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CLIENT ALERT: DOL Issues Opinion Letters on Mid-Day Commute and Pre-Shift Activities

As hybrid and remote work arrangements become more permanent fixtures in the workplace, the flexibility offered through this work brings more complex scenarios as to what the law considers to be compensable “work time.” On July 22, 2026, the U.S. Department of Labor (“DOL”) issued two opinion letters clarifying the compensability of travel time for remote and field work under the Fair Labor Standards Act (“FLSA”). These opinion letters, while only considering specific fact patterns, provide at least some practical guidance that employers can follow to avoid costly wage-and-hour disputes.

In the first letter, FLSA2026-9, the DOL contemplated whether an employee’s time voluntarily commuting into the office mid-day is considered “work time.” In this scenario, the employee works both at home and in-office, and the employer offers an alternative mid-day commute to cut down on traffic time. The letter addresses three different fact patterns: (1) the employee changes the commute time to avoid rush hour traffic, working at home in the morning prior to coming into the office, and then working again in the late afternoon after leaving; (2) the employee volunteers to work additional hours but only if the employee can do that work prior to driving into the office instead of arriving early or staying late; and (3) the employee uses the city bus to commute and requests permission to bring work home to complete.

The DOL concluded that in each of these three scenarios, the travel between the employee’s home and office is considered an ordinary commute and is not considered hours worked under the FLSA. Generally, ordinary home-to-work travel is a normal incident of employment that primarily benefits the employee and, as such, is not treated as work hours. An otherwise normal commute does not become compensable because an employer allows flexibility for it to occur mid-day. There are a few important items to note following this opinion letter. While this opinion provides support for flexible hybrid work arrangements, remember that if the employee engages in any work while traveling, that time must be paid. In addition, this opinion letter only addresses mid-day travel when the office is the employee’s regular place of work. If, however, the travel is to a special temporary assignment or is a principal activity of the employee's job (*i.e.*, travel between client worksites), this analysis may differ.

The second letter issued by the DOL, FLSA2026-10, concerns a field service engineer with no primary office who spends time receiving pages and making phone calls to clients and other engineers to schedule appointments prior to or while driving from their home to their first client appointment in an employer-provided vehicle. This opinion letter is also based on specific facts. The employee is scheduled to work from 8:00 a.m. to 5:00 p.m. The employee receives service requests by pager between 7:00 a.m. and 8:00 a.m., then calls clients and other engineers to schedule appointments. The DOL considered two different scenarios: (1) the employee completes the calls at home between 7:00 a.m. and 8:00 a.m. and then leaves for the first client worksite at 8:00 a.m.; and (2) the employee must leave for the first client worksite earlier than 8:00 a.m. and makes client calls while driving.

The DOL concluded that time spent receiving pages is not compensable because that work is incidental to the employee's use of an employer-provided vehicle for commuting. Time spent calling clients and scheduling appointments, however, is compensable hours worked because those calls are integral and indispensable to the employee's principal duties. Less clear is the drive time from the employee's house to the first client appointment. Whether that commute is compensable hours worked depends upon when the employee's workday starts. Because client calls are a principal activity, as soon as the employee makes one call, the workday begins. Therefore, if the employee makes calls and then drives to the first client worksite, all of that travel time is compensable, even if it happens before 8:00 a.m. If instead the employee leaves home first and then makes calls during the drive, that drive time is unpaid as ordinary commuting until the first call is made. Essentially, the DOL concluded that the workday begins when the first compensable call begins, so any travel time after the beginning of that first phone call is compensable hours worked.

Employers should regularly review their timekeeping practices and travel policies to ensure compliance with the DOL's latest guidance as remote work arrangements continue to evolve and become more prevalent. Employers with questions about what is considered compensable travel time or other wage and hour concerns should contact their MBJ attorney for advice on compliance and best practices.

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