U.S. Department of Labor

Wage and Hour Division
Washington, DC 20210

FLSA2026-9

July 22, 2026

Dear **Name***:

This letter responds to your request for an opinion addressing whether mid-day travel between an employee's home and work office is worktime for which the employer must pay the employee under the Fair Labor Standards Act (FLSA or Act), where the employee performs work at both locations and the mid-day travel is offered as a voluntary alternative to unpaid commuter travel that would otherwise occur before or after the employee's workday.

As explained below, it is our opinion that such mid-day travel would qualify as "normal" or "ordinary" commuter travel, which is not hours worked under the FLSA. Accordingly, an employer would not need to record such travel time as work, and generally it would not be subject to wage and hour requirements.

BACKGROUND

You represent an employer with a large workforce of non-exempt employees who, aside from general commuting between their homes and your client's offices, do not regularly travel as part of their job duties. Such employees include administrative support staff, bookkeeping clerks, and other similar corporate office-based positions. In recent years, your client has adjusted its operations to allow many of its employees to telework from their homes where business needs permit. Non-exempt office-based employees, however, have not been permitted to work in more than one location (for example, home and office) in a single workday. You assert that this limitation exists in part due to a concern that time spent traveling between home and office in the middle of an employee's workday could be considered compensable "worktime" under the FLSA because "travel from job site to job site during the workday . . . must be counted as hours worked." 29 C.F.R. § 785.38. This is because allowing such flexibility would necessitate employees performing work at home before their morning commute, after their evening commute, or both. Your client is concerned that by allowing employees to change when they commute to or from the office, or to work at home before or after their typical commute, for their convenience, the commuting time itself might be deemed compensable under continuous workday principles.

To permit more flexibility for the benefit and convenience of its non-exempt workforce by allowing staff to split their workday between home and office, your client asks for guidance on whether home-to-work travel would be FLSA-covered worktime in the following three scenarios:

- **Scenario 1**. A non-exempt employee is scheduled to work 9:00 a.m. to 5:00 p.m. and typically commutes to the office from 8:00 a.m. to 9:00 a.m., and home from 5:00 p.m. to 6:00 p.m. Driving two hours daily is not ideal for the employee, who wants to avoid rush hour traffic by commuting between 10:00 a.m. and 10:30 a.m. and 3:00 p.m. and 3:30 p.m., reducing the total drive time by an hour. The employee requests to work at home from 8:00 a.m. to 10:00 a.m. before driving to the office, and from 3:30 p.m. to 5:00 p.m. after returning home from the office. The employee takes a 30-minute lunch break at noon regardless of her location, so either arrangement results in the employee working a normal schedule of 7.5 hours.

- **Scenario 2**. A non-exempt employee volunteers to work additional hours for a special project that is short-staffed. However, the employee is only interested in the work if the employee can perform the additional work during the early hours of the morning before leaving for her regular shift at the office, instead of arriving at the office early or staying late.

- **Scenario 3**. A non-exempt employee uses the city bus to commute to and from the office and is unable to complete his day's work before the last bus leaves for the day. The employee asks the employer for permission to bring his work home to complete the work upon arriving home, with overtime hours.

For these scenarios, you have asked us to assume that these employees are fully relieved of work-related tasks during their midday travel, that the travel time at issue is for 20 or more minutes, and that the employer and employees have appropriate timekeeping policies and practices to capture and record all worktime, regardless of the work location.

GENERAL LEGAL PRINCIPLES

A. Hours Worked Under the Fair Labor Standards Act

Enacted in 1938, 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).[1] Additionally, among other requirements, the Act requires covered employers to "make, keep, and preserve" certain records regarding employees such as the "[h]ours worked each workday and total hours worked each workweek" for nonexempt employees. *Id.* § 211(c); 29 C.F.R. § 516.2(a)(7). As a result, 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. And from the earliest days of the FLSA, this has proven to be a more nuanced question than some originally anticipated.[2]

Much of the challenge stems from the concept of "work." Congress did not define the term, leaving the issue for courts and the Wage and Hour Division (WHD or Division) to address. *IBP,*

[1] The overtime threshold has remained fixed at 40 hours for 86 years. As originally enacted in 1938, however, the overtime requirement of section 7 applied to all hours worked in excess of 44 hours in a workweek. *See* Pub. L. 75-718, 52 Stat. 1060, 1063 (1938). That level automatically adjusted to 42 hours in 1939 and, in 1940, to the current threshold of 40 hours in a workweek. *See id.* §§ 7(a)(1)–(3).

[2] Many of the largest manufacturing companies had not vociferously opposed the Act, perhaps conceiving that the baseline standards pertaining to wages and hours (that they already exceeded) were unlikely to impact their operations. The initial wave of portal litigation, discussed below, caused several to reconsider.

Inc. v. Alvarez, 546 U.S. 21, 25 (2005). WHD's early administrators took up the challenge,[3] as did the courts. Courts retain the ultimate authority to "say what the law [here the FLSA] is" or means, or how it applies. *Marbury v. Madison*, 1 Cranch 137, 177 (1803). However, rules, interpretations, opinions, and other guidance issued by the Wage and Hour Division together constitute a body of experience, expertise, and considered judgment that courts, employees, and employers have turned to and relied upon for decades. *See* 29 C.F.R. § 785.2.

Ultimately, the U.S. Supreme Court ruled that 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); *see also Tenn. Coal, Iron & R.R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 598 (1944) (defining work in relevant part as employee time which is "primarily for the benefit of the employer and his business"). This remains the standard today. *See, e.g.*, *Smith v. Aztec Well Servicing Co.*, 462 F.3d 1274, 1290 (10th Cir. 2006) ("[T]he test for whether an employee's time constitutes working time is whether the time spent is spent predominantly for the employer's benefit or for the employee's."); *Reich v. S. New England Telecomms. Corp.*, 121 F.3d 58, 64 (2d Cir. 1997) (time is compensable when employees "perform[] activities predominantly for the benefit of the employer"); 29 C.F.R. § 785.7 (summarizing definition of work); WHD Op. Ltr. FLSA2020-19 (Dec. 30, 2020) at 2 ("Whether an employee is 'working' typically can be answered by determining whether her action is primarily for the benefit of the employer").[4]

B. Early Disagreements on the Concept of Worktime

Determining whether time constitutes hours worked under the FLSA is informed by an earlier component of the New Deal, the National Labor Relations (or Wagner) Act (or NLRA), Pub. L. 74-198, 49 Stat. 449 (1935). The NLRA, like the Railway Labor Act (RLA) and earlier legislative efforts,[5] sought to prevent and limit commercial and economic disruption caused by labor-

[3] *See generally* Interpretative Bulletin No. 13 (July 1939), as revised (Oct. 1939; Nov. 1939; Oct. 1940; Nov. 1940) (setting out early positions of the Administrator on hours worked).

