



Interpretive Notice & Formal Opinion (“INFO”) #20C:

What Travel Time and Sleep Time Is and Isn’t “Time Worked” That Must Be Paid

Overview

This INFO #20C covers how time worked applies to travel time ([Rule 1.9.2](#)) and sleep time ([Rule 1.9.3](#)). INFO #20A covers what counts as time worked that must be paid (also called paid or compensable time) under [Colorado Overtime and Minimum Pay Standards Order \(“COMPS”\) Order](#) Rule 1.9; INFO #20B covers how what’s owed for time worked can vary by the type of pay — hourly, salaried, piece rates, commissions, etc.

Sleep Time in an Assigned Location

- Sleep time of **5-8 continuous hours**¹ in an **assigned location** is **not** time worked under these conditions:
 - In shifts **under 24 hours**: If the employer doesn’t interrupt, *or* reserve a **right to interrupt**, the 5-8 hours.
 - In shifts of **24 hours or longer**: If —
 - (A) an **express agreement** excludes this sleep time from time worked that must be paid;²
 - (B) the employer provides **adequate facilities** for uninterrupted sleep; *and*
 - (C) the employee **is actually allowed** to sleep at least **5 hours uninterrupted** — even if the employer reserves the **right to interrupt** the time for work.
 - Even if sleep time can be excluded from time worked:
 - time worked includes any sleep time that’s **interrupted** for work;
 - **8 hours** is the most that can be excluded, even if the sleep time is over 8 hours; and
 - for any **overtime eligibility** based on shift length,³ all **sleep time is included** in shift length.

Example 1: An office security employee has a 36-hour shift, 6 a.m. Monday to 6 p.m. Tuesday. A written agreement says up to 8 hours of sleep time will not be paid. Though the employee has 5 hours of uninterrupted sleep time Monday night, and is allowed to try to sleep, the only place to sleep is the office chair at the security desk.

→ No time when the employee actually sleeps, or is permitted to try to sleep, may be excluded from time worked, because there is no adequate sleeping facility.⁴

Example 2: A hospital requires paramedics to stay in the building for 24-hour shifts, but provides a room for each paramedic to sleep, with a bed and curtains. A written agreement says 8 hours of sleep time may be excluded from time worked. When they are woken up to respond to calls, the employee is paid for their time responding to calls.

→ The employer can exclude sleep time of 5-8 hours from time worked.

¹ Federal law has been interpreted as similarly requiring that at least 5 hours be continuous. *E.g.*, [Bagoue v. Developmental Pathways, Inc.](#), No. 16-cv-01804-PAB-NRN, 2019 U.S. Dist. Lexis 162007, at *34 (D. Colo. Sep. 23, 2019) (holding, and citing “Department of Labor ... guidance,” that “the five hours must be continuous”) (citing [29 C.F.R. § 785.22](#)).

² This differs from the federal rules that also allow “implied” agreements, [29 C.F.R. § 785.22\(a\)](#).

³ *E.g.*, [COMPS Rules 2.4.7](#) (certain direct care “companions”), 2.4.4 (medical transport employees).

⁴ *Bagoue*, (above), at *34 (noting the general “require[ment] that the sleeping facility be ‘private’”).

Travel Time That Is "Time Worked"

- Time **traveling for the employer's benefit** is time worked that must be paid.
- All time within a **continuous workday** — including all travel between the **first** and the **last** time worked in a workday — **is** time worked.⁵ That means:
 - ✓ "travel **from job site to job site** during the workday[] must be counted as hours worked,"⁶ and so must
 - ✓ travel **from the employer's site to a job site** where the employee is assigned to work:

"Where an employee is **required to report** at a meeting place to receive **instructions** or to perform **other work** there, or to pick up and to carry **tools**, the **travel** from the designated place to the work place is part of the day's work, and must be **counted as hours worked** regardless of contract, custom, or practice. If an employee normally finishes his work on the premises at 5 p.m. and is sent to another job which he finishes at 8 p.m. and is required to return to his employer's premises arriving at 9 p.m., **all of the time** is working time. However, if the employee goes **home instead of returning** to his employer's premises, the travel after 8 p.m. is home-to-work travel and is **not** hours worked."⁷

Example 3: Insulation installation employees report to the shop to clock in, wait for assignments, and load equipment before heading to worksites.

→ Since clock-in, waiting, and loading are time worked (see INFO #20A), the travel time also is.⁸ But the time commuting to the shop before clocking in is not time worked.

Example 4: A home health employee's day is a series of appointments at client residences. Once per pay period, they must go to the employer office to sign their timesheet — which they do during a workday that's otherwise filled with client residence appointments.

→ The trip to the office is just one of several work appointments at different sites, so:

- (A) travel from home to the first appointment (whether a client residence or the office) is ordinary commuting, not time worked;
- (B) travel between appointments is time worked; and
- (C) travel from the last appointment to home is ordinary commuting, not time worked.

- ✗ The **exception** to all time within continuous workdays being time worked — **breaks** of over **20 minutes** when **completely relieved** of duty (see INFO #20A) — includes **personal travel** on such breaks.

