U.S. Department of Labor

Wage and Hour Division
Washington, DC 20210

FLSA2026-10

July 22, 2026

Dear **Name***:

This letter responds to your request to the Wage and Hour Division (WHD or Division) for an opinion regarding whether the Fair Labor Standards Act (FLSA or Act) requires payment for the time that you, a field service engineer, spend receiving pages, calling clients and other engineers to schedule appointments, and driving from home to the first client appointment—either while performing these tasks or after completing them.

Based on the information presented, time spent receiving pages is not compensable hours worked as it is incidental to your use of an employer-provided vehicle for commuting. In contrast, time spent calling clients to schedule appointments and scheduling other field service engineers is compensable hours worked as it is not incidental to your commute, but rather integral and indispensable to your principal work activities of installing and servicing equipment at client sites. Furthermore, under certain circumstances outlined below, where you are required to be engaged in calling clients for an hour before or during your commute, we would not consider such travel to be either an "ordinary" commute or otherwise not compensable under the Portal-to-Portal Act. Accordingly, such travel would be compensable hours worked.

BACKGROUND

In your correspondence and follow-up communications with my staff, you represent that you are employed as a field service engineer and are responsible for the installation and servicing of magnetic resonance imaging (MRI) systems. You do not have an office to which you report. Rather, you perform these services at clients' locations—hospitals or imaging sites. Each day, you drive from home to your first client appointment, from job site to job site, and then home after your last appointment.

Your regular paid shift begins at 8:00 a.m. and ends at 5:00 p.m., and your first appointment can be as early as 8:00 a.m. Between 7:00 a.m. and 8:00 a.m., your employer sends clients' service requests to you via your employer's internal paging/messaging system. You receive about three to five pages on average each morning, throughout the 7:00 a.m. to 8:00 a.m. hour. It takes you approximately 15 seconds to accept a page. At some point after accepting each page, ideally as soon as it comes in and generally within 15 minutes, you call each client to set up their appointments. Each call may take 5 to 10 minutes, and in response to a call, you may need to schedule other field service engineers if you are not able to cover the service request or if you need assistance with a service request. You do not know in advance how many pages you will receive per day or how long each call will take.

The vehicle you drive is provided by your employer and is a sports utility vehicle customarily used for commuting. You do not incur out-of-pocket costs for driving, fueling, parking, or otherwise maintaining the vehicle for commuting.

You describe two scenarios:

- **Scenario 1:** You leave home at 8:00 a.m. and all of your drive time from home to your first appointment occurs during your paid shift. You receive all pages and contact all clients to schedule appointments before you leave home and drive to the first client location. During this time, either between or during calls, you also engage in some personal or preliminary activities, including drinking coffee, getting ready for the day, and collecting the tools or supplies you will need for the day. Your employer does not pay for the time you spend at home between 7:00 a.m. to 8:00 a.m. receiving pages and calling clients to schedule appointments, including scheduling other field service engineers as necessary.

- **Scenario 2:** You need to leave home before 8:00 a.m. to get to the first client appointment. At least some, and potentially all, of the time spent driving from home to your first appointment occurs outside your paid shift. You still receive pages and call clients to schedule their appointments between 7:00 a.m. and 8:00 a.m., but you perform these tasks either in whole or in part in the vehicle while on the way to the first appointment. Your employer does not pay for the first hour of your pre-shift drive time, but pays for any such drive time after the first hour. For example, your first appointment may be at 8:30 a.m. at a location that is a 2½ hour drive from your home, meaning you would leave home at 6:00 a.m. In such a scenario, your employer does not pay you for the time from 6:00 a.m. to 7:00 a.m., but pays you for the pre-shift drive time from 7:00 a.m. to 8:00 a.m., in addition to the 30-minute portion of the drive time that occurs during your paid shift.

Finally, you ask whether, under the FLSA, your employer must pay for the time you spend receiving pages, calling clients to schedule their appointments, and scheduling other field service engineers, and for the first hour of your drive time when such drive time occurs outside of your shift.

GENERAL LEGAL PRINCIPLES

A. The FLSA's Basic Requirements

The FLSA generally requires covered employers to pay employees at least the federal minimum wage for all hours worked and overtime of at least one and one-half times the employee's regular rate of pay for all hours worked over 40 in a workweek. 29 U.S.C. §§ 206, 207(a). The amount of wages an employee is entitled to receive in any workweek cannot be determined without knowing the number of hours worked. *See* 29 C.F.R. § 785.1.