[4] *See also* WHD Op. Ltr. FLSA2018-20 (Aug. 28, 2018), at 2 (advising that "[because] an employee's voluntary participation in biometric screenings, wellness activities, and benefits fairs as described predominantly benefits the employee … [such activities] do not constitute compensable worktime under the FLSA"); WHD Op. Ltr. FLSA2018-19 (Apr. 12, 2018), at 1 (absent unusual circumstances, short rest breaks are compensable because they predominantly benefit the employer); WHD Op. Ltr. FLSA2009-1 (Jan. 7, 2009) (determining that "time spent by employees voluntarily attending in-service training or continuing education required by the State and provided [by their employer] is not hours worked" where such training is "for the benefit of the employees" because it "enables an individual to gain or continue employment with any child care service provider").

[5] The Wagner Act was Congress's response to decisions of the Supreme holding unconstitutional the National Industrial Recovery Act. *See* Pub. L. 73-67, 48 Stat. 195 (1933); *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935); *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935). Previous legislation regulating labor-management relations tended to focus on shipping and transportation sectors of the economy critical to interstate commerce. *See, e.g.*, Railway Labor Act, as amended, Pub. L. 14-487, 49 Stat. 1189 (1936); Pub. L. 69-257, 44 Stat. 577 (1926); 45 U.S.C. §§ 151–65, 181–88; Esch-Cummins Act of 1920, Pub. L. 66-152, 41 Stat. 456 (1920); Adamson Act, Pub. L. 64-252, 39 Stat. 721 (1916); Newlands Labor Act, Pub. L. 63-6, 38 Stat. 103 (1913); Erdman Act, ch. 370, 30 Stat. 424 (1898).

management conflict and covered most of the private sector that did not fall under the RLA. In relevant part, the NLRA prohibited so-called company-dominated unions, provided for the resolution of worker representation questions by majority vote, and required labor and employers to negotiate in good faith. In the years that followed, unions and businesses across the country entered into bargaining agreements within those frameworks, which generally were more favorable to workers than previous federal labor regimes. Against this backdrop, Congress enacted the FLSA, which—with its focus on wages and hours worked—overlapped with mandatory subjects of bargaining under federal labor law.

At the time, the objective nature of wage rates and the hour as units of currency and time suggested that the FLSA would not have much of an impact on manufacturing, especially since most large industries paid wage rates well in excess of the law's minimums. The concept of "work," however, proved far more challenging and—as the ultimate question of the amount of wages owed turned not simply on a tabulation of rates and hours but rather hours *worked*—provoked vehement disagreement.[6] To meet the massive production demands of an economy run on a war footing, companies took advantage of extensive vertical integration, which minimized bottlenecks and cut costs, as well as previously unattained economies of scale. Employers continued to build facilities of ever-greater size such that workers spent significant time traveling within employer worksites. As a result, disputes developed about the compensability of time spent walking or riding from point to point within an employer's facility—not a standard home-to-office commute—and would result in three Supreme Court cases and major federal legislation.

In a trio of cases, all authored by Justice Frank Murphy and handed down between 1944 and 1946, the Supreme Court addressed whether time spent by employees walking or riding from point to point on the premises of their employers constituted "work" for the purposes of the FLSA. *See Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946); *Jewell Ridge Coal Corporation v. Local No. 6167, United Mine Workers of America, et al.*, 325 U.S. 161 (1945); *Tenn. Coal Co.* 321 U.S. at 590.

Tennessee Coal addressed whether time spent by miners walking and riding underground between the entrance—or portal—of the mine and the vein where they worked constituted compensable work time. The Court made clear that it was "not guided by any precise statutory definition of work or employment," but rather the "remedial and humanitarian" purpose of the FLSA that necessitated the rejection of any "narrow" or "grudging" interpretation or application.[7] 321 U.S.

[6] This included foundational disagreement on when the figurative work "clock" started running under the Act. For example, was it when the employee starts performing work tasks on the production line? Did it start minutes earlier when donning protective or other clothing or gear? Did it begin at the door of the building or, perhaps, the outer gate? Did it include riding to work in company-provided transportation? Additional disputes arose regarding who should and could definitively answer this question. Was it a question of statutory interpretation, either for the Administrator, the courts, or both? Did it turn on industry practice or longstanding custom at a particular worksite? Did employers have ultimate authority to make these determinations? If so, did that authority depend on whether the subject had been bargained, whether with a company-controlled union or a unit organized under the NLRA?

[7] *Tennessee Coal*, like many cases of its era, was part of an *ancien régime* of statutory interpretation that relied on broad notions of "remedial purpose" imbued in "humanitarian and remedial" legislation.

at 597. Proceeding, instead, by "discarding formalities and adopting a realistic attitude, recognizing that we are dealing with human beings," the Court read subsections 7(a), 3(g), and 3(j) of the FLSA as "necessarily indicative of a Congressional intention to guarantee either regular or overtime compensation for all actual work or employment," which it defined as any "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business." *Id.* at 592, 597, 598. Applying this definition, the Court held that the time miners spent underground riding and trekking was compensable work primarily because the travel was both physically demanding and extremely dangerous.[8] To the justices, the extreme perils and physical challenges to miners

