



## Interpretive Notice & Formal Opinion (“INFO”) #20A: What Is and Isn’t “Time Worked” That Must Be Paid under Colorado Law

### Overview

Employees must be paid for any time that counts as “time worked,” also called “compensable time” or “paid time.” This INFO #20A explains what does and doesn’t count as time worked under Colorado law, in particular the time worked definition in [Colorado Overtime and Minimum Pay Standards Order \(“COMPS”\) Order Rule 1.9](#). INFO #20B explains how time worked applies to different pay types; #20C explains travel time and sleep time.

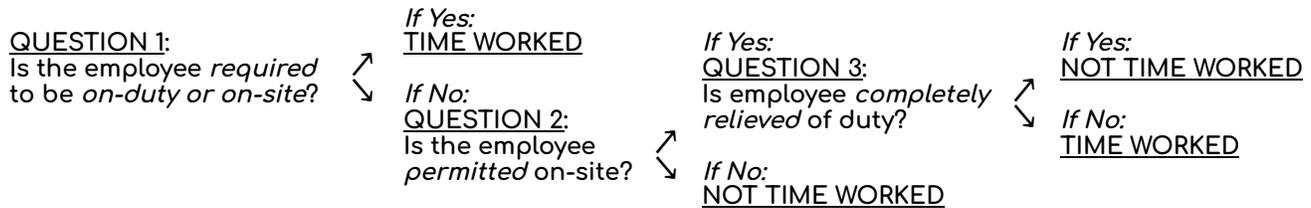
**General Rule:** Time worked is **all time** performing **labor or services** for employer **benefit**. That includes:

- **Performing work.** Time an employer **benefitted** from and **permitted**, even if it didn’t **require** the time.
  - **Benefit** to an employer doesn’t require an employer to actually **control** the employee activities, under Rule 1.9 and the statute defining an employee “performing labor or services.”<sup>1</sup>
  - **Permission** includes work the employer **didn’t expressly authorize** — **if** the employer **knew**, or had **reason to believe**, employees worked for its benefit,<sup>2</sup> including:
    - work an employer **knew** or had **reason to believe** was done **outside scheduled shifts**; and
    - **off-site** work, if the employer permitted it, such as allowing **remote or home-based** work.<sup>3</sup>

**Example 1:** An employee works overtime without authorization. The employer forbids overtime, but doesn’t monitor time worked. It must pay for the unauthorized overtime worked.<sup>4</sup>

- **On-premises time** depends on why the employee is on premises. Time an employee is:
  - **Required** to be “**on ... premises, on duty or at a prescribed workplace**”<sup>5</sup> **is time worked**, whether or not any productive work is done; “there need be no exertion at all.”<sup>6</sup>
  - **Choosing** to be on-site, **if completely relieved of duty, is not time worked** — for example, arriving early or staying late to socialize with co-workers, eat, or watch TV in a break room.

FIGURE 1: Is it “time worked,” based on 3 questions



<sup>1</sup> C.R.S. § 8-4-101(5) (performing labor or services for “benefit” of employer who “may” exercise control defines “employee”).

<sup>2</sup> [Blue Ribbon Distributing](#), DLSS Case #0758-18 (Hearing Decis. #19-017, Feb. 19, 2019) (employer “suffered or permitted” off-clock work; evidence undercut its denial of knowing of the work); [Todd M. Roby DDS](#), DLSS Case #2629-16 (Hearing Decis. #18-008, Feb. 27, 2018), at 6-7; [Bender Medical Group](#), DLSS Case #2997-16 (Hearing Decis. #17-084, Oct. 18, 2017), at 5-6. [Accord 29 C.F.R. §§ 785.11](#) (work compensable if not requested, but suffered or permitted), 785.12 (“must count” offsite work employer “knows or has reason to believe”), 785.13 (noting “duty of the management to exercise its control and see that the work is not performed if it does not want it”; “It cannot sit back and accept the benefits without compensating”).

<sup>3</sup> [Bull v. U.S.](#), 68 Fed. Cl. 212, 251-252 (2005) (employer knew “or had reason to know ... employees were constructing training aids at home because [it] did not provide ... an adequate tool room” or enough time during scheduled shifts).