The Act broadly defines the term "employ" to include "to suffer or permit to work." 29 U.S.C. § 203(g). The words "suffer" and "permit" overlap in meaning, but together in this definition they encompass a broad spectrum of an employer's actions or inactions regarding its employees' work—ranging from an employer expressly *requiring*, to *authorizing,* to *allowing*, to tacitly *accepting* or *benefitting from*, and even to *refraining from, interfering with*, *preventing*, *or stopping,* work by its employees. Thus, as long as an employer knows or has reason to believe that its work is being performed, the time spent performing such work is "hours worked" for FLSA purposes, even if the work is not expressly assigned, requested, or required. 29 C.F.R. § 785.11; *see, e.g.*, *Craig v. Bridges Bros. Trucking LLC*, 823 F.3d 382, 388 (6th Cir. 2016); WHD Field

Assistance Bulletin No. 2020-5 (Aug. 24, 2020) ("Employers' obligation to exercise reasonable diligence in tracking teleworking employees' hours of work").

In contrast, and perhaps surprisingly, the FLSA does not define what constitutes "work." *IBP, Inc. v. Alvarez*, 546 U.S. 21, 25 (2005). Because of the lack of a definition for this foundational term, both the courts and the Wage and Hour Division were tasked with interpreting it, particularly over the Act's first decade. *See* WHD Op. Ltr. FLSA2026-9 (July 22, 2026). Ultimately, the Supreme Court made clear that determining whether employee time constitutes "work" generally turns on "[w]hether [it] is spent predominantly for the employer's benefit or for the employee's . . . [according to] all the circumstances of the case." *Armour & Co. v. Wantock*, 323 U.S. 126, 133 (1944). This remains the standard today. *See* WHD Op. Ltr. FLSA2026-9 at 3 (citing cases); WHD Op. Ltr. FLSA2020-19 at 2 (Dec. 31, 2020) ("Whether an employee is 'working' typically can be answered by determining whether her action is primarily for the benefit of the employer."); *see also, e.g.*, *Reich v. S. New England Telecomms. Corp.*, 121 F.3d 58, 65 (2d Cir. 1997) (holding that time is compensable when employees "perform duties predominantly for the benefit of the employer"). An employer must pay for all work that it knows or has reason to know is being performed, including work performed off-site (*e.g.*, at the employee's home). *See*, *e.g.*, *Von Friewalde v. Boeing Aerospace Operations, Inc.*, 339 F. App'x 448, 455 (5th Cir. 2009) (citing *Newton v. City of Henderson,* 47 F.3d 746, 748 (5th Cir. 1995)); *Holzapfel v. Town of Newburgh, N.Y.*, 145 F.3d 516, 524 (2d Cir. 1998); 29 C.F.R. §§ 785.11–.12; WHD Op. Ltr. FLSA2009-15 (January 15, 2009); WHD Op. Ltr. FLSA-112 (Aug. 11, 1993); WHD Op. Ltr., 1985 WL 1087351, at *2 (Dec. 30, 1985).

B. The Continuous Workday

The "continuous workday" doctrine establishes that "once the workday starts, all activity is ordinarily compensable until the workday ends," *Aguilar v. Management & Training Corp.*, 948 F.3d 1270, 1279 (10th Cir. 2010) (cleaned up), even if an employee is not engaged in productive work. *See Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 226 (2014); *Alvarez*, 546 U.S. at 37. It reflects a general presumption that an employer principally benefits from an employee's time during the workday and, conversely, the employee predominantly benefits from time outside it. WHD Op. Ltr. FLSA2026-9. The doctrine, therefore, both serves and protects both employers and employees. Time during the workday is ordinarily compensable; time away from work outside the workday generally is not compensable. In effect, this approach prevents employers from restricting the application of the FLSA only to time the employer determines is spent in active, productive, or efficient work—a result that would frustrate the purpose of FLSA's hourly minimum wage and overtime requirements. *Id.* Similarly, the doctrine also means that every second outside of the workday that arguably benefits the employer is not necessarily compensable hours worked.[1] Altogether, the continuous workday doctrine is a pragmatic compromise anchored in reality. Without it would come—both at the worksite and while working offsite (e.g., at

[1] *See, e.g.*, 29 C.F.R. § 785.17 ("An [on-call] employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call."); WHD Op. Ltr. FLSA-1271 (June 1, 1994) (advising that time spent by law enforcement officers in physical fitness training during off-duty hours, where the training was voluntary and not directly related to the employees' jobs, was not compensable work even though "such training benefits the employer").

home)—levels of monitoring, supervision, assessments, recordkeeping, abuse, disputes, and litigation on an unprecedented scale in most workplaces—all to the dissatisfaction of, and detriment to, both employees and employers. *Id*.