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Practically, this approach called for "broad" interpretation of a law's so-called remedial provisions and "narrow" construction of provisions limiting those statutory rights. *See A.H. Phillips, Inc. v. Walling*, 324 U.S. 490, 493 (1945); *see also Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388, 392 (1960); *Mitchell v. Ky. Fin. Co.*, 359 U.S. 290, 295 (1959). At its zenith, the principle applied to a variety of statutes beyond the Act—such as the Freedom of Information Act, *see U.S. Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 151 (1989), and the Federal Arbitration Act, *see Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 112 (2001). Today, both the courts and the Division reject interpreting the Act in this manner. After signaling dissatisfaction with this approach, *see CTS Corp. v. Waldburger*, 573 U.S. 1, 12 (2014) (the "proposition that remedial statutes should be interpreted in a liberal manner" cannot be a "substitute for a conclusion grounded in the statute's text and structure" because "almost every statute might be described as remedial in the sense that all statutes are designed to remedy some problem. And even if the Court identified some subset of statutes as especially remedial . . . no legislation pursues its purposes at all costs."), the Court squarely "reject[ed] this principle" in *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79 (2018), explaining that exemptions must be afforded the same "fair reading" as any other statutory provision because the FLSA's exemptions are "as much a part of the FLSA's purpose as the overtime-pay requirement." *Id.* at 88–89. Although *Encino* arose in the context of section 13(b)(10), the Division has explained that the "fair reading" required by the Court properly applies to all the Act's provisions. *See id.* at 89 (noting that "limitations" are as much a part of the statute as other provisions) (citing *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017)); *see also* WHD Op. Ltr. FLSA2021-3 (Jan. 15, 2021), at 3 ("WHD affords all provisions of the FLSA the same fair construction."); WHD Op. Ltr. FLSA2020-13 (Aug. 31, 2020), at 3 ("WHD, therefore, interprets the Act neither expansively nor narrowly, but according to conventional canons of statutory construction."); WHD Op. Ltr. FLSA2020-4 (Mar. 26, 2020), at 1 (exclusions of section 7(e)); WHD Op. Ltr. FLSA2020-3 (Mar. 26, 2020), at 1 (same); WHD Op. Ltr. FLSA2020-11 (Aug. 31, 2020), at 1 (section 7(i) exceptions); WHD Op. Ltr. FLSA2018-21 (Aug. 28, 2018), at 1 (same). The Court has since confirmed the Division's initial understanding of *Encino*, even applying its "fair reading" principle beyond the FLSA to other statutes. *See, e.g.*, *BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. 230, 239 (2021) (28 U.S.C. § 1447(d)); *Food Marketing Institute v. Argus Leader Media*, 588 U.S. 427, 439 (2019) (FOIA exemptions). The Division thus affords all sections of the Act—whether characterized as remedial, exemptions, definitions, exceptions, or exclusions—a fair (neither artificially broad nor unnaturally narrow) interpretation. *See, e.g.*, WHD Op. Ltr. FLSA2026-5 (May 28, 2026), at 2; WHD Op. Ltr. FLSA2021-3 (Jan. 15, 2021), at 3.

[8] The egregious dangers of the subsurface transport at issue in the case certainly fell short of modern MSHA and OSHA standards and requirements. After gathering equipment, miners were "forced to jump several feet into the skip from the loading platform, which not infrequently causes injuries to ankles, feet and hands," after which the miners "[stood] tightly pressed together" in an "overcrowded" car. With their heads more than a foot above the top of cars that themselves cleared mine tunnels by inches, miners were compelled to "bend over" and ride in "close 'spoon-fashion.'" This often resulted in "broken ribs, injured arms and legs, and bloody heads," while fatalities were "not unknown." The rides extended several

simply of riding or negotiating their way through an iron ore mine made untenable, even ridiculous, the notion that such time was not compensable work.[9] *Id.* Especially in this context, counterarguments that "immemorial" industry customs or collective bargaining agreements pointed in a different direction were not well taken.[10]

One year later, in *Jewell Ridge*, the Court applied the rule of *Tennessee Coal* to the time miners spent traveling underground in bituminous coal mines. Taking the Court at its word in *Tennessee Coal*, one might reasonably have expected—and the four dissenting justices did expect—a different result. The bituminous coal miners faced far fewer and less perilous dangers traveling than iron ore miners. While "definitely not luxurious," their subterranean travel was "neither painful nor unduly uncomfortable, and [was] less hazardous than other phases of mining operations." 325 U.S. at 164. Additionally, bona fide collective bargaining units between the mine operators and the United Mine Workers (which was not a company-controlled union) had determined that compensable work time was limited to work time at the face of the vein or seam, which WHD accepted as the industry practice of calculating work for the bituminous coal mine industry.[11]

The Court was not impressed. Claiming "no substantial factual or legal difference" between this case and *Tennessee Coal*, it confirmed several of its statements in that case. *Id.* at 163. Although bituminous coal miners faced fewer and less dangerous perils, the Court noted that miners still

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thousand feet in "dark, moist, malodorous shafts" and, after disembarking at the unloading platforms—called "hoodlums"—the miners continued to walk up to two more miles through "discomforts" and "hidden perils." The Court described the "surroundings" as "dark and dank," and the air as "increasingly warm and humid, the ventilation poor," permeated with "befouling" "odors of human sewage, resulting from a complete absence of sanitary facilities." "Low ceilings" had to be "ducked" and "moving ore skips" had to be "avoided." Overhead, a maze of water and air pipe lines, telephone wires, and exposed high voltage electric cables and wires present[ed] ever-dangerous obstacles," and falling rocks were an omnipresent danger. *See generally Tenn. Coal Co.*, 321 U.S. at 595–96.

[9] The Court also noted that travel in iron ore mines was compensable under the Act because it occurred entirely on the employer's property while workers were under their employer's supervision and control. *Id*. at 598.

[10] The employers argued that industry custom and collective bargaining agreements supported the notion that compensable work was limited to so-called "face to face" time, that is, when miners were face-to-face with the seam or "working face" where iron ore is mined and loaded. *Id.* at 592 n. 2. Even if such arguments might have been persuasive in the abstract, here they fell short. The trial court's findings were to the contrary; no such custom existed in the industry or labor agreements. *Id.* at 601. Moreover, as the unions who were party to any agreements were company-dominated, the courts rejected the agreements as indicative of workers' understanding or agreement regarding compensable work. *Id*. Even so, the Court made clear that the Act was "not designed to codify or perpetuate those customs and contracts which allow an employer to claim all of an employee's time while compensating him for only a part of it," but rather that Congress "intended" to "achieve a uniform national policy of guaranteeing compensation for all work or employment engaged in by employees covered by the Act." *Id*. at 602. Albeit concurring, Justices Jackson and Frankfurter each argued that what constitutes "work" in an industry may depend upon circumstances specific to an employer, as well as broader customs and practices. *See id.* at 603–06.