Example 5: In addition to a 30-minute meal break, an employee has another 20-minute break, when completely relieved of duty, in their eight-hour shift. They use the break for personal activity like walking to a place to eat another meal, or driving to run errands.

→ The walking and driving are not time worked. For shifts of five hours or more, Colorado law requires a 30-minute meal break that can be unpaid if the employee is completely relieved of duty — but a *second* break can be unpaid if 20 minutes or longer and completely relieved of duty.

⁵ [29 C.F.R. § 785.38](#).

⁶ [29 C.F.R. § 785.38](#) (emphasis added); *Excel in Driving*, DLSS Case #2891-17 (Hearing Officer Decis. #18-046, Jul. 27, 2018), at 11 (time worked included travel between driving lessons; workday began when employee picked up employer car).

⁷ [29 C.F.R. § 785.38](#) (emphasis added).

⁸ *Chao v. Akron Insulation & Supply*, No. 5:04-CV-0443 (N.D. Ohio May 5, 2005) (workday began with "shop time" — getting assignments, gathering in crews, and packing equipment — so later travel time was time worked).

Travel Time That Is Not "Time Worked"

(1) **Normal home to work commuting** — traveling **to and from work**, at the **start or end** of a workday, is **not time worked**⁹ — with the exceptions listed below:

Example 6: An oil drill crew rides together from a meetup point to the site in one car, due to (1) employer pressure for crews to arrive at the same time, (2) roads requiring four-wheel drive, and (3) limited parking. Workers use the drive time as they wish.

→ Despite work reasons to drive together, this is ordinary commuting, not time worked.¹⁰

Example 7: A car dealership employee works five days a week of regular day shifts, but sometimes is called to return at night to unlock a car.

→ Time worked excludes regular commutes as "normal home to work travel." But *extra* home to work travel, like these special trips to and from work, in a day that already had a home to work commute, is time worked, not "normal" home to work travel.

✓ **Exceptions:** Commutes **are time worked** in **some circumstances** making them more like work time:

(A) If, **during the commute**, employees engage in **other time worked**.

Example 8: A manager holds morning safety meetings by phone while employees commute.

→ Receiving information is time worked, so the workday starts with the call, making the rest of the commute also time worked.¹¹

Example 9: An inventory auditor rides in a company van to individual stores to take inventory. During the ride, the auditor sometimes completes paperwork and verifies that the stores have provided the necessary inventory information.

→ Completing paperwork and verifying information is time worked. On days the auditor performs time worked in the van, the workday starts when they start that work.¹²

(B) If an activity is required **immediately before** commuting to work, **during** a commute, or **immediately after** commuting home, that gives the commute **increased (a) length, (b) risk, or (c) restrictions on activity**.

Example 10: Medical clinic employees have 15 minutes of time worked immediately before their morning commute, and another 15 immediately after their evening commute: the clinic prohibits leaving certain medical equipment at work or in cars, so employees must load it into their cars right before driving to work, must unload it right after driving home, and can't make stops for personal errands or appointments during their commutes since that would leave the equipment unattended in a car.

→ The requirement to commute with equipment comes with *restrictions on employee activity*, so it doesn't stop the time worked that starts with morning loading, and continues through evening unloading.¹³

⁹ [KadyLuxe, LLC](#), DLSS Case #0049-19 (Hearing Officer Decis. No. 20-016, March 13, 2020) (travel time between tasks during the workday was time worked but employee's commute from home to first task and from last task home was not).

¹⁰ [Smith v. Aztec Well Servicing Co.](#), 462 F.3d 1274 (10th Cir. 2006) (also noting that tasks like repairing flat tires, because they are inherent to any commuting or driving, didn't start the paid workday).

¹¹ [Smith v. Aztec Well Servicing Co.](#), 462 F.3d 1274 (10th Cir. 2006) (ordinarily non-compensable commuting became time worked when drives included safety meetings, so for those drives only, the paid workday began when the meeting began).

¹² [Johnson v. RGIS Inventory Specialists](#), 554 F. Supp. 2d 693, 708-09 (E.D. Tex. 2007).

¹³ [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 time of technicians allowed to drive company-branded trucks between home and worksites, but forbidden from personal activity, is time worked); [Dooley v. Liberty Mutual Insurance](#), 307 F. Supp. 2d 234 (D. Mass. 2004) (checking email and returning calls before driving from home to the first job were compensable for appraisers).

Example 11: An inspector drives directly to client sites. Before leaving home, they get directions to each client for the day, call each client they will visit that day, and prepare some paperwork. After returning home, the inspector must finish and upload their reports.

- Time worked includes the work both before leaving home and after returning, but not the *commute*, because the employee: (1) is *fully relieved* of duty while commuting, free to to personal activity (errands, etc.); and (2) need not do these tasks *immediately before or after* the workday.¹⁴

Example 12: A car racetrack employee, while commuting to the track each day, must hitch and tow a racecar behind their own car. The commute is fully relieved of duty, but due to towing another car, they drive more slowly, making the commute 5 minutes longer.