Of course, the Division has long recognized certain specific exceptions to the continuous workday doctrine for time spent, on the one hand, at a worksite during the workday that clearly benefits the employee more than the employer and, on the other hand, time away from a worksite outside the workday that benefits the employer more than an employee. *Id.* The former is not compensable. *See* 29 C.F.R. §§ 785.16 (off-duty time), 785.19 (bona fide meal breaks). The latter is. *See* 29 C.F.R. § 785.12 (work performed away from the worksite, even at home).

As the Division now clarifies, an ordinary home-to-work or work-to-home commute that takes place during the workday constitutes a third exception to compensability during the continuous workday. *See* WHD Op. Ltr. FLSA2026-9. An ordinary commute from home to work or from work to home is not considered work under the FLSA, whether the employee works at a fixed location or at different job sites. *See Kuebel v. Black & Decker Inc.*, 643 F.3d 352, 360 (2d Cir. 2011); WHD Op. Ltr. FLSA2026-9; 29 C.F.R. § 785.35.[2] This is the case whether the commute occurs before or after the workday, as is the typical case, or within the workday, as is the case for an employee who chooses to work part of the day in the office and part of the day from home. *See* WHD Op. Ltr. FLSA2026-9.

C. The Portal-to-Portal Act

In a series of cases between 1944 and 1946, the Supreme Court held that the FLSA required employers to compensate employees for "all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed workplace," including time spent walking or riding on an employer's premises, as well as certain preparatory and concluding activities that the Court had determined were primarily for the employer's benefit and thus constituted work. *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 690–92 (1946); *see Jewell Ridge Coal Corp. v. Local No. 6167, United Mine Workers of Am.*, 325 U.S. 161, 170 (1945); *Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 598 (1944).

Facing a deluge of litigation in the aftermath of these cases, industry leaders did what any entity or individuals seeking changes in statutory law must do: appeal to Congress. And Congress responded, enacting the Portal-to-Portal Act ("Portal Act"), Pub. L. 80-49, 61 Stat. 84 (May 14, 1947), which amended the FLSA. Among other revisions, Congress set forth a more practical test for determining whether hours at the beginning and end of the workday are compensable, clarifying that employers were not required to compensate employees for time spent:

> (1) walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which [an] employee is employed to perform, and

[2] *Accord Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 599 & n.12 (1944) (citing *Walling v. Peavy-Wilson Lumber Co.*, 49 F. Supp. 846 (W.D. La. 1943); *Sirmon v. Cron & Gracey Drilling Corp.*, 44 F. Supp. 29 (W.D. La. 1942); *Bulot v. Freeport Sulphur Co.*, 45 F. Supp. 380 (E.D. La. 1942); *Dollar v. Caddo River Lumber Co.*, 43 F. Supp. 822 (W.D. Ark. 1941)).

> (2) activities which are preliminary to or postliminary to said principal activity or activities,
>
> which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.

61 Stat. at 86–87; 29 U.S.C. § 254(a). By its terms, the Portal Act applies to the enumerated activities only if they occur before or after an employee's workday, and specifically, before the employee commences, or after the employee ceases, the employee's "principal activity or activities." Thus, the Portal Act "does not affect the computation of hours worked within the 'workday' proper … and its provisions have nothing to do with the compensability under the [FLSA] of any activities engaged in by an employee during that period." 29 C.F.R. § 790.6(a). As both the Supreme Court and the Division have noted, an employee's principal activities include all activities that are "integral and indispensable to the principal activities that an employee is employed to perform," meaning they are an "intrinsic element of those activities . . . with which the employee cannot dispense if he is to perform his principal activities." *Integrity Staffing Sols., Inc. v. Busk*, 574 U.S. 27, 33 (2014); *see also* WHD Op. Ltr. FLSA2026-8 at 3 (May 28, 2026).