[11] *Jewell Ridge*, 325 U.S. at 187–88 (Jackson, J., dissenting), citing Statement of Wage and Hour Administrator, 3 W.H. Rep. 333 (July 18, 1940).

engaged in some "physical or mental exertion," and that said "exertion" was both required by the employer and undertaken "necessarily and primarily" for the employer and its business. *Id.* at 164–66.[12] The Court also discounted the bona fide collective bargaining agreements between operators and independent unions, reiterating that the Act was "not designed to codify or perpetuate those customs and contracts which allow an employer to claim all of an employee's time while compensating him for only a part of it." *Id.* at 167 (citation omitted). Without discussion or explanation, it dismissed WHD's endorsement of those agreements as "legally untenable." *Id.* at 169. In dissent, four justices asserted that the FLSA should not be applied to displace bona fide collective bargaining agreements, absent direct conflict with the Act. *Id.* at 170–96.

In 1946, the Court again took up walking time—this time in the comparatively ordinary context of pottery plant workers moving from their time clocks to their workstations. *Mt. Clemens*, 328 U.S. at 680. Unlike the more arduous movement in *Tennessee Coal* and *Jewell Ridge*, traversing the pottery plant did not present any of the hazards found in mines.[13] Employees entered and exited at one corner of the building, where they punched a time clock. *Id.* at 682. Depending on the location of an individual's workstation, the employee then walked between 30 seconds and three minutes, though some estimates extended to eight minutes. *Id*. at 683. Upon arriving at their workstations, employees took no more than four minutes to "perform various preliminary duties." *Id*. The reverse sequence occurred at the conclusion of each shift. *Id.* at 690. The employer allowed employees 14 minutes to accomplish these tasks before and after each shift, but this time was not treated as worktime. *Id*. at 683.

As the employees had not made a claim for unpaid wages for time spent waiting to punch time clocks, the Court focused on the walking time between the time clocks and the employees' workstations. Relying on the definition of compensable work outlined in *Tennessee Coal* and *Jewell Ridge*, the Court held that "the time necessarily spent by the employees in walking to work on the employer's premises, following the punching of time clocks, was working time" under the

[12] Eighty years later, both the courts and the Division recognize that hours worked under the Act do not require the "exertion" as articulated in *Tennessee Coal*, *Jewell Ridge*, and *Mt. Clemens*. *See Alvarez*, 546 U.S. at 25 (explaining that in *Armour & Co.*, the Court "clarified that 'exertion' was not in fact necessary for an activity to constitute 'work' under the FLSA," since "'an employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen'" (quoting *Armour & Co.*, 323 U.S. at 133)); 29 C.F.R. § 785.7. Mental or cognitive activity, or even "do[ing] nothing," for the primary benefit of the employer can be compensable work under the Act; conversely, time an individual spends moving or otherwise "exerting" himself is not automatically work. *See, e.g.*, *Armour & Co.*, 323 U.S. at 133; *Tennessee Coal*; 321 U.S. at 598; WHD Op. Ltr. FLSA-1271 (June 1, 1994), at 2 (advising that time spent by law enforcement officers in physical fitness training during off-duty hours, where the fitness training was voluntary and not directly related to the employees' jobs, was not compensable work even though "such training benefits the employer"). Put simply, "exertion," by itself, is neither a necessary nor sufficient condition of hours worked under the Act. Throughout its history, the Division has sought to explain and illustrate the nuance of both the concept and tangible requirements of hours worked under the Act. *See generally* 29 C.F.R. Part 785; Interpretative Bulletin No. 13, *supra* note 3.

[13] While the pottery plant was large, covering more than "eight acres of ground" at a length of nearly a quarter mile, the Court acknowledged that workers traversed "along clean, painted floors" and the building was "brightly illuminated and well ventilated." *Mt. Clemens*, 328 U.S. at 682, 683.

Act. *Id*. at 691. The Court reasoned that such time, as in the mines, was "under the complete control of the employer, being dependent solely upon the physical arrangements which the employer made in the factory." *Id*. After all, but for the workers' walking to their workstations, "the productive aims of the employer could not have been achieved." *Id*. In the view of the Court, employees' "convenience and necessity . . . bore no relation whatever to" their treading the factory floor, which the employer "compelled" them to do "by the necessities of the employer's business." *Id*. And walking was "exertion," at least as the Court first articulated the concept against the backdrop of mines in the 1940s, even though the physical burdens or dangers of strolling above ground along level "clean, painted floors" in a "brightly illuminated and well ventilated" factory paled in comparison to navigating an iron ore mine.[14] *Id*. Perhaps recognizing this juxtaposition of striding to make pottery in *Mt. Clemens* and the life-threatening subterranean trudge in *Tennessee Coal* and *Jewell Ridge*, the Court clarified that only the "minimum time necessarily spent in walking at an ordinary rate along the most direct route from time clock to work bench" was compensable, a result that held less than a year before the Portal Act made such time before the workday noncompensable, rendering this portion of *Mt. Clemens* obsolete. *Id*.

Ultimately, in these cases, the Court interpreted and applied the FLSA to require 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 certain preparatory and concluding activities that the Court had determined were primarily for the employer's benefit and thus constituted work. *Id.* at 690–91. The breadth of the Court's construction of work and rejection of bona-fide collective bargaining agreements were amplified in their potential impact by the FLSA's lack of a statute of limitations for private civil actions.[15] Indeed, in the aftermath of *Tennessee Coal*, *Jewell Ridge*, and especially *Mt. Clemens*, workers filed more than 1,900 lawsuits in federal courts related to so-called portal-to-portal travel in the seven months between July 1, 1946 and January 31, 1947, seeking more than $5.7 billion.[16] Industry leaders appealed to Congress for relief.

C. The Portal-to-Portal Act

In response, Congress enacted the Portal-to-Portal Act (Portal Act), Pub. L. 80-49, 61 Stat. 84 (May 14, 1947), which amended the FLSA in ways that modified or rejected the Court's construction of certain provisions of the Act. As relevant for present purposes, Congress provided

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[14] *See supra* notes 8, 13.

[15] As originally enacted, Congress did not provide for a statute of limitations applicable to claims for unpaid minimum or overtime wages. *See* 52 Stat. 1060. As a result, in the late 1930s and 1940s, a patchwork of limitations applied to claims under the Act, borrowed from various states. Indeed, these periods ranged widely from one year up to twelve years. *See* U.S. Dept. of Labor, *Annual Report, Wage & Hour & Public Contracts Divisions, For the Fiscal Year Ended June 30, 1946*, Table H, at 86 (1947). When combined with confirmation that employees could not waive or otherwise release their statutory rights under the Act, including to liquidated damages, *see Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 707 (1945), longer limitations periods potentially allowed for gamesmanship. For example, workers could imply or agree to refrain from commencing an action under the Act for unpaid wages in an attempt to secure other concessions from an employer, but always "reconsider" within the limitations period.

