U.S. Department of Labor Wage and Hour Division
Washington, D.C. 20210

FMLA2026-3

November 17, 2026

Dear **Name***:

This letter addresses your questions regarding employee eligibility under the Family and Medical Leave Act (FMLA or Act) and the proper determination of the hours of service for a school district employee who travels between worksites and works additional time outside of her scheduled daily hours.

For the reasons set forth below, time the employee spends working outside of scheduled work hours on mandatory work tasks counts toward the FMLA's hours-of-service requirement. Additionally, it is likely that the time the employee spends traveling from worksite to worksite is hours worked and, therefore, also counts toward the hours-of-service requirement. Finally, please note that if an employer has not kept accurate records of an employee's actual hours worked, the employer has the burden of showing the employee has not met the hours of service for eligibility under the Act.

BACKGROUND

You represent that you are an occupational therapist who works in a public school system and are paid on a salary basis. You work a seven-hour scheduled day. Outside of, and in addition to, that schedule, however, you spend additional time on mandatory tasks, including Individualized Education Program (IEP) assessments and documentation,[1] quarterly progress reporting, and

[1] For context, IEP assessments and documentation outline the special education services, supports, and goals for a student with physical or intellectual disabilities and are necessary for complying with requirements for receipt of federal funds for the education of these children. *See A. J. T. ex rel. A. T. v. Osseo Area Schs., Indep. Sch. Dist. No. 279*, 605 U.S. 335, 339–40 (2025). After laying groundwork in the Education of the Handicapped Act, Pub. L. 91-230, tit. VI, 84 Stat. 121, 175 (1970), and other overlapping statutes, Congress enacted the Education for All Handicapped Children Act of 1975, Pub. L. 94-142, 89 Stat. 773. *See Osseo*, 605 U.S. at 339 (discussing panoply of statutes affording "diverse" protections for children with disabilities in public schools). Reauthorized in 1990, the statute took a new name: the Individuals with Disabilities Education Act (IDEA). *See* Pub. L. 101-476, 104 Stat. 1142, as amended, 20 U.S.C. §§ 1400 *et seq.* Congress has reauthorized and amended the IDEA since, including in 1997 and 2004. *See, e.g.*, Pub. L. 105-17, 111 Stat. 37; Pub. L. 108-446, 118 Stat. 2647. The IDEA "offers federal funds to States in exchange for a commitment[] to furnish a 'free appropriate public education'—more concisely known as a FAPE—to all children with certain physical or intellectual disabilities." *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 158 (2017); 20 U.S.C. §§ 1401(9), (26), (29). A state's acceptance of IDEA funds bestows this "substantive right" to such an education on children living within the state. *Fry*, 580 U.S. at 158; *Smith v. Robinson*, 468 U.S. 992, 1010 (1984). Generally, the FAPE is a "requirement that the education to which access is provided be sufficient to confer some educational benefit" to a child with disabilities. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 200 (1982). This includes "'special education and related services'—both 'instruction' tailored to meet a child's 'unique needs' and sufficient 'supportive services' to permit the child to benefit from that instruction." *Fry*, 580 U.S. at 158 (quoting 20 U.S.C. §§ 1401(9), (26), (29)). This individualized tailoring

required travel to different worksites (*i.e.*, schools). You maintain that your supervisors are aware that you have performed, and are performing, the required assessments and documentation outside your seven-hour scheduled day. Additionally, you state that time you spend traveling between schools is excluded from your scheduled hours, and that neither you nor your employer keeps a record of your time spent in such travel, or performing follow-up or related work at home.

You ask whether time spent working on IEPs and progress reports outside your seven-hour scheduled day, as well as the time spent traveling between schools, should be counted towards hours of service for determining FMLA eligibility for a school-based occupational therapist.