D. The Employee Commuting Flexibility Act

In 1996, Congress enacted the Employee Commuting Flexibility Act (ECFA), which amended the Portal Act to provide that the use of an employer-provided vehicle for travel before or after the workday, and activities incidental to the use of that vehicle for commuting, are not considered "principal activities" under the FLSA as amended by the Portal Act. Pub. L. 104-188, § 2102, 110 Stat. 1755, 1928 (1996). In relevant part, the ECFA states:

> For purposes of [the above-quoted provision of the Portal Act], the use of an employer's vehicle for travel by an employee and activities performed by an employee which are incidental to the use of such vehicle for commuting shall not be considered part of the employee's principal activities if the use of such vehicle for travel is within the normal commuting area for the employer's business or establishment and the use of the employer's vehicle is subject to an agreement on the part of the employer and the employee or representative of such employee.

29 U.S.C. § 254(a).

Thus, under the Act, time an employee spends in ordinary commuting from home to work and vice versa in a vehicle provided by the employer is not compensable hours worked simply because the employer—not the employee—owns the vehicle. Put simply, the employer's ownership of the vehicle used by the employee does not affect the analysis of hours worked under the Act. Additionally, ECFA provides that activities incidental to the use of an employer-owned vehicle under certain circumstances are not compensable hours worked if performed before or after the employee's workday.[3]

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[3] Activities excluded from hours worked by virtue of the Portal Act, which includes ECFA, become hours worked if compensated via contract, custom, or practice. *See* 29 U.S.C. § 254(b). In contrast, ordinary

E. Compensable Travel Time

Unlike ordinary commuting time or travel time excepted by the Portal Act or ECFA, any travel that is part of an employee's principal activity, such as travel between different worksites during the workday, is considered part of the day's work and therefore compensable hours worked. *United Transp. Union Local 1745 v. City of Albuquerque*, 178 F.3d 1109, 1119 (10th Cir. 1999); 29 C.F.R. § 785.38. Additionally, because an employee must be paid for all hours worked, courts and the Division have long recognized that time spent during an otherwise non-compensable ordinary home-to-work or work-to-home commute becomes compensable hours worked when the employee is working during the commute time. *See* WHD Op. Ltr. FLSA2026-9; *Reich v. N.Y.C. Transit Auth.*, 45 F.3d 646, 651 (2d Cir. 1995) (explaining that the Portal Act does not excuse employers from "payment for actual work required to be done during such travel"); *accord Burton v. Hillsborough Cnty., Fla.*, 181 F. App'x 829, 835 (11th Cir. 2006) (interpreting the ECFA and concluding that just as non-compensable travel time does not become compensable merely because the employee uses the employer's vehicle, "otherwise compensable travel time does not become non-compensable simply through the use of an employer-owned vehicle"); 29 C.F.R. § 785.41 ("Any work which an employee is required to perform while traveling must, of course, be counted as hours worked"). Thus, if, during a commute, an employee performs activities that are integral and indispensable to the principal activities he or she is employed to perform, or said principal activities themselves, and not incidental to the use of an employer-provided vehicle for commuting, then the time spent on those activities constitutes compensable hours worked even though the activities occur during an otherwise non-compensable commute.

OPINION

A. Whether time spent receiving pages and calling clients to schedule their appointments, including scheduling other field service engineers, is compensable hours worked under the FLSA

Time spent receiving pages from your employer before you perform any other work-related activities is likely not compensable worktime, whether performed at home or during your commute. Both the Division and courts have concluded that these sorts of activities are usually incidental to the use of an employer's vehicle for commuting under ECFA.[4] In applying ECFA, courts have held that merely receiving assignments from an employer is incidental to an employee's commute and not integral to an employee's principal activities. *See, e.g.*, *Chambers v. Sears Roebuck & Co.*, 428 F. App'x 400, 417 (5th Cir. 2011) (holding that receiving assignments and transmitting activity reports while at home was required by the employer-provided vehicle program and therefore incidental to the commute); *Rutti v. Lojack Corp., Inc.*, 596 F.3d 1046, 1057 (9th Cir. 2010) (concluding that the time a car alarm technician spent before his shift "receiving,

commuting time, whose non-compensability predated and does not derive from the Portal Act, *see* WHD Op. Ltr. FLSA2026-9, is not considered hours worked under the FLSA even if an employer has a contract, custom, or practice to pay for it. *See* 29 C.F.R. § 785.34.