[16] *See* S. Rep. No. 80-37, at 3–5 (1947) (listing 1,913 portal-to-portal cases filed in United States district courts by circuit and district). In 2026 dollars, those demands equate to more than $85 billion.

a more practical test for determining whether hours at the beginning and end of the workday are compensable, clarifying that employers would not be 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
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> (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).[17] 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."[18] Thus, the statute "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).

D. Ordinary Commuting Time

Under the Portal Act, "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" are not compensable activities. 29 U.S.C. § 254(a)(1). However, both before and after the Portal Act, WHD and courts have long confirmed that "[n]ormal travel from home to work is not worktime." 29 C.F.R. § 785.35; *see Kuebel v. Black & Decker Inc.*, 643 F.3d 352, 360 (2d Cir. 2011) ("The general rule . . . is and always has been that the FLSA does not treat ordinary home-to-job-site travel as compensable"). As demonstrated above, even in its pre-Portal Act decisions, the Court never held that time an employee spent traveling from his or her home to an employer's worksite was generally compensable. This is because normal commuting travel between home and work is a "normal incident of employment" that may take more or less time depending on where an employee lives—*i.e.*, it predominantly benefits employees by allowing them to live where they

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[17] These provisions do not upset relevant customs, practices, or agreements that provide for compensation of such time. *See* 29 U.S.C. § 254(b). Additionally, the Portal Act allowed parties to settle minimum wage or overtime claims under certain conditions, barred all but the Secretary of Labor from filing class action suits, established the alternative collective action structure where only those employees who affirmatively agreed to join an action as party plaintiffs could recover unpaid wages, established a default two-year statute of limitation to initiate an action to recover wages, provided for good faith defenses, and formally established the Division's opinion letter authority. *See* 61 Stat. at 86–90; 29 U.S.C. §§ 216, 253, 254, 255, 259–60.

[18] 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).

choose. 29 C.F.R. § 785.35; *see also Sirmon v. Cron & Gracey Drilling Corp.*, 44 F. Supp. 29, 31 (W.D. La. 1941) ("Ordinarily, an employee [cannot] recover for the time spent in going to and returning from his work under normal circumstances. If he chooses to live at a great distance from his place of employment, he [cannot] tax the extra time necessary to reach it against his employer."); *cf. Tennessee Coal*, 321 U.S. at 599 (concluding that in contrast to home-to-work travel, travel in underground mine shafts was work in part because it was "not primarily undertaken for the convenience of the miners and bears no relation whatever to their needs or to the distance between their homes and the mines"). Ordinary commuter travel is excludable whether an employee "works at a fixed location or at different job sites." 29 C.F.R. § 785.35.

E. Compensable Travel Time

Unlike ordinary commuter travel, "[t]ime spent by an employee in travel as part of his principal activity . . . must be counted as hours worked." *Id.* § 785.38. A common example of such time is "travel from job site to job site during the workday." *Id.* For example, "[i]f an employee normally finishes his work on the premises at 5 p.m. and is sent to another job which he finishes at 8 p.m. and is required to return to his employer's premises arriving at 9 p.m., all of the time is working time." *Id.* (citing *Walling v. Mid-Continent Pipe Line Co.*, 143 F.2d 308 (10th Cir. 1944)); *see also, e.g.*, *Vega v. Gasper*, 36 F.3d 417, 420 (5th Cir. 1994) ("Travel between sites or from the last site to the office is compensable").[19]

For this reason, though ordinary commuting is not compensable work—as explained above—travel from home to work *can* constitute work in some instances, such as "if an employee who has gone home after completing his day's work is subsequently called out at night to travel a substantial distance to perform an emergency job for one of his employer's customers." 29 C.F.R. § 785.36; *see also id.* § 790.7(c). Similarly, "home to work [travel] on [a] special one-day assignment in another city" is compensable worktime, though an employer may deduct the time that an employee would have otherwise spent commuting to his or her "regular work site." *Id.* § 785.37; *see also id.* § 790.7(c); WHD Op. Ltr., 1999 WL 1002360, at *2 (Jan. 29, 1999) (opining that driving time between a field engineer's home and a job site could constitute hours worked if "the time involved is extraordinary," with an offset for the time of the employee's typical commute). Finally, if an employee performs any work during home-to-work travel, it would "of course be counted as hours worked." 29 C.F.R. § 785.41; *see also id.* § 790.7(d). These types of travel are not considered "ordinary" commuting because they are not normal incidents of employment and primarily benefit the employer as opposed to the employee.

F. The Continuous Workday Doctrine

The "continuous workday" doctrine or rule 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. 2016) (citations, internal quotation marks, and alterations omitted), even if an employee is not engaged in productive work. *See Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 226 (2014) (explaining that under the continuous workday doctrine, "compensable time

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[19] However, if the employee goes home from the final job site instead of returning to his employer's premises, the travel from the job site to the employee's home is ordinary home-to-work travel and is not hours worked. 29 C.F.R. § 785.38.

comprises 'the period between the commencement and completion on the same workday of an employee's principal activity or activities . . . [,] whether or not the employee engages in work throughout all of that period'") (quoting 29 C.F.R. § 790.6(b)); *Alvarez*, 546 U.S. at 37. For example, "a messenger who works a crossword puzzle while awaiting assignments" or "a factory worker who talks to his fellow employees while waiting for machinery to be repaired" is considered to be working, even if the employee is "allowed to leave the premises or the job site during such periods of inactivity." 29 C.F.R. § 785.15. Similarly, a waiter who must wait during his shift for customers to come in is working. *Brock v. DeWitt*, 633 F. Supp. 892, 895 (W.D. Mo. 1986). And as another example, bathroom breaks and other "rest periods of short duration, running from 5 minutes to about 20 minutes . . . must be counted as hours worked," as such rest breaks "promote the efficiency of the employee." 29 C.F.R. § 785.18; *see Sec'y U.S. Dep't of Lab. v. Am. Future Sys., Inc.*, 873 F.3d 420, 423 (3d Cir. 2017).

The continuous workday doctrine reflects a general presumption that an employee's time within the workday predominantly benefits the employer—and that time outside the workday mainly benefits the employee. It thus historically benefits *both* employers *and* employees. Generally, an employee's time during the workday is compensable, even though it may provide employees with some benefits, whereas outside the continuous workday time is generally not compensable even though it may provide employers with some benefits.[20] This approach is a sensible alternative to restricting the application of the FLSA during the workday only to the precise time that the employer determines is spent in active, productive, or efficient work. Such a paradigm would encourage ever-increasing monitoring, assessments, recordkeeping, disputes, and litigation. It would also frustrate the purpose of FLSA's basic minimum wage and overtime requirements. *Cf. Sec'y, U.S. Dep't of Labor v. East Penn Mf'g Co.*, 123 F.4th 643, 649 (3d Cir. 2024) (rejecting argument that employer could pay employees only for employer-determined "reasonable" amounts of time spent donning and doffing protective gear).

Like many general principles, there are recognized exceptions to the continuous workday doctrine—both for time spent at an employer's worksite that clearly benefits the employee more than the employer and, concomitantly, time spent away from an employer's worksite (*e.g.*, at a worker's home) that benefits the employer more than the employee. The former is, therefore, excludable from compensable worktime and the latter properly counted as hours worked. Specifically, the Department has recognized off-duty time, defined as "periods during which an employee is completely relieved from duty and which are long enough to enable [an employee] to use the time effectively for his own purposes," and bona fide meal periods as time during the workday that is nonetheless not worktime and thus need not be compensated. 29 C.F.R. §§ 785.16, 785.19. And, of course, any hours worked before or after an employee's regular working hours constitute worktime, even if the work is performed away from the worksite, including at home. 29 C.F.R. § 785.12.

[20] *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, *supra* note 12.

OPINION

We conclude that the home-to-work (or work-to-home) travel in all three of the scenarios you described would not qualify as FLSA-covered "work," as the facts provided indicate that such travel time would be an "ordinary" commute that is a normal incident of employment and thus primarily benefits the employee. We take this opportunity to clarify that, as a general matter, an "ordinary" or "normal" commute represents a third category of time, in addition to off-duty time and bona fide meal breaks, that is not worktime even if it occurs during the continuous workday. Because remote work and "split shifts" between homes and separate work locations have become increasingly prevalent in recent years, we will explain the factors that did—and did not—inform our determination against the history and background above.

As an initial matter, we note that the exclusion of an ordinary commute from worktime does not turn on applicability of the Portal Act. As explained above, the Portal Act was enacted to relieve employers from liability for certain preparatory and concluding activities that the Supreme Court had determined constituted "work." *See Mt. Clemens*, 328 U.S. at 690–91; *Jewell Ridge*, 325 U.S. at 170; *Tennessee Coal,* 321 U.S. at 598. The Portal Act explicitly made such "preliminary" and "postliminary" activities excludable from compensable worktime going forward—but only if they occur "prior to" or "subsequent to" the employee's first and last "principal" activities, respectively. *See Alvarez*, 546 U.S. at 28–29; 29 C.F.R. § 790.6. Thus, for such activities, compensability turns on whether they occur during the workday—in which case they are compensable worktime, consistent with pre-Portal Act case law and the continuous workday principle—or before or after the workday—in which case they are excluded from compensable worktime by the Portal Act.

In contrast, "ordinary home-to-work travel was not viewed as hours worked, even prior to the enactment of the Portal-to-Portal Act." *Johnson v. RGIS Inventory Specialists*, 554 F. Supp. 2d 693, 708 (E.D. Tex. 2007). This is clear from the Court's pre-Portal Act cases, which expressly distinguished the preparatory and concluding activities under consideration from ordinary, unpaid commutes, which were understood not to be "work." *See Mt. Clemens*, 328 U.S at 691 (explaining that walking time from a plant's time clocks to employees' workstations "differed vitally from the time spent in traveling from workers' homes to the factory"); *Jewell Ridge*, 325 U.S. at 166 (noting that miners traveling underground "are unlike the ordinary traveler or the ordinary workman on his way to work"); *Tennessee Coal,* 321 U.S. at 599 & n. 12 (citing cases).

Because the ordinary home-to-work commute has been excluded from FLSA-covered worktime since before Congress enacted the Portal Act, which neither addressed nor changed the law in this regard, the ordinary commute is not subject to the Portal Act's limitation to activities before and after the workday.[21] Consistent with this principle, courts and the Department have recognized

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[21] On occasion, some courts have imprecisely characterized the excludability of an ordinary commute as deriving from the Portal Act, potentially implying that an otherwise-ordinary commute might be compensable but for the Portal Act. *See*, *e.g.*, *United Transp. Union Local 1745 v. City of Albuquerque*, 178 F.3d 1109, 1120 (10th Cir. 1999) (describing "classic commuting-to-work time" as "excluded from compensation by the Portal-to-Portal Act"). While the language "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," 29 U.S.C. § 254(a)(1), certainly reaffirms the excludability of a commute that takes place before or after the workday, nothing suggests that the 80th Congress intended for the Portal Act to transform an

that while excludable commuter travel typically takes place before or after an employee's "regular workday," otherwise-ordinary travel between home and work does not become worktime simply because it occurs during the workday—that is, at some point in between an employee's first and last "principal activities." *See, e.g.*, *Kuebel*, 643 F.3d at 360–61 (administrative duties required to be completed at home at some point in the morning and evening do not cause an employee's commute to be compensable worktime); *Rutti v. Lojack Corp., Inc.*, 596 F.3d 1046, 1059–61 (9th Cir. 2010) (an employee's end-of-day transmission of completed jobs to his employer from home, where the employee had a 12-hour window in which to complete the task, did not cause his earlier commute home to be compensable worktime); WHD Op. Ltr. FLSA2020-19, at 3–6 (explaining that when an employee teleworks for part of the day to accommodate a personal appointment, the travel between the employee's home, office, and personal appointment is not compensable worktime); WHD Op. Ltr., 1999 WL 1002360, at *2 (work activities performed at home do not necessarily turn work-to-home or home-to-work travel into compensable worksite-to-worksite travel).

Rather, when an employee engages in an "ordinary" commute, the commute is simply a "normal incident of employment," and thus is not "work." 29 C.F.R. § 785.35.[22] We therefore confirm here that if home-to-work travel is "ordinary," it need not be paid or recorded as worktime,[23] and we clarify that ordinary home-to-work travel that occurs during the workday constitutes a third category of time during the workday, in addition to bona fide meal breaks and off-duty time, that is not considered "hours worked" under the FLSA. *See* 29 C.F.R. §§ 785.16, 785.19.[24]

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ordinary commute—universally understood before the Portal Act to not be work—into compensable worktime if it occurs during the workday. *See* 29 C.F.R. § 790.6(a) (emphasizing that the Portal Act has "nothing to do with the compensability under the [FLSA] of any activities engaged in by an employee during [the workday]"). Similarly, language in the Division's regulations stating, "An employee who travels from home *before his regular workday* and returns to his home *at the end of the workday* is engaged in ordinary home to work travel which is a normal incident of employment," 29 C.F.R. § 785.35 (emphasis added), does not limit an "ordinary" commute to one that occurs before or after the workday, but merely explains the most common circumstances under which such a commute occurs. Rather, as the concluding sentence in the Division's regulation makes clear, all "*[n]ormal* travel from home to work is not worktime," regardless of whether it occurs outside or during the workday. *Id.* (emphasis added).

[22] *Cf.* 29 C.F.R. § 785.34 (noting that under the Portal Act, while non-commute preliminary and postliminary activities are considered worktime if paid pursuant to contract, custom, or practice, ordinary commutes "need not be counted as hours worked even if the employer agrees to pay for it").

[23] Of course, the employer must keep an accurate record of all "hours worked each workday and total hours worked each workweek," 29 C.F.R. § 516.2(a)(7), which, depending on an employer's recordkeeping practices, could necessitate recording the length or timing of an excluded mid-day commute. While the FLSA does not require any particular form or order of records, employers' records must include all hours each employee actually works each day and each workweek, whether at the worksite or at home.

[24] While some court decisions have suggested or implied that travel in the middle of a workday can only be excluded from worktime if it qualifies as off-duty, *see Rutti*, 596 F.3d at 1060 (speculating that an employee's performance of a principal activity after the evening commute "might support the extension of [compensable worktime] through his travel back to his residence, were it not for" adjacent off-duty time), ordinary commuter travel is best viewed as a standalone category of excludable employee time rather than as a type of "off-duty" time. *See Kuebel*, 643 F.3d at 360 (concluding that work performed before a morning

Conversely, if travel between home and work during the workday is not "ordinary" and occurs under circumstances such that it primarily benefits the employer, the travel falls within the definition of work and is compensable worktime. *Cf. id*. § 785.37 (addressing home-to-work travel for "special assignments" which greatly exceed an employee's "ordinary home-to-work travel").

Having framed these foundational principles, we now consider the scenarios you have posed.[25]

A. Scenario 1

Scenario 1 addresses the treatment of commuter travel (*i.e.*, travel from home-to-work or work-to-home) that an employee chooses to perform in the middle of her scheduled workday in lieu of unpaid commuter travel outside of her scheduled workday. Here, where mid-day commuter travel is offered to employees as an optional alternative to unpaid commuter travel at the beginning or end of their workdays, it functions as a scheduling flexibility for the benefit of the employees and thus may be excluded from employees' recorded worktime like any other "normal" or "ordinary" commute. 29 C.F.R. § 785.35.

In your description of the facts for Scenario 1, you note that avoiding rush hour traffic would significantly reduce the employee's overall commute time, cutting it in half from two hours to one. While this fact vividly illustrates one reason why employees may choose to commute in the middle of their workday, it is not necessary for a mid-day commute to reduce an employee's commute time to be considered ordinary or normal. Instead, it suffices that the timing of such commuter travel is genuinely voluntary, as employees might have any number of reasons to adjust the timing of their daily commutes. For example, an employee might need to remain at home for part of his or her workday due to a sick child or a visit from a maintenance worker during a scheduled appointment window. Because optional mid-day commuter travel allows employees to accommodate such personal needs, it can benefit employees as much or more than commuter travel which occurs at the beginning or end of the workday. Accordingly, voluntary commuter travel which occurs in the middle of the workday remains an ordinary commute and does not qualify as work.

Notably, the employee described here did not engage in personal activities adjacent to her mid-day commuter travel. In this respect, Scenario 1 is distinguishable from the scenarios addressed in WHD Op. Ltr. FLSA2020-19, which involved mid-day home-to-work travel adjacent to personal appointments, such as attending a parent-teacher conference at a child's school or visiting a doctor's office. WHD Op. Ltr. FLSA2020-19, at 1–2. While adjacent off-duty activities (such as those described in FLSA2020-19) certainly would support a conclusion that mid-day commuter

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commute, "on [the employee's] own schedule, does not make his commute time compensable any more than it makes his sleep time or his dinner time compensable").

[25] In your request, you stipulated that the travel time at issue would be for 20 or more minutes, presumably so it could not be characterized as a compensable "rest break." *See* 29 C.F.R. § 785.18 (advising that "[r]est periods of short duration, running from 5 minutes to about 20 minutes . . . must be counted as hours worked"). However, to clarify, there is no minimum time requirement for an ordinary commute to be excludable from worktime. *Id*. § 785.35. Just as a commute before or after the workday is not considered work whether it is 5 minutes or 50, as long as a mid-day commute is "normal" or "ordinary," it is not worktime and thus is excluded from hours worked.

travel is "ordinary" or "normal" in the sense that such travel even more clearly benefits the employee more than his or her employer, adjacent off-duty activities are not required for such a finding. Rather, it is sufficient that the home-to-work or work-to-home travel be voluntary and primarily for the employee's benefit.

B. Scenario 2

Scenario 2 addresses home-to-work travel when an employee volunteers to perform "additional work during the early hours of the morning before leaving" for her "regular shift at the office, instead of coming in early or staying late at the office." In this scenario, nothing about the employee's normal morning commute has changed. Instead, the question is whether a voluntary morning work assignment performed at home transforms subsequent home-to-work travel from an "ordinary" commute into worktime which must be paid. We conclude that it would not.

In this scenario, the employee performs additional work for the employer at home, and the employer, in turn, allows the employee to avoid the inconvenience of an earlier or later unpaid commute.[26] As such, just as in Scenario 1, the fact that the commute happens during the workday, rather than before or after it, takes place at the employee's initiative and predominantly for the employee's benefit. The commute would therefore remain "ordinary" and need not be paid. Although, as noted above, the continuous workday rule reflects a presumption that time falling within the workday is predominantly for the employer's benefit, an employee's performance of additional work at home does not, by itself, transform "[n]ormal travel from home to work" into worktime. 29 C.F.R. § 785.35; *see also* WHD Op. Ltr., 1999 WL 1002360, at *2.