GENERAL LEGAL PRINCIPLES

A. The Family and Medical Leave Act

1. FMLA Entitlement

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons while continuing group health insurance coverage under the same terms and conditions as if the employee had not taken leave. *See* 29 U.S.C. §§ 2612–2614. Covered employers include private-sector employers who employ 50 or more employees in 20 or more workweeks in either the current calendar year or the preceding calendar year, public agencies (including federal, state, and local government employers), local educational agencies (including public elementary and secondary schools and school boards), and private elementary and secondary schools. *See id.* §§ 2611(4), 2618(a).

2. FMLA Eligibility

Employees who work for a covered employer are eligible for FMLA leave if they have worked for their employer for at least 12 months, work at a worksite where the employer has at least 50 employees within 75 miles, and have at least 1,250 hours of service with the employer during the 12 months before their FMLA leave starts. *Id.* § 2611(2)(A)–(B); *see also* 29 C.F.R. § 825.110(a).

For purposes of determining whether an employee meets the hours-of-service requirement under the Act, the standards for compensable hours worked under section 7 of the Fair Labor Standards Act (FLSA) apply.[2] 29 U.S.C. § 2611(2)(C); *Id.* § 207; *see also* 29 C.F.R. § 825.110(c)(1) ("The

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is critical. *See Hendrick Hudson*, 458 U.S. at 200–01 ("It would do little good for Congress to spend millions of dollars in providing access to a public education only to have the handicapped child receive no benefit from that education"). The "primary vehicle" for delivering a FAPE to each child is an "individualized education program." *Fry*, 580 U.S. at 158 (citing *Honig v. Doe*, 484 U.S. 305, 311 (1988)). "Crafted by a child's 'IEP Team'—a group of school officials, teachers, and parents—the IEP spells out a personalized plan to meet all of the child's 'educational needs'" and also "documents the child's current 'levels of academic achievement,' specifies 'measurable annual goals' for how she can 'make progress in the general education curriculum,' and lists the 'special education and related services' to be provided" so that the child "can 'advance appropriately toward [those] goals.'" *Id.* at 158–59 (quoting 20 U.S.C. §§ 1414(d)(1)(A)(i)(I), (II), (IV), (d)(1)(B)).

[2] Airline flight crew employees have special hours-of-service eligibility requirements pursuant to 29 U.S.C. § 2611(2)(D).

determining factor is the number of hours an employee has worked for the employer within the meaning of the FLSA. The determination is not limited by methods of recordkeeping, or by compensation agreements that do not accurately reflect all of the hours an employee has worked for or been in service to the employer"); *Mutchler v. Dunlap Mem'l Hosp.*, 485 F.3d 854, 857–59 (6th Cir. 2007) (applying these authorities in evaluating an hours-of-service challenge).

3. FMLA Recordkeeping Requirements

The FMLA requires employers to keep and preserve records in accordance with section 11(c) of the FLSA and regulations issued by the Secretary of Labor under the FMLA. 29 U.S.C. §§ 211(c), 2616(b); 29 C.F.R. § 825.500. When a question arises regarding whether an employee has the requisite hours of service to be eligible for FMLA leave, the Division refers to the employer's records showing the number of hours worked by the employee. 29 C.F.R. §§ 825.110(c), 825.500. In most cases, the employer records confirm an employee's eligibility or ineligibility for FMLA leave.

If, however, the employer's records of the hours worked by an employee are inaccurate or otherwise do not resolve whether the employee has worked the requisite number of hours, the employer bears the burden to demonstrate that the employee is not, in fact, eligible for FMLA leave—that is, has not worked the necessary hours. *Id.* § 825.110(c)(3). If an employee is not covered by the FLSA such that the employer is not obligated to maintain records concerning hours worked for that employee, FMLA eligibility is presumed if the employee has been employed for 12 or more months.[3] *Id.* § 825.500(f). The employer's burden "is not heavy, but it is specific" in that the employer must show that either the hours alleged to have been worked outside the workplace or at an employee's home did not or could not have occurred or the hours alleged are not compensable under the FLSA. *See Donnelly v. Greenburgh Cent. Sch. Dist. No. 7*, 691 F.3d 134, 143 (2d Cir. 2012) (citing *Staunch v. Continental Airlines, Inc.*, 511 F.3d 625, 627–28 (6th Cir. 2008)). Moreover, the burden is not confined to employees who are nonexempt under the FLSA but instead applies even to employees who are exempt from the requirement that a record be kept of their hours worked; for example, bona fide executive, administrative, and professional employees as defined in FLSA regulations at 29 C.F.R. part 541. *See Donnelly*, 691 F.3d at 142 (approvingly quoting 29 C.F.R. § 825.110(c)).