[4] You have represented that the employer-provided vehicle you drive is of a type normally used for commuting. This analysis assumes that the remaining criteria for ECFA have been met, *i.e.*, that your travel is within the normal commuting area for your employer's establishment and that your use of the vehicle is pursuant to an agreement with your employer.

mapping, and prioritizing jobs and routes for assignment" was incidental to his commute rather than integral to his principal activities); *Robinson v. Gosiger Mach. Tools, LLC*, 479 F. Supp. 3d 788, 790, 793–94 (N.D. Ind. 2020) (reviewing next day's schedule and planning routes); *Butler v. DirectSAT USA, LLC*, 55 F. Supp. 3d 793, 806–08 (D. Md. 2014) (reading emails to determine appointments and mapping routes); *Donatti v. Charter Comm'ns, L.L.C.*, 950 F. Supp. 2d 1038, 1053–54 (W.D. Mo. 2013) (checking first assignment of the day). This is consistent with ECFA's plain meaning, as an activity is "incidental" to something else when it is "likely to ensue as a chance or minor consequence." *Incidental*, Merriam-Webster's Collegiate Dictionary (10th ed. 1998); *see also Incidental*, Oxford English Dictionary, https://www.oed.com/dictionary/incidental_adj ("Occurring or liable to occur in fortuitous or subordinate conjunction with something else of which it forms no essential part").

Receiving assignments remotely is a minor consequence of driving an employer-provided vehicle to and from home. Otherwise, an employee would have to report to a central work location to receive assignments, which would frustrate the convenience of a program allowing employees who work at multiple job sites per day to drive an employer-provided vehicle directly to and from home. ECFA was enacted with such programs in mind. *See Chambers*, 428 F. App'x at 417 (explaining that "[c]ommunication between the employee and employer to receive assignments or instructions" is "incidental" to the use of an employer's vehicle for commuting and thus not compensable hours worked (citation omitted)); *Rutti*, 596 F.3d at 1053 (discussing the meaning of "incidental" in ECFA). As you explained, you receive your assignments via pages. Therefore, the minimal time it takes to receive each page before your workday begins is not compensable hours worked because it is incidental to your commute in an employer-provided vehicle and thus excepted from compensability by ECFA.

On the other hand, time spent calling clients to schedule and arrange the details of appointments, including scheduling other field service engineers, constitutes compensable hours worked. These activities are required by, and primarily benefit, your employer; therefore, they constitute work. Furthermore, they are a critical element of your primary responsibilities, and consequently are not incidental to your commute or otherwise preliminary but rather integral and indispensable to your principal activity of installing and servicing medical equipment at your employer's clients' locations. Unlike simply receiving pages, communicating with clients to schedule appointments is a necessary step to performing the services requested by them. *See Butler*, 55 F. Supp. 3d at 814 (no dispute that pre-calling customers is integral and indispensable); *Espenscheid v. DirectSat USA, LLC*, No. 09-625, 2011 WL 10069108, at *22–23 (W.D. Wis. Apr. 11, 2011) (time spent calling customers is "related uniquely to plaintiffs' position as installation technicians" and therefore compensable, but time spent receiving routes is not); *accord Hall v. DIRECTV, LLC*, 846 F.3d 757, 773 (4th Cir. 2017) (characterizing calling customers to confirm installations as "essential to the installation and operation of DIRECTV products"); *Tapia v. DIRECTV, Inc.*, No. 14-939, 2016 WL 9777179, at *2, *5 (D.N.M. June 22, 2016) (plaintiffs sufficiently pled that calling customers to confirm installations was integral and indispensable to installing satellite television service). The same is true of calling other field service engineers to ensure that clients' service requests are fulfilled. Similarly, unlike receiving pages, which is specifically necessary for you to receive assignments from home, one must call clients to schedule appointments in any event if clients' requests are to be fulfilled. This activity is thus intrinsic to the services you perform for clients, and you cannot dispense with such work. *See Integrity Staffing Sols.*, 574 U.S. at 35 (finding pre-shift security screenings of warehouse workers not integral or indispensable where the employer "could have eliminated the screenings altogether without impairing the employees' ability to complete their work"). Accordingly, your time spent calling clients to schedule appointments, including scheduling other engineers, is compensable hours worked.