Our conclusion regarding Scenario 2 does not depend on the fact that the additional morning work was voluntary. The employee's 8:00 am commute would still be "normal" if the earlier work was mandatory but the employee chose to perform it at home rather than at the office. After all, on any particular workday, an employer could require an employee to arrive at the office earlier than usual or stay later than usual for extra work, and although such a scheduling demand would both increase the employee's compensable hours worked and affect the timing of the employee's commute, the commute would not be compensable worktime. *See* 29 U.S.C. § 254(a)(1); *cf.* 29 C.F.R. §§ 785.36, 785.37 (addressing extraordinary home-to-work travel where the travel itself is a principal activity). In the scenario described here, by permitting the employee to perform the additional work at home rather than in the office, the employer would be allowing the employee to avoid the inconvenience of an earlier or later (unpaid) commute. As such, the commute would remain "ordinary" or "normal" and primarily for the employee's benefit, and need not be paid.

C. Scenario 3

Scenario 3 describes an employee who uses the city bus to commute to and from the office. Unable to complete his day's work before the last bus leaves, the employee asks the employer if he can catch the last bus and complete his assigned work upon arriving home. In this scenario, as long

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[26] The time spent at home performing additional work for the employer, of course, constitutes compensable hours worked.

the employee is not working while on the bus, his evening work-to-home travel does not qualify as FLSA-covered work.

Here, by granting the employee's request to catch the final bus home and complete his assigned work at home, the employer is avoiding a far more draconian and disruptive alternative where the employee would have to stay late at the office until the assigned work is complete. For example, the employee could be stranded at the office without transportation to get home and might have to make alternative arrangements for dinner and other family or social events, such as having to find another adult to pick up his child from soccer practice. The mid-day commute here thus predominantly benefits the employee by preventing such an outcome.

Accordingly, as under Scenarios 1 and 2, the commute time described in Scenario 3 would qualify as "ordinary" and predominantly benefit the employee, and would not constitute work for purposes of the FLSA.

D. Additional Clarifications

Having determined that the home-to-work and work-to-home travel in the three scenarios you have identified would not be compensable, we add a few points of clarification.

First, we emphasize that nothing in this letter should be construed as a departure from the Department's longstanding positions that (1) travel from worksite to worksite during the workday is compensable, and (2) if an employee is engaged in compensable work during a commute, time engaged in such tasks is compensable. *See* 29 C.F.R. § 785.38, 785.41. Neither of these situations constitutes an "ordinary" home-to-worksite commute. Home-to-work travel is different from "time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday." 29 C.F.R. § 785.38. An employee's "principal activities" are those activities which an employee is "employed to perform," including all activities "integral and indispensable" to such activities. 29 U.S.C. § 254(a)(1); *Integrity Staffing*, 574 U.S. at 35; 29 C.F.R. § 790.8(a). In most cases, an employee is not "employed to perform" his or her daily commute, nor is a commute "integral and indispensable" to an employee's duties. And in the fact patterns presented here, we have concluded that the additional work performed at an employee's house would not change the employee's house into a "job site," or change his or her home-to-work commute into travel that is "part of [the employee's] principal activity," as those terms are used in the regulation. *See* 29 C.F.R. § 790.7(c) (advising that "ordinary daily trips between [an employee's] home or lodging and the actual place where he does what he is employed to do" are not "principal activities," unlike "travel by a repairman from one place where he performs repair work to another such place, or travel by a messenger delivering messages"). Likewise, because you have stipulated that the employee is not working during the commute here, it is distinguishable from "work performed while traveling," which must be counted as worktime. 29 C.F.R. § 785.41.

Second, the analysis and opinion in this letter is strictly limited to ordinary commuter travel between home and work. It should not be read as suggesting that other types of activities during the continuous workday require a detailed primary-beneficiary analysis to determine their status as worktime. Thus, consistent with the Division's longstanding position and well-established case law, we reaffirm that all non-ordinary-commute activities addressed in the Portal Act are worktime if they occur during (not outside) the workday; that rest breaks of up to 20 minutes are always compensable worktime; and that apart from ordinary home-to-work travel, time during the continuous workday is compensable worktime unless it is either a bona fide meal break or off-duty time. *See Alvarez*, 546 U.S. at 37 (walking time to workstation after donning essential safety gear is worktime); WHD Op. Ltr. WH-533, 1991 WL 790604, at *1 (Dec. 16, 1991) (non-ordinary-commute travel by agricultural workers is worktime if preceded by principal activities such as loading or transporting equipment, putting on specialized apparel, receiving instructions, or sharpening knives); *see also* 29 C.F.R. § 785.18 (addressing short rest breaks which are work); *Am. Future Sys., Inc.*, 873 F.3d at 422–23 (same).

Finally, home-to-work travel can be compensable where it is not "ordinary" and primarily benefits the employer. *See, e.g.*, 29 C.F.R. § 785.36 (addressing "home to work in emergency situations"); § 785.37 (addressing home-to-work travel while on special assignment in another city). While we do not attempt to define the precise contours of such travel here, as highlighted in WHD Op. Ltr. FLSA2026-10 (July 22, 2026), there are circumstances under which travel between home and work will not be considered ordinary, including where the travel and the timing thereof are both dictated by the employer and impose such significant constraints on the employee's time before, after, or during the travel that the travel becomes predominantly for the employer's benefit and not the employee's. Provided that such travel is not separately excluded from compensability under the Portal Act, it would be compensable. *See id*.

CONCLUSION

We conclude that any time employees spend traveling between their home and their primary worksite within a workday may be excluded from recorded worktime, as long as such travel is otherwise a "normal" or "ordinary" commute that primarily benefits the employee. Because all three of the scenarios described in your letter fit that description, your client would not have to treat such commuter travel as compensable worktime.

To reiterate, longstanding case law and the Division's regulations and guidance pertaining to travel time, *see, e.g.*, 29 C.F.R. § 785.33, contemplate that normal commuter travel is not properly treated as worktime. This principle is well-established, having been codified in the Department's regulations for more than 70 years. *See* 20 Fed. Reg. 9963, 9966–67 (Dec. 24, 1955). In recent years, common understanding of what constitutes a "normal" or "ordinary" commute has expanded, as growing numbers of employees—particularly employees who are FLSA-exempt (*e.g*, exempt executive, administrative, or professional employees)—enjoy the flexibility to start or finish a portion of their workday from home. We affirm here that extending such flexibility as a benefit to non-exempt employees does not require employers to pay for employees' ordinary commutes simply because their commutes occur in the middle of the workday.

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 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.*

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.