<sup>4</sup> [Rocky Mountain Business Advocate Group](#), DLSS Case #0513-18 (Hearing Decis. #19-026, Mar. 21, 2019); [Trimble True Value Hardware & Garden Center](#), DLSS Case #4585-17 (Hearing Decis. #18-071, Oct. 18, 2018).

<sup>5</sup> [COMPS Rule 1.9; Statement of Basis, Purpose, Specific Statutory Authority, and Findings for COMPS #36 \(2020\) \(“2020 COMPS SBP”\)](#), at 11-16. (Both quoting and citing [Anderson v. Mt. Clemens Pottery Co.](#), 328 U.S. 680, 690-91 (1946)).

<sup>6</sup> “[A]n employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve.... Readiness to serve may be hired, quite as much as service itself....” [Armour & Co. v. Wantock](#), 323 U.S. 126, 133 (1944) (quoted in 29 C.F.R. § 785.7).

## Pre-/Post-Shift Time Worked

- *Federal* wage law (the Fair Labor Standards Act, "FLSA") originally counted pre-/post-shift tasks (screenings, gear time, etc.) as time worked — until a later federal statute (the Portal-to-Portal Act, "PTPA") excluded some "preliminary and postliminary" activity that isn't "integral and indispensable."<sup>7</sup>
- But: **Colorado never adopted the federal statute excluding pre- and post-shift activities from time worked** (the PTPA).<sup>8</sup>
- **Pre-/post-shift tasks** like these may take just seconds, but **count as time worked if over one minute**:
  - ✓ putting on or removing required **clothes or gear**, but **not** uniforms also worn **outside work**;
  - ✓ pre- or post-shift meetings, or other sharing or receiving of **work-related information**;
  - ✓ **clock** or **check in/out**, or security/safety **screening**;
  - ✓ staying at work **waiting** for **assignments**;
  - ✓ **set-up, clean-up**, or other "**off the clock**" duties; or
  - ✓ **waiting** for activities like those listed here.

**Example 2:** An employer requires gear pick-up and a security screening. Each of the two activities (with time spent waiting in line for each) takes 45 seconds.

- Both activities count as time worked *if* the employee spends over one minute on them.
- If the gear pick-up and security screening are *consecutive*, they are time worked. Though they are different tasks, the employer is requiring 1.5 continuous minutes of pre-shift activity.
- If the gear pick-up is in the morning right before the shift starts, but the security screening is in the afternoon right after the shift ends, then the employer is requiring 45 seconds of pre-shift activity, and 45 seconds of post-shift activity — so neither counts as time worked.

**Example 3:** An arriving employee's day starts with: (1) 45 seconds in security screening at the entrance; (2) 5 minutes walking to the work area, often spent in personal conversation with co-workers, or on phone calls; then (3) arriving at the work area typically 10 minutes before the shift — voluntarily, with no employer or workload pressure to be early — often spent socializing with coworkers in a break room or listening to music, with no required tasks or assigned location.

- None of the three activities are time worked; only starting their shift starts their time worked.<sup>9</sup> (1) The 45-second screening is too short. (2) The 5-minute walk remains completely relieved of duty. (3) The pre-shift 10 minutes on premises also remains completely relieved of duty. If the employer required arriving 10 minutes before their shift (to wait for assignments, etc.), *then* it would be time worked. But early arrival is optional, so it's not the sort required of on-premises time that, even without productive work, still counts as time worked.

<sup>7</sup> 29 U.S.C. § 251 et seq.; e.g., [Integrity Staffing Solutions, Inc. v. Busk](#), 574 U.S. 27, 33 (2014).

<sup>8</sup> Having never adopted or applied the PTPA, Colorado law parallels the broader time worked definition of the *pre-PTPA* FLSA, as the Division explained in the 2019 proposed version, and 2020 final version, of the [2020 COMPS SBP](#), at 11-16. E.g., [Universal Protection Service](#), DLSS Case #1839-20 (Hearing Decis. #21-073, July 2, 2021), at 13-17 ("Colorado has not adopted PTPA-like exemptions. ... Thus, to the extent federal precedent is helpful in interpreting ... COMPS on what counts as time worked, that guidance is to be found in the pre-PTPA/pre-§ 203(o) cases."); [Busk v. Integrity Staffing Solutions, Inc.](#), 905 F.3d 387, 405 (6th Cir. 2018) (finding "nothing to suggest" state law follows PTPA and "refus[ing] to read-in such a significant statute by inference or implication" when Nevada and Arizona never adopted PTPA provisions).