To summarize, the minimal time you spend receiving pages is excluded from compensable time under ECFA because it is incidental to your use of an employer-provided vehicle for commuting. On the other hand, your time spent calling clients to schedule appointments, including scheduling other engineers, is compensable and not excluded under ECFA or the Portal Act.

B. Whether all or some of your drive time to the first client location is compensable hours worked under the FLSA in Scenario 1

Based on your representations, we assume that at least some working days in Scenario 1 proceed as follows: you begin receiving pages at 7:00 a.m., receive five pages over the next hour, spend a total of 50 minutes over the hour scheduling client appointments, and then begin driving to the first worksite at 8:00 a.m. Under this set of facts, we conclude that your travel time to the first client location would be compensable.

As an initial matter, travel under these circumstances is not excluded from worktime by ECFA or other provisions of the Portal Act. Since the travel occurs after you have performed principal activities—client calls—it takes place during the workday, not before or after it, and the Portal Act, including ECFA, does not apply to time within the workday. *See* 29 C.F.R § 790.6(a). The inapplicability of ECFA and the Portal Act does not end the inquiry, however, given our conclusion that an "ordinary" or "normal" home-to-work commute is not worktime even if it takes place during the workday. *See* WHD Op. Ltr. FLSA2026-9. The remaining question, therefore, is whether the travel from home to your first worksite in this scenario is an ordinary commute.

Under the facts described above, we conclude that this travel is not an ordinary commute, but rather compensable travel. We reach this conclusion based on the application of longstanding FLSA principles to the totality of the circumstances. Here, not only are both the time and manner of the travel based primarily on the employer's needs rather than the employee's choice, but your employer is also requiring you to engage in substantial work both immediately before the travel, when you spend most of an hour engaged in phone calls, and immediately after your travel, when you work at your first worksite of the day. This bears few, if any, of the hallmarks of an ordinary commute between an employee's home and worksite. Indeed, under the circumstances described, you lack virtually any of the types of freedom and flexibility that typically accompany an ordinary home-to-work commute time, such as the choice of the mode of transportation, the choice of departure time, and the ability to spend time on personal tasks before or during breaks in the travel. For these reasons, we conclude that your travel is not, in fact, an "ordinary" commute that is non-compensable regardless of when it occurs. To be clear, the Division would consider this sort of travel to work to be explicitly excluded from compensability under the Portal Act if it were to occur before or after the workday. *See* 29 U.S.C. § 254(a)(1). However, for the reasons set forth above, it constitutes compensable worktime because it both occurs during the workday and is not an ordinary commute.[5]

The arrangement that you describe is distinguishable from many situations where travel between home and work within the workday remains an ordinary, non-compensable commute. For example, many employees who travel from site to site during the workday are required to complete some administrative work at home beforehand or afterwards, but have a long window of time in which to do so. For such employees, the home-to-work and work-to-home drives remain ordinary commutes since the employees retain the same flexibility and freedom during and adjacent to the travel that they would otherwise enjoy. *See Kuebel*, 643 F.3d at 360–61 (administrative duties required to be completed at home do not render the commute compensable where they are not required to be completed immediately before or after commuting); *Rutti*, 596 F.3d at 1059–61 (end-of-day transmission of completed jobs to employer does not extend workday where employee had a 12-hour window in which to complete the task).[6] Likewise, where an employee, for the employee's own benefit, requests and receives permission to telework for part of the day instead of working from the office, the travel between work and home remains an ordinary commute even if the employee is required to work both immediately before and immediately after the travel, since the travel remains primarily for the employee's benefit. *See* WHD Op. Ltr. 2026-9 (concluding that a commute is ordinary where the employee requests and receives permission from the employer to telework part of the day); WHD Op. Ltr. FLSA2020-19 (home-to-work travel non-compensable where employee requests and receives permission to attend personal appointments between working in the office and at home).

