

Do you have to pay remote employees for time spent running errands?

Working from home is great — you can run errands on a day that isn't a Saturday, you can go to the dentist and have all day to recover, you can see your kids in the school play. But those situations can make timekeeping for nonexempt employees a nightmare.

Good news: Employees who work from home and do errands don't have to be paid for the time, the Department of Labor has **concluded** in a new opinion letter. However, you may still be liable for other employee travel time and time spent at home.

Be sure to keep up to date policies and an employee teleworking agreement to avoid any confusion among employees.

The continuous workday rule and WFH employees

Under the Fair Labor Standards Act's continuous workday rule, once employees' workdays start, all the time until the end of their workday is considered compensable working time. The exception, of course, is meal break time.

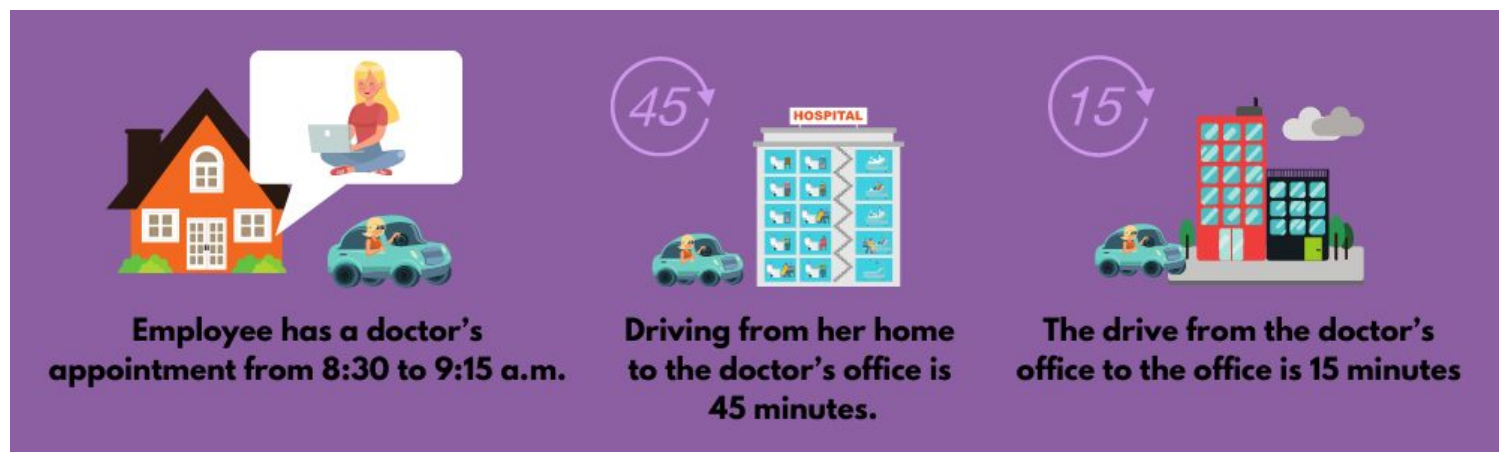
The DOL considered how the rule applies when employees work at home part of the day, in the office the other part of the day, and do personal stuff in between.



Scenario #1: An onsite employee has a parent-teacher conference at her child's school from 1:30 p.m. to 2:15 p.m. She leaves her office at 1:00 p.m., drives 30 minutes to the school, and meets with the teacher for 45 minutes. Then she drives home, where she works the rest of the day. The travel time from the school to her home is 30 minutes.

The DOL opinion letter addresses four variables to determine if the time spent driving from the office to the school and from the school to home is compensable. Does the employee:

- Immediately resume working when she gets home?
- Devote an hour to personal activities after getting home and then resume working?
- Devote two hours to personal activities after getting home and then resume working?
- Devote at least an hour to personal activities before driving home, devote at least another hour to personal activities after getting home, and then resume working?



Scenario #2: The employee has a doctor's appointment from 8:30 to 9:15 a.m. The drive from her home to the doctor's office is 45 minutes; the drive from the doctor's office to the office is 15 minutes. The employee begins this workday at home.

- Is her one hour of traveling time from home to the appointment and the appointment to the office compensable?
- Is her commute time from her office to home, where she first began working, compensable?

It's all personal travel

In both scenarios, the DOL concludes the employee's travel is personal and, therefore, non-compensable.

DOL: In the first scenario, between her leaving work at 1:00 p.m. and resuming work at 2:45 p.m. at the earliest, the employee's time is hers to do with as she pleases. The same is true in the second scenario. And this remains the case regardless of whether she's traveling to a personal appointment, traveling from a personal appointment, having personal meetings, or performing other personal activities.

The DOL also concluded the employee's traveling time wasn't compensable for worksite-to-worksite travel. *DOL:* You must count traveling time as hours worked when it's part of an employee's principal activity, like traveling from worksite to worksite during the workday. But this traveling time is different — the employee isn't traveling as part of her work, she's running errands.

Work easier

The DOL has provided a level of certainty, at least when employees leave early from work. For those who start their workdays at home, managers must stress to their WFH employees that they still need permission to vary their work schedule.

OK, what about WFH employees who just make a run to the bank or complete another short errand? You may never know. This is what working on the honor system means.

Traveling to the office

While you're not accountable for time spent while employees are running errands, you may be accountable for

other travel time and expenses.

Telecommuters who travel into the office for an occasional meeting can be reimbursed for their mileage — up to 57.5¢ a mile. Again, they must give you an accounting of their mileage. If your telecommuters are nonexempt, the time they spend traveling to the office for an occasional meeting is compensable working time.

Time spent at home

The time they spend booting up in the morning may also be compensable. Home internet access, even enhanced internet access, is probably not as fast as your office connection. This means employees could be spending anywhere from five to 10 minutes booting up. If they need multiple programs, it could take longer.

You don't have to pay if the time they spend booting up is *de minimis*. Three factors go into the determination of *de minimis* time:

- The practical administrative difficulty of recording the additional time
- The aggregate amount of compensable time
- The regularity of the additional work.

You can solve a lot of these issues by using a formal working-from-home agreement

The focus of telecommuting arrangements must be on results. You need to communicate in advance the positions for which telecommuting is appropriate, taking into consideration employees' preferences and the assessment techniques used to measure employees' success in meeting performance standards.

You and your telecommuters should agree on the following:

- The hours employees are expected to be working and reachable.
- How employees can be contacted (e.g., dedicated phone lines, voice mail, email, video conference, etc.).
- Who owns and maintains required equipment and supplies.
- Who pays for on-going expenses, such as phone lines and data.
- A statement that employees agree to: provide a secure location for company-owned equipment and materials; they will not use or allow others to use, the equipment for purposes other than company business; and the company is entitled to reasonable access to its equipment and materials.
- A statement that management retains the right to modify the agreement on a temporary basis as a result of business necessity.

Additional Resource: See [3 overlooked basics of a telecommuting agreement](#).