

Bits & Pieces – Part 5

Waldthausen & Associates, Inc. is a Retained Executive Search firm with the focus on recruiting managers that influence a company's result and earnings. The firm focuses on recruiting professional managers for US subsidiaries with parent companies located in central Europe.

Compensate for Travel Time

Most employers know that the law does not require companies to pay employees for the time spent traveling during their normal commute from home to work. However, other circumstances require more careful analysis to determine if the employee should be paid for travel time. Here are the guidelines from the Fair Labor Standards Act (FLSA) on this topic.

Special One-Day Assignment in another City (Section 785.37): When an employee travels to an out-of-town site for a special one-day assignment, the time traveled counts as work time. Thus you would pay an employee sent to Greensboro for a training class for the time spent commuting there and back. You may legally deduct the normal commute time they would have spent from home to work, but many companies pay for the total commute to keep things simple.

Travel All in the Day's Work (Section 785-38): The FLSA states that, "Time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked." So employees such as service technicians who travel from customer site to customer site during the day must be paid for the commuting time between customers. (Although if they stop for personal reasons, such as a meal period of 30 minutes or more where they are completely relieved from duty, this is unpaid time.)

Overnight Travel Away from Home (Section 785.39): Trips that take employees away from home overnight have certain guidelines. The regulations say that "Travel away from home is clearly work time when it cuts across the employee's workday. The employee is simply substituting travel for other duties. The time is not only hours worked on regular working days during normal working hours, but also during the corresponding hours on nonworking days." When a nonexempt employee flies out of town on a Saturday or Sunday, flight time that occurs during their normal shift counts as hours worked, even if a Saturday/Sunday is not a normal workday. But if they fly outside of their normal shift hours, the time does not have to count as hours worked. Some companies choose to be more generous. Also time spent performing work while traveling must be counted as hours worked, no matter what time of day.

The regulations are less clear about driving time. Generally, it is a good practice to pay employees for time they are required to spend driving, even if it is outside the normal work hours. Passengers in a vehicle would not have to be paid if they are traveling outside of their normal work hours, unless they are performing work related duties while being a passenger. Again, some companies choose to be more generous in order to avoid an employee relations problem from paying the driver and not paying the passenger.

Background Check Reminder

Employers should remember that if they use an outside source to conduct any type of background check (credit, criminal, driving record, investigative report, etc.) on an applicant or employee, they are subject to the federal Fair Credit

Reporting Act (FCRA). The FCRA has certain strict disclosure requirements for employers who use so-called consumer or investigative consumer reports. Applicants have the right to know that a report will be conducted, the name and address of the consumer reporting agency, and to receive a free copy of the report if the company denies employment based on the information.

Before conducting a consumer report using a third party, the employer must:

- Provide the individual with a self-standing, clear and conspicuous written disclosure which explains that a consumer report may be obtained for employment purposes. This cannot be a paragraph on the employment application; it must be a separate, stand-alone document.
- Obtain written authorization from the individual for the report to be obtained (with certain exceptions for truck driver).
- Provide the individual with a summary of their rights under the FCRA.

If the employer decides to take adverse action (*i.e. not hire the person or not promote an employee*) based upon the results of the report, the company must:

- Before taking adverse action, furnish the individual with a copy of the report and a written description of their rights under the law. Some companies make it a practice to mail a copy of each report, along with a notice of rights, to every subject of such a report. Then they have already taken care of this requirement if they later decide to take adverse action based upon the report.
- Once the decision to take adverse action has been made, give notice to the individual of the adverse action. Provide the name, address, and phone number of the consumer reporting agency.
- Include a statement that the consumer reporting agency did not make the decision and cannot tell the individual the specifics of the adverse action.
- Tell the individual that they have the right to obtain a free copy of their report from the consumer reporting agency within 60 days of notice of the adverse action.
- Give notice of the individual's right to dispute the accuracy of the report.

Investigative consumer reports are more thorough reports that describe a person's credit, general reputation, and mode of living through personal interviews with neighbors, friends, and associates. Employers must notify an individual within three days of requesting such a report and give them information on their right to obtain a copy of the report. If the individual makes a written request to know the nature and scope of the report, the employer must reply within five days. (www.greatercharlottebiz.com)

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