We reach a different conclusion here based on your representations that you are sometimes required (and accordingly must regularly plan) to spend the substantial majority of the hour before your travel making calls to clients, and to other engineers as necessary, to fulfill clients' service requests, with any personal activities you undertake limited to those you can perform simultaneously with (or in very short breaks between) your work duties, before you immediately travel to your first worksite at the time and in the manner directed by your employer. *See, e.g.*, *Gomley v. Crossmark, Inc.*, No. 1:13-420, 2015 WL 1825481, at *4 (D. Idaho Apr. 22, 2015) (denying summary judgment where plaintiff provided evidence she was required to perform administrative tasks at home immediately before driving to first worksite); *Butler*, 55 F. Supp. 3d

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[5] Also, we do not consider the travel to be off-duty time, since, under these circumstances, you are neither completely relieved from duty nor free to use the travel time effectively for your own purposes. 29 C.F.R. § 785.16.

[6] *See also Garcia v. Crossmark, Inc.*, 157 F. Supp. 3d 1046, 1049 (D.N.M. 2015) (administrative tasks performed at home that were not required to be performed immediately before or after commute between home and office did not render commute compensable); *Ahle v. Veracity Research Co.*, 738 F. Supp. 2d 896, 917 (D. Minn. 2010) (work activities performed at home did not extend the workday to include commute where employees were not required to perform the activities immediately before leaving home or immediately after returning home); WHD Op. Ltr., 1999 WL 1002360, at * 2 (Jan. 29, 1999) (work activities performed at home do not necessarily turn work-to-home or home-to-work travel into compensable worksite-to-worksite travel). These holdings apply only to home-to-work or work-to-home travel; in contrast, worksite-to-worksite travel is worktime even if it occurs before or after a non-compensable off-duty period. *See Sec'y U.S. Dep't of Labor v. Nursing Home Care Mgmt.*, 128 F.4th 146, 156–57 (3d Cir. 2025); *United Transp. Union Local 1745*, 178 F.3d at 1118–19.

at 814–18 (same); *Harris v. Reliable Reports Inc.*, No. 1:13-210, 2014 WL 931070, at *5 (N.D. Ind. Mar. 10, 2014) (denying motion to dismiss where plaintiff alleged such facts); *Bowman v. Crossmark, Inc.*, No. 3:09-16, 2012 WL 2597875, at *8 (E.D. Tenn. July 5, 2012) (denying summary judgment); *see also* WHD Op. Ltr. FLSA2020-19, at 5 & n.19. To the extent that your workday regularly differs from this scenario, your drive may instead be a non-compensable ordinary commute, depending on all the circumstances.[7]

Finally, we note that to the extent that your time spent calling clients and other engineers from home is subject to considerable variability from day to day and week to week such that it is difficult to determine your exact hours worked at home, employers and employees have means of determining compensation for such time: a written mutual agreement. Specifically, where an employee performs some work activities at home and the exact time spent on such activities is difficult to determine, the employer and employee may be permitted to enter into a "reasonable agreement . . . which takes into consideration all of the pertinent facts" to ensure sufficient compensation for the hours worked. 29 C.F.R. § 785.23; *see Brock v. City of Cincinnati*, 236 F.3d 793, 805 (6th Cir. 2001); *Halferty v. Pulse Drug Co.*, 864 F.2d 1185, 1190–91 (5th Cir. 1989). Thus, you and your employer have the option to come to such an agreement to ensure that you are compensated for periods of work that are difficult to measure with exactitude. *See Brock*, 236 F.3d at 805 (relying on 29 C.F.R. § 785.23 to permit reasonable agreements in circumstances "where unsupervised employees can divide their time between 'work' and personal pursuits"). You have not represented that such an agreement exists here.

C. Whether all or some of your drive time to the first client location is compensable hours worked under the FLSA in Scenario 2

As explained above, an employee's ordinary home-to-work travel, whether the employee works at a fixed location or at different job sites, is a normal incident of employment and not compensable. *See* WHD Op. Ltr. FLSA2026-9. Additionally, the Portal Act, as amended by ECFA, does not require compensation for travel to the place of performance of an employee's principal activities when such travel precedes the performance of principal activities, and further provides that travel in an employer-provided vehicle within the normal commuting area is not such an activity. As a general matter, therefore, when you begin your commute before performing any work activities for the day, your employer's practice of compensating pre-shift travel time only in excess of one hour is acceptable. *See* WHD Op. Ltr., 1999 WL 1002360, at *2 ("We would not take exception to a practice that treats one hour of commuting time as non-compensable home-to-work travel, and

