

On the road again: Compensating work-related travel

By Dan Eaton

August 15, 2022 | 6:00 AM PT

After limiting work-related travel due to the pandemic, many employers are sending their employees to out-of-town sales meetings, conferences, and trainings. Here are the rules of the road for compensating California employees for work-related travel.

Non-exempt employees must be compensated for employer-mandated travel time

Employees exempt from overtime rules, such as executives, professionals, and high-level administrators, are paid a set salary of at least twice the state hourly minimum wage to perform their duties, however long it takes. They are not entitled to extra compensation for traveling on business.



(San Diego Union-Tribune)

Under the governing state wage orders, non-exempt employees, whether paid by the hour or by salary, are entitled to be paid for all “hours worked,” including “the time during which an employee is subject to the control of an employer. ...” That includes time spent on employer-mandated travel.

DLSE guidance on compensating work-related travel

In 2002, the California Division of Labor Standards Enforcement (DLSE) issued opinion letter 2002.02.21, whose guidance was later incorporated into the agency’s enforcement manual, reviewing the legality of an employer policy that provided that “Time spent traveling as a passenger on a plane, train, bus, car, or taxicab to a business destination outside [an employee’s] normal business hours is not considered to be paid time.” The DLSE concluded the policy violated California law, even if it might pass partial muster under the less demanding federal wage rules.

“Under state law, if an employer requires an employee to attend an out-of-town business meeting, training session, or any other event, the employer cannot disclaim an obligation to pay for the employee’s time in getting to and from the location of that event. Time spent driving, or as a passenger on an airplane, train, bus, taxi cab or car, or other mode of transport, in traveling to and from this out-of-town event, and time spent waiting to purchase a ticket, check baggage, or get on board, is, under such circumstances, time spent carrying out the employer’s directives, and thus, can only be characterized as time in which the employee is subject to the employer’s control. Such compelled travel time therefore constitutes compensable ‘hours worked.’”

According to the DLSE, that does not mean every hour an employee spends away on employer-required travel is compensable. “[T]ime spent taking a break from travel in order to eat a meal, sleep, or engage in purely personal pursuits not connected with traveling or making necessary travel connections (such as, for example, spending an extra day in a city before the start or following the conclusion of a conference in order to sightsee), is not compensable.”

Employer may establish lower rate of compensation for travel before it occurs

The DLSE allows an employer, by policy or contract, to “establish a separate rate for travel before the work is performed, provided that no rate of pay can fall below the state minimum wage. Under state law, the obligation to pay no less than the minimum wage attaches to each separate hour, or part of each hour worked.”

All employees must be reimbursed for reasonably necessary work-related travel expenses

California Labor Code section 2802 requires an employer to reimburse exempt and non-exempt employees alike for all necessary expenses incurred in connection with employer-required travel.

Employers often reimburse employees who drive out-of-town for business at the mileage rate set by the U.S. Internal Revenue Service rather than for all expenses the employee actually incurs in driving. In June, the IRS announced an unusual mid-year increase in the business-related mileage reimbursement rate from 58.5 cents to 62.5 cents effective July 1 through the end of the year to reflect the recent increase in fuel prices.

Limits on employer duty to pay work-related travel costs

Non-exempt employees must be paid for business travel that an employer requires, not business travel that an employee elects to take, such as for an enrichment seminar the employee chooses to take to make himself or herself a better employee. And an employer must reimburse “necessary” travel-related expenses, not discretionary extras like seat or room upgrades. Along with the ability to set a lower compensation rate in advance for hours spent traveling for business, these limits give employers some control over their travel budgets.

Dan Eaton is a partner with the San Diego law firm of Seltzer Caplan McMahon Vitek where his practice focuses on defending and advising employers. He also is an instructor at the San Diego State University Fowler College of Business where he teaches classes in business ethics and employment law. He may be reached at eaton@scmv.com. His Twitter handle is [@DanEatonlaw](https://twitter.com/DanEatonlaw).