



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT  
DEPARTMENT OF LABOR STANDARDS

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August 29, 2016

Brad MacDougall  
Associated Industries of Massachusetts  
1 Beacon Street, 16<sup>th</sup> Floor  
Boston MA 02108

RE: Courtesy Shuttle Services to Place of Work.

Dear Mr. MacDougall,

This letter is written in response to your request for an opinion letter regarding whether or not the time spent traveling between an off-site parking lot and the workplace in a company-provided courtesy shuttle is considered "working time" thus, requiring compensation.

Under the Massachusetts Minimum Fair Wage Law, M.G.L. c. 151, and regulations promulgated thereunder, 454 C.M.R. §27.04, travel to an employee's regular work site at the beginning of the workday and travel from the same site at the end of the work day is not "working time," and therefore is not compensable time. Therefore, so long as the shuttle service not "**required**" and transportation is offered at the beginning and end of the workday, your client need not pay for the travel time.

This situation is analogous to others previously considered by the Department; for instance, a general contractor who chartered a boat to transport workers to an island, otherwise accessible by public transportation, did not need to compensate the workers who voluntarily accepted his private-ferry service for their commute over to the island worksite.

When an employee uses employer-provided transportation for travel to and from work, DLS determines the start of the work day in a manner consistent with analogous federal law, the federal Fair Labor Standards Act (FLSA) and the Portal-to-Portal Act of 1947, as amended by the FLSA Amendments of 1996. See Goodrow v. Lane Bryant, Inc., 423 Mass. 165, 169-170 (2000) (in the absence of a statutory definition, we may look to interpretations of analogous federal statutes for guidance).

The mere fact that the employee is traveling in a company-provided vehicle, does not, in and of itself, transform ordinary commuting time into compensable working time,

provided that: 1) the vehicle is of the type that does not impose a greater difficulty to operate than a vehicle normally used for commuting; 2) the employee incurs no out-of-pocket expenses for driving, parking, or otherwise maintaining the employer's vehicle; 3) travel is within the normal commuting area for the employer's business; and 4) use of the employer's vehicle is subject to an agreement on the part of the employer and the employee, or his or her representative, the employee's home to work travel does not constitute compensable working time. See e.g. U.S. Department of Labor Wage and Hour Division Opinion Letters, dated April 18, 2001 & January 29, 1999. See MW Opinion Letter 2003-006, dated May 16, 2003, adopting federal law treatment of this issue.

These guidelines come from the Employee Commuting Flexibility Act of 1996, which amended the Portal-to-Portal Act by adding the provision concerning use of employer-provided vehicles, and from subsequent DOL opinion letters interpreting that provision. The intent of this provision was to clarify that otherwise non-compensable commuting time is not made compensable merely because the employee uses an employer-provided vehicle. United Transp. Union Local 1745 v. City of Albuquerque, 178 F.3d 1109, 1117 (10<sup>th</sup> Cir. 1999) The intent was not to create another rule whereby commuting time in employer-provided vehicles would become part of an employee's principal activities and become compensable working time. Adams v. U.S., 65 Fed. Cl. 217, 225 (2005). See also United Transp. Union Local 1745 at 1120; Manners v. State of New York, 183 Misc.2d 382, 387-389 (2000).

Given these guidelines and the facts as presented, that is, that employees are *not required* to report to the parking lot, are not mandated to take the shuttle bus, are free to utilize other methods to get them to their store-front workplace, are not charged for the transportation service, and are free at the end of the day to leave work and to retrieve their vehicles by whatever manner and at whatever time they please, it is this Department's determination that state law does not require that these employees be paid for travel time while taking advantage of the shuttle service to the job site. Providing company-sponsored shuttle services does not transform ordinary commuting time into compensable working time. If the employees are merely traveling to and from the job site, and performing no activity that is integral and indispensable to the principal work activity, then the travel time is not compensable.

Please note that, in the event an employee were *required* to report to an off-site parking lot and to take a shuttle bus, then the work day would begin upon arrival at the designated parking location and would not end until they were delivered back to the parking area at the end of the day.<sup>1</sup> However, that is not the situation herein described.

I hope this information has been helpful. If you have any further questions, please feel free to contact me.

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<sup>1</sup> 454 C.M.R. §27.04 (c) If an employer requires an employee to report to a location other than the work site or to report to a specified location to take transportation, compensable work time begins at the reporting time and includes subsequent travel to and from the work site.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'John H. Ronan', written in black ink. The signature is fluid and extends to the right with a long horizontal stroke.

John H. Ronan,  
General Counsel

JHR/jbd