- The commute is time worked; its length is increased by work immediately before.

(C) If employees are **required** to take **employer-provided transportation** that, compared to other commuting, causes **either (i) or (ii)** below.

(i) If the required employer transportation **makes the commute longer**.

Example 13: To save parking for guests, a ski resort requires employees to park at a local school to wait for a shuttle to the resort. To be safe, most employees arrive 5 minutes before the scheduled shuttle arrival. The shuttle at times is up to 10 minutes late. The school to resort drive is 20 minutes by shuttle, but 15 minutes in employees' own cars. For some employees, driving to the school is longer than driving to the resort.

- Rule 1.9.1 time worked includes time in, and time awaiting, a shuttle.
- Extra driving from home to school, rather than right to the resort, is *not* time worked; it's normal home-to-work travel, just to a different site the employer chose, the school.

(ii) If the required employer transportation **increases safety risk**.

Example 14: Miners travel from the mining property entrance to their underground mining work stations. Part of the travel is in employer-provided open-top rail cars. Part is a lengthy walk (i.e., not just a short walk to and from a rail car). Both in the rail cars and on the walk, miners face physical "exertion as well as hazards ... even if safety rules are followed": "hazards of falling rocks"; "ventilation poor" air; and "footing uncertain" due to "steep grades," "low ceilings," and various "obstacles."¹⁵

- The entrance-to-workstation walk imposes physical hazards and exertion, well beyond that of normal walks or commutes, so it counts as "labor," and therefore as "time worked," when it's required, on employer property, and for employer benefit.¹⁶

¹⁴ [Butler v. DirectSAT USA, LLC](#), 55 F. Supp. 3d 793, 814-16 (D. Md. 2014).

¹⁵ These facts and quotes are from [Tennessee Coal Co. v. Muscoda Local](#), 321 U.S. 590, 595-596 (1944).

¹⁶ [Tennessee Coal Co. v. Muscoda Local](#), 321 U.S. 590, 598, 603 (1944) (miners' entrance-to-workstation "compulsory travel" under employer control and on employer property — both the walking and in employer transport — "involves ... exertion as well as hazards," making it compensable "work or employment ... as those words are commonly used — ... exertion ... controlled or required by ... and primarily for the benefit of the employer," so the pre-Portal-to-Portal Act ("PTPA") version of the Fair Labor Standards Act ("FLSA") "leave[s] no uncertainty as to its character as work ... [and] requires that ... compensation be paid for such work") (emphases added); [Carter v. Panama Canal Co.](#), 463 F.2d 1289, 1304 (D.C. Cir. 1972) (holding that, even where the PTPA's exclusion of ordinary entrance-to-workstation travel applies, walking to a locomotive engine within the employer's site *would* be compensable if it were an "arduous" task, but that this walking was not arduous, so it was not compensable).

Tip: If an employer wants to **minimize the risk of commute time becoming time worked** due to job activities immediately before or after (or during) the commute being "time worked," options include:

- **minimizing employee transport of equipment** while commuting, and employee **loading or unloading** of equipment immediately before or after commuting — or at least limiting any such transport, loading, or unloading to light items that don't meaningfully add to employee time; and
- ensuring employees are **fully relieved from duty while commuting** by not restricting their activity while commuting (forbidding personal errands, requiring pickup/dropoff stops, or requiring employees transporting property to stay in their vehicles to guard the property).

(2) Travel between a site **entrance** and **workstation**, at the **start** or **end** of a shift, generally **is not** time worked — like ordinary **commuting**, with similar **exceptions**. That is, entrance-workstation travel **is** time worked:

✓ If it's **not solely travel**, because it includes **other activity** that's "time worked," such as —

- meetings or instructions,
- picking up or returning required gear or clothes,
- screening or check-in, or
- waiting in line for these or other kinds of time worked.¹⁷

✓ If it's **after other time worked starts**, and **before it ends**, making it part of a **continuous workday**.

Example 15: An arriving employee spends 3 minutes waiting in line at the building entrance before punching the timeclock, then 3 minutes walking to their workstation.

→ The entrance-to-workstation walk is time worked. Waiting for and punching the timeclock counted as time worked (see INFO #20A), and therefore started the employee's time worked for the day.

✓ If it imposes **physical hazard or exertion** beyond normal travel of that type (walking, driving, etc.).

Example 16: Same as Example 14, but with the entire mine entrance to mining work station travel being on foot, without the portion in the employer-provided open-air rail cars.

→ This travel time is time worked, for the same reasons covered in Example 14.¹⁸

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

¹⁷ For what non-travel activities do and don't count as time worked, including the sorts of pre-/post-shift activities that may occur during entrance-workstation travel, see [INFO #20A](#).

¹⁸ [Tennessee Coal Co. v. Muscoda Local](#), 321 U.S. 590, 595-96, 598, 603 (1944) (miners' entrance-to-workstation time, including the walking time, compensable under FLSA as it existed before the PTPA excluded such time).