When Does the Commute Count? What Two New DOL Opinion Letters Mean for Flexible Schedules

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Employers have been asking a version of the same question for years: If we let employees split their day between home and the office, or let a field employee handle calls before getting in the car, are we suddenly on the hook to pay for the drive? On August 6, 2026, the Department of Labor's Wage and Hour Division answered that question twice, in two opinion letters (FLSA2026-9 and FLSA2026-10) that reach opposite conclusions on similar facts. Read together, they give employers a genuinely useful roadmap for structuring flexible and hybrid schedules without accidentally converting an employee's commute into paid working time under the Fair Labor Standards Act.

The Employee's Choice: Mid-Day Commuting Stays Unpaid

The first letter deals with a familiar hybrid-work scenario. Employees want to work part of the day from home and part from the office, timing their drive to dodge rush hour rather than sitting in traffic during the worst of it. The employer worried that under the FLSA's continuous workday doctrine, once an employee clocks in for the day, any travel before clocking out again becomes compensable, even if it is really just a commute that happens to fall in the middle of the day rather than at the beginning or end.

WHD said no. When the employee decides when to travel and that decision is driven by personal preference rather than any work demand, the trip remains what it has always been: an ordinary commute. It does not matter that it happens mid-shift. The agency went further and effectively created a third bucket of non-compensable time that exists alongside off-duty periods and bona fide meal breaks: voluntary, employee-driven travel that falls inside the continuous workday but outside the definition of "hours worked."

This is a meaningful win for employers trying to offer real flexibility. It confirms that letting people avoid gridlock, or duck out mid-afternoon to handle something at home before logging back in later, does not by itself create new wage exposure.

The Employer's Control: Travel Bookended by Required Work Gets Paid

The second letter tells a different story, and the contrast is the point. Here, a field service engineer with no fixed office spends up to an hour most mornings on the phone, fielding pages, and scheduling appointments with clients and colleagues, before ever leaving the house in a company vehicle to reach the first job. WHD found that the scheduling calls themselves are compensable because they are integral to the engineer's actual job of installing and servicing equipment. More importantly for scheduling purposes, the drive that follows is compensable too, because the employer requires substantial work immediately before and immediately after the travel, and because the employer, not the employee, controls when and how that travel occurs.

Notably, WHD drew a line even within this letter. Simply receiving pages during the drive was treated as incidental to using an employer-provided vehicle and did not, by itself, trigger compensability. The dividing line the agency keeps returning to is not the mere presence of a phone or a laptop during the commute; it is whether the employer is dictating the timing of the trip and sandwiching it between required work.

Reading the Two Letters Side by Side

Both opinion letters apply the same "primary beneficiary" framework that has guided FLSA travel-time analysis for decades, and both reach different results because of who is actually calling the shots. Where the employee sets the schedule, and the travel serves the employee's own convenience, the trip stays an ordinary, unpaid commute even if it happens smack in the middle of a workday. Where the employer sets the schedule and requires real work on both ends of the drive, the travel loses its status as an ordinary commute and becomes paid time.

What This Means for Employers Right Now

For employers running hybrid schedules, offering flexible start and end times, or managing a field-based workforce, these letters offer something rarer than most agency guidance: a clear, factor-based test that can actually be built into policy. The safest ground is genuine employee choice over the timing of travel, paired with no requirement to perform work immediately before or after the drive. The moment an employer starts dictating when someone has to leave, or requiring calls, paperwork, or scheduling tasks right up against the commute, the analysis shifts and the travel time risk goes up.

It is worth remembering that opinion letters are not binding law, but they do carry real practical weight. An employer who structures a policy consistent with an opinion letter and later faces a Fair Labor Standards Act claim on the same facts has a strong argument against a finding of willfulness, which can matter enormously for liquidated damages and the statute of limitations. It is also worth remembering that these letters interpret federal law only. A number of states impose stricter rules on what counts as compensable travel time, so any policy built around this guidance still needs to be checked against state law before it is rolled out.

Employers revisiting hybrid work policies, flexible scheduling, or field employee protocols in light of this guidance should take a close look at who actually controls the timing of the commute and what, if anything, employees are required to do immediately before or after they get in the car.