<sup>9</sup> [Cookies with Altitude](#), DLSS Case #2890-16 (Hearing Officer Decis. #18-015, Mar. 28, 2018).

- The **one-minute threshold** applies to **only pre- and post-shift activities, not other time worked.**<sup>10</sup>

**Example 4:** Before her main duties, an employee (1) skims her work text messages (45 seconds), (2) skims the subject lines of unread emails (30 seconds), then (3) checks voicemail (2 minutes).

→ All three activities are time worked. Though tasks like these are commonly done when a shift starts, they aren't *pre- or post-shift* activity like those Rule 1.9 covers only if over one minute.

- **Other pre-/post-shift activity not listed in Rule 1.9:** The list in Rule 1.9 gives just **examples** of pre- or post-shift activity. For activities not in that list, apply the general rule: whether time is for employer benefit.

**Example 5:** Before restaurant servers clock in for a shift, the manager holds a pre-shift meeting. In the meeting, the manager talks about the day's menu, table assignments, and other information needed for the workday. Servers are not required to show up early to attend the meeting.

→ The pre-shift meeting is time worked for all who attend, even if others don't. The employer is permitting anyone attending to perform work for the employer's benefit.

**Example 6:** Before remote call center staff start work, they start up and sign into their computers, which can take 5-15 minutes, because it includes multiple sign-ins (to the employer intranet, then to its timekeeping software), and sometimes waiting for software or database updates.

→ Computer sign-in, whether or not delayed by updating, is essentially clock-in time, so it counts as time worked for employer benefit, as long as it takes over one minute.<sup>11</sup>

### **"Continuous Workdays" Include All Time Not Fully on Break, Until the Last Time Worked Activity**

- Even if time isn't otherwise time worked, it counts as part of a **"continuous workday"** of time worked if it's **after** other time worked **starts**, and **before** other time worked **ends** — excluding long enough breaks.<sup>12</sup>

✗ Periods of **20 minutes** or longer when **"completely relieved from duty"** (e.g., meal breaks, or time between separate shifts) are **not** time worked.

✓ **Shorter** breaks, even if completely relieved from duty (e.g., coffee breaks or time for snacks of under 20 minutes) are considered paid rest time that **"must be counted** as hours worked."<sup>13</sup>

**Example 7:** An arriving employee spends 45 seconds in security screening, then 30 seconds clocking in, then 5 minutes walking to her desk. On the walk, she makes personal calls or listens to music.

→ The 5-minute walk alone wouldn't count as time worked — but it does because it (a) follows 75 seconds of time worked (screening and clock-in), and (b) can't qualify as an unpaid break.

<sup>10</sup> The one-minute threshold recognizes that seconds-long pre-/post-shift tasks shouldn't need tracking since they don't add meaningful work time. Some federal courts reject *federal* claims to *several minutes* of pre-/post-shift work as *de minimis*, e.g., [Peterson v. Nelnet Diversified Solutions](#), 15 F.4th 1033 (10th Cir. 2021). Colorado law has no such exclusion: "There is no minimum size of a wage claim, ... no claim too minimal ('de minimis') for recovery, because Article 4 requires paying '[a]ll wages or compensation', and authorizes ... actions 'to recover any amount of wages or compensation' and ... complaints 'for any violation'." [COMPS Rule 8.1\(B\)](#); see also [2020 COMPS SBP](#) at 52-55; [Universal Protection Service](#) (above) at 20.

