

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT

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April 22, 2003

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**Re: Travel Time Pay For Employee With
Alternative Worksites** (00107)

Dear Ms. Dermenjian:

Anne Stevason, Chief Counsel of the Division, has asked me to respond on behalf of the Division of Labor Standards Enforcement to your letter requesting an opinion on the above-referenced subject.

You set out the following facts:

"We represent a client with an employee who alternates work sites by spending five days in Bakersfield, where he resides, and then five days at the Palmdale work site. It is an approximate hour and a half drive each way from Bakersfield to Palmdale. therefore, each day the employee works in Palmdale, he drives to and from the Palmdale site and incurs three hours of travel time. The employee does not drive from the Bakersfield work site directly to the Palmdale work site, but rather leaves directly from his home. the employee is non-exempt and is entitled to overtime pay for overtime worked. the employee drives a vehicle furnished by the company but the employee does not transport any significant materials from one work site to the other."

You ask the DLSE to address the issue of whether the employee is entitled to compensation for time spent traveling from Bakersfield to Palmdale and back.

We note that the nature of the employment is not discussed in the fact scenario you have submitted. We will, therefore, discuss the issue in broad terms and allow you to apply the DLSE

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enforcement posture to your client's situation.

THE NATURE OF THE OCCUPATION, REASONABLE EXPECTATIONS:

The California Supreme Court addressed the issue of travel time in the case of *Morillion v. Royal Packing* (2000) 22 Cal.4th 575, 587. The Court held that it was necessary to "distinguish between travel that the employer specifically compels and controls...and an ordinary commute that employees take on their own." (Emphasis added) The Court in *Morillion* concluded that farm workers who were required to meet at designated departure points at a certain time to ride the employer's buses to work were under the control of the employer and entitled to be compensated for that time. The Court also noted, of course, that "[T]his conclusion should not be considered as holding that all travel time to and from work, rather than compulsory travel time as defined above is compensable."

The question then becomes: What is "compulsory" travel time and what is "an ordinary commute"? DLSE has taken the position that travel involving a substantial distance from the assigned work place to a distant work site to report to work on a short-term basis is compensable travel time.

The travel time is measured by the difference between the time it normally takes the employee to travel from his or her home to the assigned work place and the time it takes the employee to travel from home to the distant work site. This could calculate to no commute time if, for instance, the travel time is less from the employee's home to the distant work site than the normal commute travel time by the employee.

A long-term transfer to a different work site (no matter how distant) would raise different issues involving expenses and travel time which are not addressed in this letter.

The DLSE has recognized, also, that some employees in certain occupations, by the nature of the industry and the occupation, are not assigned to a specific workplace and have a reasonable expectation that they will be routinely required to travel reasonable distances to job sites on a daily basis. Primary examples would be found in the construction industry where the employer only offers employment to some employees in certain occupations at the current building site, not the employer's offices, shop or other fixed place of business. Certain other workers, for instance, those in the entertainment and movie industries working in short-term employment situations where the site of the work changes, could

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also be included. This list is not inclusive and there may be other occupations which would be subject to these exceptions.

Note, too, that not all employees in any given occupation in a particular industry would necessarily be included among those "not assigned to a specific workplace and routinely required to travel reasonable distances to job sites on a daily basis".

For instance, a carpenter employed by a contractor to perform framing work would, under normal circumstances, have an expectation that he or she was to report for work at the job site the contractor is currently working. If this is the routine, the framing carpenter could not expect to be paid for the time commuting from his home to the job site if that job site was within a reasonable distance. This would be so as a result of the fact that framing carpenters typically report in this fashion and do not have a specifically assigned workplace. Any travel by the framing carpenter required by the employer during the workday would, of course, be compensated travel time.

If the same contractor employed a finish carpenter who built cabinets in the contractor's shop, the finish carpenter has a specific assigned workplace: the contractor's shop. In the event the finish carpenter was assigned to install the cabinetry at a worksite, that employee would be entitled to travel time. Again, as explained above, the travel time would be measured by the difference between the normal time it took to reach the shop from home and the same time from the worksite to home.

It is also recognized that a construction employer may be forced, by normal business circumstances, to accept construction contracts in distant areas. If the employer requires the employee to travel to that distant work site, the time is compensable. The amount of time compensable is measured as described above by the difference between the normal commute and the time to the new location.

Thus, even in those instances where there is a reasonable expectation that the occupation would require some travel, unreasonably extended travel could be compensable depending on the surrounding circumstances. Also, if the travel involved the employee being required to deliver any equipment, goods or materials for the employer, the travel, no matter how extended, would be compensable.

Employees such as those described above are in unique situations. Normally, the DLSE does not consider these employees to be in the same category as workers who are, by the nature of their

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occupation, normally assigned to a specific work location or who report to, or headquarter in, a specific work location.

For this reason, DLSE has taken the position that an office worker assigned to a given location may not be required to report to a distant location on a day-to-day basis.

Indeed, DLSE has concluded that in the event an employee with a fixed and assigned workplace is required, on a short-term basis, to travel anything more than a *de minimis* distance to report to work at a place other than an employee's usual work place, the employee is entitled to be compensated for the additional time measured by the difference in the time normally required to travel between the employee's home and the regularly assigned workplace and the time between home and the temporary worksite. It should be noted that this calculation is expressed in "time" and not distance. This is because traffic patterns, of course, vary from location to location and travel times for the same distance would likewise vary.

The question has also been asked concerning the right to travel time for a clerical employee who is "transferred" to a job site for the duration of a project and, after completion of that project, the clerical employee may be "transferred" to another job site.

The DLSE concluded that so long as each of the transfers was for more than one month, each of these job sites, in turn, would be assigned workplaces for that employee. Travel to the employee's new location would, therefore, be "an ordinary commute". This conclusion was based on the fact that every employer has the right to "transfer" a position of an at-will employee. Barring any contractual obligation, the employer is not required to compensate the employee further.

Among the issues not addressed in this letter are those involving expense reimbursement for travel and the result of any extended travel requirements on the employee's right to quit the employment and still be entitled to unemployment compensation. Any issues involving expenses would be subject to the provisions of Labor Code § 2802.

In addition, issues involving the right of the employee to unemployment compensation benefits as a result of voluntarily quitting due to increased travel requirements are subject to the

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jurisdiction of the Employment Development Department¹ and are not addressed in this letter.

We hope the information provided here will allow you to make an informed determination regarding the obligation of your client toward the employee who drives from Bakersfield to Palmdale.

Thank you for your continued interest in California labor law.

Yours truly,

H. THOMAS CADELL, JR.
Attorney for the Labor Commissioner

c.c. Arthur Lujan, State Labor Commissioner
Tom Grogan, Chief Deputy Labor Commissioner
Anne Stevason, Acting Chief Counsel
Assistant Labor Commissioners
Regional Managers

¹"Analysis of...cases...decided shows that no definite standards or criteria may be established. Although we have held that 30 and 45 miles are excessive, distance and cost to and from work must be considered in light of the commuting pattern of any given community, including the feasibility of public transportation. Travel time may similarly be viewed as to that which is normal. ...Additional factors may also be relevant and require consideration. Specifically, the age and physical condition of the claimant which may well affect the safety with which he travels." EDD Board Decision, P-B-245.

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