B. The Fair Labor Standards Act

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(a), 207(a).[4] The FLSA

[3] For purposes of the FMLA's eligibility requirements, an employer is not required to keep a record of the employee's actual hours worked for any employee who is not subject to the FLSA recordkeeping requirements because such an employee is not covered by (or is otherwise exempt from) the FLSA. *See* 29 C.F.R. § 825.500(f).

[4] Although you note that you are paid on a salary basis, you do not indicate whether you are classified as exempt under the FLSA or provide enough information to determine whether you meet the other tests required for exemption under section 13(a)(1)—which exempts from the FLSA's minimum wage and overtime requirements "any employee employed in a bona fide executive, administrative, or professional

broadly defines the term "employ" to include "to suffer or permit to work." *Id.* § 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 *benefiting from*, and even to *refraining from interfering with*, *preventing*, or *stopping*, work by its employees. *See* WHD Op. Ltr. FLSA2026-9 (July 22, 2026) (discussing history of "hours worked" under the FLSA); WHD Op. Ltr. FLSA2026-10 (July 22, 2026) (detailing "suffer or permit" standard). Generally, as long as an employer knows or has reason to believe that its work is being performed, the time spent performing such work constitutes "hours worked" for FLSA purposes, even if the work is not expressly assigned, requested, or required. *See* 29 C.F.R. § 785.11; WHD Op. Ltr. FLSA2026-10; *Craig v. Bridges Bros. Trucking LLC*, 823 F.3d 382, 388 (6th Cir. 2016); *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)); *see also* WHD Field Assistance Bulletin No. 2020-5 (Aug. 24, 2020) ("Employers' obligation to exercise reasonable diligence in tracking teleworking employees' hours of work"). This includes tracking work performed off-site (*e.g.*, at the employee's home). *See, e.g.*, *Holzapfel v. Town of Newburgh*, 145 F.3d 516, 524 (2d Cir. 1998); 29 C.F.R. §§ 785.11–.12; WHD Op. Ltr. FLSA 2009-15 (Jan. 15, 2009); WHD Op. Ltr. FLSA-1112 (Aug. 11, 1993); WHD Op. Ltr., 1985 WL 1087351 (Dec. 30, 1985).

Time spent in normal commuting from home to work and vice versa is excluded from recorded worktime and is not compensable hours worked. 29 C.F.R. § 785.35; WHD Op. Ltr. FLSA2026-9; *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."). Unlike ordinary commuting time, however, 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. *See* 29 C.F.R. § 785.38; WHD Op. Ltr. FLSA2026-10; *United Transp. Union Local 1745 v. City of Albuquerque*, 178 F.3d 1109, 1119 (10th Cir. 1999) (finding time spent traveling to and from relief points to be travel time that is part of an employee's principal activity); *Sec'y of Labor v. Nursing Home Care Mgmt., Inc.*, 128 F.4th 146, 154 (3d Cir. 2025) ("[T]he travel time necessary to travel between job sites is integral and indispensable to a principal activity and is compensable") (internal quotation marks omitted).

OPINION

Based on the facts you have provided and the principles recounted above, we conclude that the hours you spend on mandatory work tasks outside of scheduled work hours must be counted as hours of service for determining FMLA eligibility. In addition, while we lack sufficient information for a definitive conclusion, it appears that the time you spend traveling between schools during the workday counts toward the hours-of-service requirement.