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[7] *See Armour & Co.*, 323 U.S. at 133 (whether inactive time is "predominantly for the employer's benefit," and therefore compensable, "or for the employee's," and therefore non-compensable, "is a question dependent upon all the circumstances of the case"); *Llorca v. Sheriff, Collier County, Fla.*, 893 F.3d 1319, 1324 (11th Cir. 2018) (the inquiry into whether travel time between home and work is compensable is "fact-intensive and not amenable to bright-line rules"); *Naylor v. Securiguard, Inc.*, 801 F.3d 501, 506 (5th Cir. 2015) (where the critical question is whether time is predominantly for the benefit of the employer or for the employee, the court considers "whether the employees are subject to real limitations on their personal freedom which inure to the benefit of the employer; whether restrictions are placed on the employee's activities during those times . . . ; whether the employee remains responsible for substantial work-related duties; and how frequently the time is actually interrupted by work-related duties" (quoting *Bernard v. IBP, Inc. of Neb.*, 154 F.3d 259, 265 (5th Cir. 1998))).

that treats all travel time in excess of that amount as hours worked"). In the second scenario you have described, however, while on your way to the first client location, you are also calling clients between 7:00 a.m. and 8:00 a.m. to schedule their appointments, and this activity occupies the substantial majority of the hour on at least some workdays. As discussed above, this activity is assigned by, and chiefly benefits your employer, such that it is work and furthermore, it is not incidental to your commute or a preliminary or postliminary activity, but rather integral and indispensable to your primary or principal activity of installing and servicing medical equipment at client sites. These activities are therefore compensable, and your workday begins when you perform such activities. *See Johnson v. RGIS Inventory Specialists*, 554 F. Supp. 2d 693, 708–09 (E.D. Tex. 2007) (performance of principal activities in a company van en route to the job site begins the continuous workday).

As a result, in the example you provided in the second scenario, the beginning of your travel time (from 6:00 a.m. until at least 7:00 a.m.) is ordinary home-to-work travel and not compensable. Your workday commences when you begin calling clients to schedule their appointments, and the rest of your travel time from your first client call until you arrive at your first client location is compensable. As previously stated, we have based our conclusions on the assumption that you must regularly plan to spend much of the time between 7:00 a.m. and 8:00 a.m. scheduling client appointments. Your remaining travel time is compensable because calling clients is your first principal activity of the day and you must perform that activity throughout your travel. Even more so than when you are required to perform principal activities at home immediately before your commute, being required to perform them throughout your drive to your first worksite of the day prevents you from exercising the freedom and flexibility associated with the ordinary home-to-work commute.

We do not consider whether—or at what point—a less extensive amount of time spent on calls while traveling to your first worksite might affect whether your entire travel time after your first call would constitute hours worked.[8] Finally, we do not consider whether your employer's current compensation practices (*i.e.*, paying you for a regular shift from 8:00 a.m. to 5:00 p.m. regardless of the timing of your first and last appointments, plus overtime for travel to and from home in excess of an hour) might sufficiently compensate you for all hours worked, as any such consideration would require additional facts.

This letter is an official interpretation of the governing statutes and regulations by the Administrator of the Wage and Hour Division of the United States Department of Labor for the purposes of the Portal Act. *See* 29 U.S.C. § 259. This interpretation may be relied upon in accordance with section 10 of the Portal Act, notwithstanding that after any such act or omission in the course of such reliance, the interpretation is "modified or rescinded or is determined by judicial authority to be invalid or of no legal effect." *Id.*

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[8] *See Smith v. Aztec Well Servicing Co.*, 462 F.3d 1274, 1291 (10th Cir. 2006) (compensable work activities that are required to be performed during commute may render the entire commute compensable depending on their extent); *N.Y.C. Transit Auth.*, 45 F.3d at 651–52 (occasional dog-care work performed during police officers' commute was compensable itself but did not render entire commute compensable). Under any circumstances, the time spent engaged in calls would be worktime. *See* 29 C.F.R. § 785.41.

We trust that this letter is responsive to your inquiry.

Sincerely,

Andrew B. Rogers
Administrator

***Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(6).** You represent that you do not seek this opinion for any party that the Wage and Hour Division (WHD) is currently investigating or for any litigation that commenced prior to your request. This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. The existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein.