

Minimum Wage Opinion Letter **06-19-07 - Travel Time Stipend**

June 19, 2007

I am writing in response to your request for this Office's written opinion regarding the applicability of the Massachusetts Minimum Fair Wage Law. Specifically, you have asked whether a particular travel time payment plan is in compliance with this law. [1] Your client currently provides a travel stipend for home-to-work travel, which is calculated on an individual, job-specific basis, and your client would like to standardize these payments for budgetary purposes.

As I understand it, your client is a private firm with an office in Waltham, Massachusetts. Your client employs technicians who travel from their homes to different customer worksites on an as needed basis to install audio-visual and sound equipment. Project assignments generally last three to ten days. These employees are provided with a company vehicle that may be used to commute to and from work. Use of these vehicles is voluntary and not a condition of employment. The vehicles provided are company vans of the type normally used for commuting. The employee incurs no costs for driving these vans; your client company pays for parking, gas and maintenance expenses. Your letter states that the "normal commuting area" for your client's business is an area constituting a roughly 30-mile radius of the Waltham office. However, on occasion, these employees may be required to travel outside of this area as far as a one to three-hour round trip from the Waltham Office (within roughly an 80-mile radius). Your client would like to standardize payment of a travel time stipend for travel outside of the normal commuting area and proposes the following plan: [2]

Within the normal commuting area (30-mile radius):
No travel time paid

Within a 45-mile radius: One hour of travel time (round trip)

Within a 60-mile radius: Two hours of travel time (round trip)

Within an 80-mile radius: Three hours of travel time (round trip)

You would like confirmation that this travel time stipend plan does not violate the state minimum wage law.

The analysis of this matter begins with the general rule that ordinary travel between home and work is not compensable working time. 455 C.M.R. 2.03(4)(a). [3] In addition, the mere fact that the employee is traveling in a company-provided vehicle, with tools and materials, 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 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 (10th 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 presented, it is this agency's determination that state law does not require that these employees be paid for travel time from their homes to the job sites. [4] When the employees are traveling within what you have represented as the normal commuting area of your client's business, all of the above factors are met and so use of a company-provided vehicle does not, in and of itself, transform ordinary commuting time into compensable working time. When employees travel outside of the normal commuting area for the business, the provision for use of a company-provided vehicle is inapplicable, and the compensability of the commuting time must be analyzed in the usual manner by looking to the activities performed. Manners, 183 Misc.2d at 389. 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. Of course, your client is free to choose to provide some standardized travel stipends over and above what is required by law, such as the plan proposed by your client.

Please note that, in the event an employee is required to report to the Waltham office (or another locale) prior to traveling to a job site, the work day begins upon arrival at the office or other required location. See 455 C.M.R. §2.01 (definition of "working time"). Subsequent travel from that location to the job site would be travel during the work day, and would constitute compensable time. 455 C.M.R. §2.03(4)(b). Similarly, if an employee were required to return to the office between the job site and home, travel time from the job site to the office would constitute compensable time. See Burton v. Hillsborough County, Florida, 181 Fed. Appx. 829, 835 (2006) (otherwise compensable travel does not become non-compensable travel simply through use of an employer-provided vehicle).

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

Sincerely,
Lisa C. Price
Deputy General Counsel

[1] As you know, most 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.

[2] These mileages are approximate - the actual proposed zones are within concentric circles drawn around the Waltham office.

[3] The exception to this general rule is the instance of an employee who regularly works at a fixed location who is required to report to a different location other than his or her regular work site for a special assignment. 455 C.M.R. §2.03(4)(a). However, the employees in question regularly report to different locations; therefore, this provision is inapplicable.

[4] This determination assumes that all employees regularly travel to different work sites as part of their job, and that no single assignment would rise to the level of an extraordinary amount of travel time. You have represented that the furthest trips would be one and one-half hours from the Waltham office location.

=Names have been Omitted