn't receive extra pay. Drivers who could prove inspections took longer than one-half hour where they regularly spent the time and documented the work should receive additional pay if the time in excess of the half-hour for which their employment agreement provided for compensation pushed them over the 40-hour week.

Note: Does it sound like inefficient drivers were to be rewarded, and efficient drivers ignored?

Down-time: “on-call” and “waiting”

Down-time is non-driving time, but whether it's compensable or not, varies.

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