<sup>11</sup> [Peterson v. Nelnet Diversified Solutions](#), 15 F.4th 1033, 1035 (10th Cir. 2021) ("booting up ... computers and launching certain software before ... clock in" is time worked); [Cadena v. Customer Connexx LLC](#), 51 F.4th 831, 839 (9th Cir. 2022) ("principal duties require ... a functional computer, so turning on or waking up their computers at the beginning of ... shifts is integral and indispensable .... Because clocking in to the timekeeping program occurs after booting up ... —the first principal activity of the day—it is compensable.").

<sup>12</sup> [29 C.F.R. § 790.6](#) ("time between the commencement of the employee's first" activity that counts as time worked, "and the completion of [their] last" activity that counts as time worked, "must be included in the computation of hours worked").

<sup>13</sup> [29 C.F.R. §§ 785.18-19](#) (rest and meal periods).

## Specific Types of Activity

### (A) Clothing and Gear

- Time worked includes **putting on** (“**donning**”) and **removing** (“**doffing**”), as well as **picking up, loading, and dropping off**, required work clothes or gear (other than uniforms also worn outside work).<sup>14</sup>

**Example 8:** An employer gives security guards mandatory uniforms and gear: shirts, pants, ballistic vests, badges, and duty belts holding firearms and tools. It also specifies what shoes the guards must wear, has uniform condition and appearance rules, and notes how uniforms are key to guards’ work deterring crime. The employer lets guards put on uniforms and gear at home or work, but forbids wearing them other than on duty or commuting in employee vehicles.

- Time putting on and taking off all parts of the uniform, whether at home or at work, is time worked. The uniform is for employer benefit, and can’t be worn in public.<sup>15</sup>

**Example 9:** Poultry plant employees start with 2-3 minutes to pick up and put on required smocks, boots, gloves, and sleeves (all worn in addition to their regular clothes). As the day ends, it takes 3-5 minutes to remove, rinse, and sanitize that gear, then wash their hands. Federal safety rules require the sanitizing to avoid contaminating other workers or the public. Showering and changing into new clothes, to remove any poultry residue, is allowed but not required.

- All gear time — picking up, putting on and off, cleaning, and waiting for those tasks — is time worked. It’s for required work gear or to prevent hazards from work for employer benefit.<sup>16</sup>
- All cleaning and sanitizing time — cleaning and sanitizing the gear, washing hands, and the optional showering and clothes-changing time — is time worked. The time is for health measures to protect against hazards from work that’s for employer benefit.<sup>17</sup>

**Example 10:** Dancers at an adult entertainment club are required to wear performance clothes they select and supply themselves, but that must meet the employer’s specific guidelines. The clothes are revealing, so dancers typically don’t wear them to or from work; they change at the club.

- Time changing into required performance clothing not worn outside work is time worked.<sup>18</sup>

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<sup>14</sup> As with PTPA, *Colorado* never adopted 29 U.S.C. 203(o), another *federal* statute that excludes certain time employees spend on work-related clothing and hygiene. [2020 COMPS SBP](#) at 13-15; [Universal Protection Service](#) (above) at 14 (Universal Protection Service, DLSS Case #1839-20 (Hearing Decis. #21-073, July 2, 2021), at 13-17 (“to the extent federal precedent is helpful in interpreting ... COMPS on what counts as time worked, that guidance is to be found in the pre-PTPA/pre-§ 203(o) cases.”).

<sup>15</sup> Compare [Universal Protection Service](#) (above) at 11-20 (under Rule 1.9, guards putting on uniforms and gear is “labor or services for the employer’s benefit, ... not because s/he chose to do it, but because the employer required it for its own ends ... , e.g., having its employees create a crime-deterring effect and avoiding penalties or fines” employer might otherwise face) with [Bamonte v. Mesa](#), 598 F.3d 1217 (9th Cir. 2010) (putting on police uniform or gear isn’t time worked if doable at home).

<sup>16</sup> Time worked under Colorado law thus includes various *gear time* federal law excludes. E.g., [Castaneda v. JBS USA, LLC](#), 819 F.3d 1237, 1250 (10th Cir. 2016) (PTPA excludes time donning, doffing, and washing meatpacking equipment); [Salazar v. Butterball LLC](#), 644 F.3d 1130, 1133 (10th Cir. 2011) (same, employee time donning, doffing, and sanitizing turkey processing “frocks, aprons, gloves, boots, hard hats, safety glasses, knife holders, and arm guards”); [Gorman v. Consol. Edison Corp.](#), 488 F.3d 586, 594 (2d Cir. 2007) (same, donning helmets, safety glasses and steel-toed boots).

