

# Newest Wage and Hour Opinion Letter Addresses Sleeping, Waiting, and Travel Time Principles

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The **U.S. Department of Labor's Wage and Hour Division** ("WHD") has issued an opinion letter addressing the **compensability of a long-haul truck driver time in a truck's sleeper berth during multi-day trips**. While this question is highly fact-specific, the WHD's response offers a useful refresher on the widely applicable Fair Labor Standards Act ("FLSA") concepts of compensability of waiting, sleeping, and traveling time.

In Opinion Letter [FLSA2019-10](#), issued on July 23, 2019, the employer operates a fleet of trucks, licensed by the Department of Transportation to move property in interstate commerce. The drivers receive pay for time spent driving, inspecting, cleaning, fueling and completing paperwork (55.84 hours at the federal minimum wage), but not for time in the sleeper berth, where drivers can sleep without interruption. To resolve whether this practice complies with the FLSA, the WHD focused on whether the drivers' activities in the sleeper berth constitute "hours

worked” within the meaning of the FLSA, assuming, based on the employer’s description of their job, that the drivers were exempt from the FLSA’s overtime requirements under 29 U.S.C. § 213(b)(1), the Motor Carrier Exemption. To start, the WHD reviewed applicable regulations on waiting time, including those distinguishing between an employee “engaged to wait” or on-duty (compensable) and an employee “waiting to be engaged” (non-compensable). Essentially, if “waiting is an integral part of the job,” waiting periods are short or unpredictable, or the employee is not completely relieved of his duties during the waiting periods, an employee’s waiting time is compensable. The implementing regulations provide examples of these principles in the context of truck drivers. In a footnote, the WHD advised that employees who remain on an employer’s “premises” to sleep and eat out of necessity due to the remoteness of the workplace or the nature of the job, including but not limited to truck drivers, are not continually on duty provided that they have regularly scheduled hours and have periods where they are completely relieved of all duties.

The WHD then considered the question of sleeping time, reiterating principles expressed in the regulations: Sleeping time is compensable if an employee may sleep during an on-duty period when the employee is not busy. When, however, an employee is on duty for a “continuous” period of 24 hours or more, an employer can agree to designate 5-8 on-duty hours as a non-compensable sleeping period.

Finally, the WHD considered travel time, citing regulations specific to truck drivers that do not require compensation where, as here, one driver of a multi-member driving team sleeps in a sleeper berth and is completely relieved of duties while another driver drives the truck. See 29 C.F.R. § 785.41.

The WHD ultimately advised that time spent by a driver in a truck’s sleeper berth while otherwise relieved of duty (whether or not the truck is moving) is presumptively noncompensable time. As the WHD explicitly acknowledged in this opinion letter, this marks a departure from, and withdrawal of, prior guidance in which the WHD interpreted the relevant regulations “to mean that while sleeping time may be excluded from hours worked where ‘adequate facilities’ were furnished, only up to 8 hours of sleeping time may be excluded in a trip 24 hours or longer, and no sleeping time may be excluded for trips under 24 hours.” By adopting this interpretation, the WHD hopes to provide a bright-line rule that will be less burdensome for employers to follow and consistent with the prevailing practice in the trucking industry.

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