

Minimum Wage Opinion Letter **04-17-02 - Travel Time - Out of State**

April 17, 2002

I am writing in response to your request for this Office's written opinion regarding the compensability of out-of-state travel time for your company's non-exempt employees. These employees' primary function involves providing product support for pharmaceutical and medical device companies. You have asked if these employees must be compensated for: 1.) attendance at social events with clients, such as lunches or dinners; 2.) car travel with clients' sales representatives to physician's offices that occurs both during and outside of an employee's normal work schedule; and 3.) time spent on airplane flights scheduled outside of an employee's normal working hours (Monday - Friday, 9:00 a.m. - 5:00 p.m.) when overnight stay away from home is required. I will address each of your questions in turn. [\[1\]](#) Due to the considerable overlap between state and federal law in this area, I have included a number of references to analogous federal laws. However, you should contact the U.S. Department of Labor for information regarding their applicability to any specific factual situations, including those outlined below.

Attendance at social events with clients

Under Massachusetts state law, "working time" is defined to include: all time during which an employee is required to be on the employer's premises or to be on duty, or to be at the prescribed workplace, and any time worked before or beyond the end of the normal shift to complete the work. Working time does not include meal times during which the employee is relieved of all work-related duties.

455 C.M.R. §2.01. If an employee is required by an employer to attend a social event, presumably for the benefit of the employer, then that employee is required to be "on duty" and must be compensated for his/her time. This is the case regardless of the fact that this requirement may coincide with a meal time since, in the situation you described, the employee is not free to leave and is not relieved of all work-related duties.

Car travel with clients' sales representatives to physician's offices that occurs both during and outside of the employees' normal work schedule

Under Massachusetts law, "[a]n employee who is required or directed to travel from one place to another after the beginning of or before the close of the workday shall be compensated for all of the time spent traveling at the same rate as for working time, and shall be reimbursed for all transportation expenses." 455 C.M.R. §2.03(2). Therefore, required travel time during the workday such as you described is compensable time. Similarly, such travel time outside of an employee's normal work schedule would also be compensable as "working time," since the employee is required to be "on duty," i.e. accompanying your clients' sales representatives.

Time spent on airplane flights scheduled outside of normal working hours (Monday - Friday, 9:00 a.m. - 5:00 p.m.) when overnight stay away from home is required.

As an initial matter, if an employee is actually working while traveling that employee is "on duty" and that portion of the travel time is compensable time. See 455 C.M.R. §2.01. This is also true under federal law. See 29 C.F.R. §785.41. Furthermore, if an employee travels during a single workday - either from job site to job site or on a special one-day assignment to another city and then returns - all such time "after the beginning of or before the close of the workday" (which excludes normal home-to-work commute time) is compensable time. See 455 C.M.R. §2.03(2). Again, such travel time is treated identically under federal law. See 29 C.F.R. §§785.37, 785.38.

The question you have raised concerns another scenario -- when travel extends beyond a single workday and involves overnight stay away from an employee's home and return on a subsequent day. Under federal law, "[a]s an enforcement policy, the [Department of Labor] will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile." 29 C.F.R. §785.39. [2] State law has no parallel provision dealing specifically with travel involving an overnight stay; state law only addresses travel "after the beginning of or before the close of" a given workday. See 455 C.M.R. §2.03(2). Therefore, if travel involving an overnight stay extends an employee's workday, then all time spent traveling during the workday is compensable time. However, travel alone on a non-work day is not covered by 455 C.M.R. §2.03(2). Employers are advised to consult federal law for any applicable regulations or interpretations governing such travel.

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

Sincerely,
Lisa C. Price
Legal Counsel

[1] Please note that employers are also subject to the federal minimum wage and hour law, found in the Fair Labor Standards Act (FLSA), and regulations promulgated thereunder. For information about applicable federal wage and hour laws, you should contact the U.S. Department of Labor. The telephone number for the Boston Office is (617) 624-6700.

[2] Please note that if travel time is compensable under contract, custom, or practice, it may be compensable time under federal law. See 29 C.F.R. §785.34.

= Names have been omitted