<sup>17</sup> Time worked under Colorado law thus includes various *health or sanitation time* federal law excludes. E.g., [Reich v. IBP](#), 38 F.3d 1123, 1126 (10th Cir. 1994) (PTPA excludes “donning, removing, picking up, and depositing for laundering sanitary outer garments” that, “although required and of some value to the employer, ... are primarily for the benefit of the employee”).

<sup>18</sup> Time worked under Colorado law thus includes various *clothing time* excluded by a federal statutory exemption, 29 U.S.C. § 203(o), that permits collective bargaining agreements to exclude certain clothing time.

- But time worked **doesn't** include **basic tasks** commuting employees do to **prepare for a day** — as long as those tasks don't materially **add** to the time it takes to prepare for a day of work outside home. Examples:
  - X dressing in appropriate clothes;
  - X packing a light bag or briefcase (with food, papers, or basic light supplies or gear); and
  - X unloading or unpacking that bag or case, or undressing, at the end of the day.

**Example 11:** Before leaving home, a hospital employee packs a stethoscope, pad, and multi-colored pen (to mark different points on patient charts) in a briefcase they bring to and from work.

- Packing a briefcase or backpack with light items doesn't materially add to the time it takes to prepare for a day of work outside home, so it isn't time worked.

**Example 12:** Medical clinic staff must load medical equipment into their cars before leaving home, then unload it after work; the employer prohibits leaving it in cars. The several items total 100 pounds, so loading and unloading takes 15 minutes of walking between the car and home.

- The loading and unloading materially add to the time it takes to prepare for (or return from) a day of work, and they are for employer benefit, so they count as time worked.<sup>19</sup>

## (B) Screening

- Time worked includes time in, or waiting for, a **screening or search** required to work for the employer —
  - including for **health, safety, or security**, and
  - whether **discretionary** with the employer or **legally required**.

**Example 13:** Federal rules require radiation screening for nuclear plant guards entering or exiting work.

- The screening is for hazards from work for employer benefit, so it is time worked.<sup>20</sup>

**Example 14:** For security screening to prevent theft, exiting warehouse employees must spend 10-15 minutes to wait in line, remove belts, empty pockets, and walk through metal detectors.

- The screening is for employer benefit, so it is time worked.

- One specific form of screening or search, **drug testing**:
  - **is** time worked when required of **employees**, but
  - **is not** time worked when required of **applicants** as a **condition** of, and **before starting**, the job.

**Example 15:** An employee's first day on the job includes a number of required activities, one of which is drug testing. The employer also requires annual drug testing for all employees.

- The drug testing is time worked: the employer requires it; it's for employer benefit (whether for efficiency, safety, or legal compliance); and it's subject to employer control (whether the employer has the drug testing done in-house or by a third party).<sup>21</sup>

**Example 16:** An employer requires new employees to take, and pass, a drug test before starting the job.

- The drug testing is not time worked. It is part of the hiring process, like an interview or a written test, because passing it is a condition of starting the job.

<sup>19</sup> [Wilson v. PrimeSource Health Care](#), No. 16-cv-1298 (N.D. Ohio July 5, 2017); see [Stevens v. Brink's Home Security](#), 169 P.3d 473, 476 (Wash. 2007) (commute in company truck was time worked; it was strictly controlled, including a mandate to be available to aid other sites); [Dooley v. Liberty Mutual Insur.](#), 307 F. Supp. 2d 234 (D. Mass. 2004) (real estate appraisers' calls and emails before driving from home to first job are time worked). INFO #20C covers pre-/post-commute work.

<sup>20</sup> Time worked under Colorado law thus includes various *health or safety screening time* that federal law excludes. [Olive v. TVA](#), No. 5:15-cv-00350 (N.D. Ala. Aug. 7, 2015) (PTPA excludes legally required radiation scans because the nuclear plant employees "are employed to provide security, not to wait in line and undergo radiation scanning").