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capacity[.]" 29 U.S.C. § 213(a)(1). Accordingly, we do not make a determination regarding your exempt status. We note, however, that the analysis and opinion in this letter are the same regardless of whether you are an exempt learned professional under section 13(a)(1) of the FLSA.

A. Does time spent on IEPs and quarterly progress reports count as hours of service for purposes of determining FMLA eligibility?

You ask whether time spent outside your scheduled day performing the mandatory responsibilities and tasks of your position as a school-based occupational therapist, such as IEP assessments and documentation and drafting progress reports, must be counted as hours of service under the FMLA. Your employer is aware of these responsibilities and expects you to perform these mandatory tasks outside of scheduled hours.

Based on these representations, we conclude that within the meaning of the FLSA your employer "suffers or permits" work you perform outside of your scheduled hours. As the Division has long made clear, "[w]ork not requested but suffered or permitted is work time." 29 C.F.R. § 785.11. This principle applies equally to work performed away from the employer's worksite or premises, including work performed at an employee's home. *See id.* § 785.12. "If the employer knows or has reason to believe that the work is being performed, he must count the time as hours worked." *Id.* Here, your employer knows that you are performing this work. As a result, it constitutes hours worked under the FLSA and, therefore, also counts as hours of service under the FMLA.

B. Does time spent traveling from worksite to worksite during the workday constitute hours worked such that it must be counted as hours of service under the FMLA?

You also ask whether time spent traveling between schools during the workday counts as hours of service under the FMLA. Under the FLSA, time 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. *See id.* § 785.38. Although your letter does not provide enough detail about your worksite-to-worksite travel for the Division to analyze this issue definitively, based on the information provided it is likely that your travel time during the workday is part of your principal activity and is, therefore, "hours worked" under the FLSA. Again, because this time constitutes hours worked, it counts toward the 1,250 hours-of-service requirement under the FMLA.

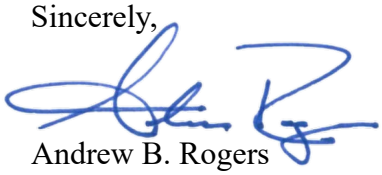
This analysis is the same where, as here, neither you nor your employer tracks the hours you work outside of scheduled work hours. This is because if an employer does not keep accurate records of an employee's actual hours worked, the employer has the burden of showing that the employee does not meet the hours-of-service requirement. *See id.* §§ 825.110(c)(3), 825.500(f). While record requirements under the FLSA differ for exempt and nonexempt employees, *see* 29 C.F.R. §§ 516.2, 516.3, the employer bears the burden for both exempt and nonexempt employees to demonstrate that an employee has not worked the requisite hours for FMLA eligibility by showing either that the hours alleged to have been worked outside the workplace could not have occurred or the hours alleged are not compensable under the principles established under the FLSA. *See id.* § 825.110(c)(3); *Donnelly*, 691 F.3d at 143 (citing *Staunch*, 511 F.3d at 627–28).

The Department's regulations helpfully illustrate the interplay between hours worked and recordkeeping principles in the context of a schoolteacher. In describing a situation where the employer does not maintain accurate records of hours worked, the regulations state that "[a]n employer must be able to clearly demonstrate, for example, that full-time teachers . . . (who often work outside the classroom or at their homes) did not work 1,250 hours during the previous 12

months in order to claim that the teachers are not eligible for FMLA leave." 29 C.F.R. § 825.110(c)(3); *see also Donnelly*, 691 F.3d at 142; *Staunch*, 511 F.3d at 627–28; *Phillips v. Jackson Pub. Sch. Dist.*, 2023 WL 7414484, at *9 (S.D. Miss. 2023). Similarly, the fact that you performed some of your work at home does not provide a basis for excluding such hours from meeting the hours-of-service requirement.

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).** The requester represents that he or she does 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.