

Employee Information Bulletin 01-03

Date: March 23, 2001

To: All U.S. Fish and Wildlife Service Employees

Subject: Compensation for Travel Time during Non-duty Hours

The purpose of this bulletin is to clarify current regulatory guidance regarding compensation for employees who travel during non-duty hours as it is important to maintain consistency throughout the Service when applying the applicable laws, rules, and regulations. If you travel on official business or direct employees to do so, this bulletin is of significant interest to you. Supervisors and managers, as the approving officials of employees' time and attendance, are responsible for knowing whether or not an employee must be compensated for time spent traveling during non-duty hours away from the duty station.

You should review the Service manual chapter, [225 FW 7](#), for explicit, written guidance regarding the subject. This chapter provides information and exhibits to assist in the determination of overtime pay and compensatory time off as well as guidance on the documentation required for the approval of premium pay.

You must remember that a decision to compensate an employee (either by paying overtime or earning compensatory time) for work outside of duty hours is **never** optional. Either the employee is entitled to compensation for such work, or he/she is not. Entitlement to compensation for work performed outside regularly scheduled duty hours is explicitly spelled out, and there is no authority to compensate employees for such work except where specifically authorized by applicable law or regulation.

The rules regarding payment of Fair Labor Standards Act exempt employees (employees not covered by the FLSA) for travel during non-duty hours are different than the ones that apply to FLSA nonexempt employees (employees covered by the FLSA). Therefore, it is crucial that you know your FLSA exemption status (and that of each of your employees, if you are a supervisor). An employee's FLSA status is documented in block 35 of the latest SF-50, Notification of Personnel Action. Your administrative staff and your servicing personnel office can also provide this information to you.

You need to be aware that **if an activity does not qualify as overtime work, you cannot earn compensatory time for engaging in it.** You **cannot** be granted compensatory time for travel outside of your regularly scheduled duty hours unless that travel time qualifies as overtime work.

FLSA Exempt Employees

Under 5 CFR 550.112(g), to receive payment (including overtime or compensatory time) while in a travel status, the travel has to be considered employment. To be considered employment, one of the following criteria must be met:

- The travel is within the employee's regularly scheduled duty hours;
- The travel involves the performance of actual work while traveling;
- The travel is incident to travel that involves the performance of work while traveling. (This provision is very restrictive. An example of a situation where a supervisor must approve overtime is for an employee who is conducting a mobile surveillance during non-duty hours. The actual work is conducting the surveillance, and the travel cannot be separated from the work. Another example is an employee whose job it is to transport fish from one location to another. The work of transporting the fish cannot be separated from the travel. Compensation is not allowable for an employee who travels as a passenger during non-duty time and who performs work on a laptop, reads work-related material, prepares for a training session, etc., while traveling.);
- The travel is carried out under such arduous and unusual conditions that the travel is inseparable from work. (This provision almost never includes travel by automobile or common carrier or on paved road. The conditions must be unusually adverse. It is not sufficient that you encounter heavy traffic, bad weather, or long delays.); or,
- The travel results from an event which could not be scheduled or controlled administratively, including the employee's travel to the event and his/her return to the official duty station. (The term "administratively uncontrollable" means that the Federal Government had no part in planning the event or had no opportunity for input in its planning. If the event is co-sponsored by an agency (or agencies) of the Federal Government, it is deemed to be administratively controllable.)

Please note that **it is extremely rare for an exempt employee to be eligible for compensation (overtime or compensatory time) for travel time outside of his/her regularly scheduled tour of duty.** When an FLSA-exempt employee travels within the confines of his/her official duty station, there is no provision for compensating the employee if the travel is conducted outside of regularly scheduled duty hours.

FLSA Nonexempt Employees

Under 5 CFR 551.422, time spent traveling **must** be considered hours of work and, therefore, appropriately compensated if an employee is required to:

- Travel during regular working hours;
- Drive a vehicle or perform other work while traveling;
- Travel as a passenger on a one-day assignment **away from** the official duty station; or,
- Travel as a passenger on an overnight assignment away from the official duty station during hours on non-workdays that correspond to the employee's regular working hours.

Whereas it would be extremely rare for an exempt employee to be compensated for travel time on a Saturday or Sunday (traditional non-workdays), it would be routine to compensate a nonexempt employee who is required to travel on a Saturday or Sunday when the employee travels during hours that correspond to his/her regular working hours.

Travel to NCTC

Servicing personnel offices report that they receive a considerable number of inquiries concerning travel to classes that are provided at NCTC and start on Monday morning and/or end on Friday. Because the training is provided by NCTC (a government agency), it is considered to be an administratively controllable event, and, therefore, is not compensable for exempt employees who travel to attend such a class during non-duty hours, but **is** compensable for nonexempt employees when they travel on a non-workday during hours that correspond to their regularly scheduled duty hours.

Meal Periods

You should also be reminded that meal periods are deducted from work when determining overtime. A meal period is an approved period of time in a non-pay and non-work status that interrupts a basic workday or a period of overtime work for the purpose of permitting employees to eat or engage in personal activities, and, therefore, is not compensable hours of work.

Requirement to Travel during Non-duty Hours

It is incumbent upon supervisors and managers, to the extent possible, not to require an employee to travel during non-duty hours because when doing so, they may require an employee to spend time away from home with no way of compensating the employee for that time. However, there are times when a supervisor or manager must require travel during non-duty hours. In such a case, 5 CFR 610.123 requires the supervisor to document for the record the reasons for ordering travel during non-duty hours and provide a copy of the documentation to the employee upon request. The Service reinforces this requirement in [226 FW 1.11](#).

The rules regarding compensation for travel time must be applied equally and consistently throughout the Service. The above guidance is based on applicable laws and regulations, **not** Service policy. There is no authority to compensate employees of the Executive Branch for travel time (whether by overtime or compensatory time off) when the situation does not meet the criteria for compensation under 5 CFR 550 or 5 CFR 551.

You may refer to Exhibits 1 through 5 of 225 FW 7, as applicable. You can find them by visiting <http://policy.fws.gov/ser200.html> and following the links. The Office of Personnel Management provides guidance at <http://www.opm.gov/oca/worksch/html/travel.htm>. And, as always, if you are in doubt as to whether or not you or your employees are entitled to compensation for time spent in travel outside of regular duty hours, you may contact your servicing personnel office.

Your cooperation in ensuring consistency in applying the regulations that pertain to compensation for travel time outside of duty hours is essential in maintaining morale and equity throughout the Service.