<sup>21</sup> [Safway Services, LLC](#), DLSS Case #2272-17 (Hearing Officer Decis. No. 18-050, Aug. 10, 2018) at 5-6 (ordering wages for employee "subject to Safway's control ... because the company required [them] to participate in the first day's orientation/training and drug test activities"; rejecting employer argument "that these activities were 'pre-employment' (and thus, non-compensable)"); [Bonds v. GMS Mine Repair & Maintenance, Inc.](#), No. 2:13-cv-1217 at \*14 (W.D. Pa. Jan. 8, 2014) (mandated safety meetings and drug/alcohol testing must be compensated).

**(C) Waiting and "On-Call" Time**

- **Waiting:** Time worked includes waiting, at the worksite or another prescribed location, for instructions or assignments, even if employees are ultimately sent home without getting any work or instructions.<sup>22</sup>

**Example 17:** For safety and sanitation, meatpacking employees must wear specialized gear that they wait in line for several minutes to pick up at the start, and drop off at the end, of their shifts.

→ Time waiting to get or return required gear is time worked, like time donning and doffing it.<sup>23</sup>

**Example 18:** In downtime between appointments, a hairstylist stays at the salon for walk-in customers.

→ The hairstylist must be compensated for time spent waiting for work.<sup>24</sup>

- **On-Call:** Time worked includes being "on call" (required to report when called) *if* work rules (response time, location, etc.) or realities (call length, frequency, etc.) prevent routine personal activity while on call.

**Example 19:** Firefighters on 24-hour on-call shifts must arrive by 20 minutes after a call, preventing activity taking more time, or further away, than 20 minutes. Those with children need child care available. Shifts average 3-5 calls, taking on average 1 hour each, but can have up to 13 calls.

→ The on-call time is time worked; it precludes routine personal activity, for employer benefit.<sup>25</sup>

**(D) Travel Time & Sleep Time** — INFO #20C gives the details, and examples, of these basic rules.

- **Travel** for employer benefit is time worked, except not commute time, and not most travel within employer property to go to and from the employee's assigned workstation — with exceptions noted in INFO #20C.
- **Sleep** time within shifts can be excluded from time worked under certain conditions — mainly whether the employee has a real opportunity for a lengthy period of sleep without interruption, as INFO #20C details.

**For More Information:** Visit the Division [website](#), call 303-318-8441, or email [cdle\\_labor\\_standards@state.co.us](mailto:cdle_labor_standards@state.co.us).

<sup>22</sup> [Donovan v. 75 Truck Stop, Inc.](#), No. 80-9-Civ-Oc (M.D. Fla. July 20, 1981) (wait was time worked: though free to "go across the street to go swimming at the Days Inn ... [employees] were expected to be available to commence work immediately" if customers arrived); [Armour & Co. v. Wantock](#), 323 U.S. 126, 133 (1944) ("[A]n employer, if he chooses, may hire [employees] ... to do nothing but wait for something to happen .... Readiness to serve may be hired, quite as much as service itself").

<sup>23</sup> [IBP, Inc. v. Alvarez](#), 546 U.S. 21, 40 (2005) (compensable under PTPA: *donning* protective gear, but not *waiting* to don).

<sup>24</sup> [HHCP LLC](#), DLSS Case #0291-18 (Hearing Decis. #19-018, Feb. 20, 2019); [Lassen v. Hoyt Livery, Inc.](#), 120 F. Supp. 3d 165, 177 (D. Conn. 2015) ("Time spent . . . waiting for passengers, even those who cancel, is compensable time").

<sup>25</sup> [Renfro v. Emporia](#), 948 F.2d 1529 (10th Cir. 1991); [29 C.F.R. §§ 785.17](#) ("An employee ... required to remain on call on the employer's premises or so close ... that he cannot use the time effectively for his own purposes is working while 'on call'") and [553.221\(c\)-\(d\)](#) ("Time ... away from the employer's premises under conditions ... so circumscribed that they restrict ... effectively using the time for personal pursuits also constitutes compensable hours .... Time ... at home on call may or may not be compensable depending on whether the restrictions ... preclude using the time for personal pursuits.")