

INTRODUCTORY STATEMENT TO THE POLICY:

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, judicial proceedings, or need for clarification. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

The purpose of this policy statement is to update section two of Labor and Industries' administrative policy ES.C.2 (section 2) pertaining to hours worked. Following the *Stevens v. Brink's Home Security* decision, Labor and Industries committed to updating this section of the policy to reflect the Supreme Court decision in the *Brink's* case and address ambiguity created by that case. [*Stevens v. Brink's Home Security*, 162 Wn.2d 42, 169 P.3d 473 (2007)].

WHETHER TIME SPENT DRIVING IN A COMPANY-PROVIDED VEHICLE CONSTITUTES PAID WORK TIME DEPENDS ON WHETHER THE DRIVE TIME IS CONSIDERED "HOURS WORKED."

Whether travel or commute time is compensable depends on the specific facts and circumstances of each individual employee, employer, and work week. If the travel or commute time is considered "hours worked" under RCW 49.46.020 and WAC 296-126-002(8), then it is compensable and the employee must be paid for this time. These statutory and regulatory requirements cannot be waived through a collective bargaining agreement or other agreement.

"Hours worked" means all hours when an employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed workplace. WAC 296-126-002(8).

There are three elements to the definition of hours worked:

- 1- An employee is authorized or required by the employer,
- 2- to be on duty,
- 3- on the employer's premises or at a prescribed workplace.

If any of the three elements is not satisfied, then the time spent driving in a company-provided vehicle is not considered "hours worked." The specific factors used to establish the "authorized or required" element are not listed in this policy. However, the element must be met for "hours worked" under the law.

Time spent driving a company provided vehicle from the employer's place of business to the job site is considered hours worked. Time spent driving or riding as a passenger from job site to job site (if the job site is not at the employer's main business location) is considered hours worked.

Time spent driving a company-provided vehicle during an employee's ordinary travel, when the employee is not on duty and performs no work while driving between home and the first or last job site of the day, is not considered hours worked.

FACTORS TO CONSIDER IN DETERMINING IF AN EMPLOYEE IS "ON DUTY" IS SATISFIED WHEN DRIVING A COMPANY-PROVIDED VEHICLE BETWEEN HOME AND WORK.

To determine if the employee is on duty, you must evaluate the extent to which the employer restricts the employee's personal activities and controls the employee's time. This includes an analysis of the frequency and extent of such restrictions and control. Below is a non-exclusive list of factors to consider when making a determination if an employee is "on duty". There may be other factors the Supreme Court or L&I have not considered. No single factor is determinative. All factors must be weighed.

1. The extent to which the employee is free to make personal stops and engage in personal activities during the drive time between home and the first or last job site of the day, or whether the vehicle may only be used for company business.
2. The extent to which the employee is required to respond to work related calls or to be redirected while en route.
3. Whether the employee is required to maintain contact with the employer.
4. The extent to which the employee receives assignments at home, must spend time writing down the assignments, and mapping the addresses or directions.

FACTORS TO CONSIDER IN DETERMINING IF AN EMPLOYEE IS "ON THE EMPLOYER'S PREMISES OR AT A PRESCRIBED WORK PLACE" WHEN DRIVING A COMPANY-PROVIDED VEHICLE BETWEEN HOME AND WORK.

To determine if a company-provided vehicle constitutes a "prescribed work place", you must evaluate whether driving the particular vehicle is an integral part of the work performed by the employee. Below is a nonexclusive list of factors to consider when making a determination if the employee is "on the employer's premises or at a prescribed work place". There may be other factors the Supreme Court or L&I have not considered. No single factor is determinative. All factors must be weighed.

1. Whether the nature of the business requires the employee to drive a particular vehicle provided by the employer to carry necessary nonpersonal tools and equipment to the work site.

2. Whether the company-provided vehicle serves as a location where the employer requires the employee to complete business required paperwork or load materials or equipment.
3. The extent to which the employer requires the employee to ensure that the vehicle is kept clean, organized, safe, and serviced.

The following are two examples of how the factors identified above might be used to determine whether or not travel time between work and home is compensable. These examples are illustrative and are not intended to create additional factors.

COMPENSABLE:

1. The employee drives between home and the first or last job site of the day in a company-provided vehicle:
 - As a matter of accepted company practice, the employee is prohibited from any personal use of the vehicle, which must be used exclusively for business purposes; and
 - The employer regularly requires the employee to perform services for the employer during the drive time including being redirected to a different location; and
 - The employee regularly transports necessary tools and equipment in the vehicle to work sites; and
 - The employee receives his/her daily job site assignments at home in a manner that requires the employee to spend more than a de minimis amount of time writing down the assignments and mapping travel routes for driving to the locations.

NON COMPENSABLE:

2. The employee drives between home and the first or last job site of the day in a company-provided vehicle:
 - The employer does not strictly control the employee's ability to use the vehicle for personal purposes. E.g., the employee, as a matter of accepted company practice, is able to use the vehicle for personal stops or errands while driving between home and the job site; and

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- The employee is not required to perform any services for the employer during the drive including responding to work related calls or redirection; and
- The employee does not perform any services for the employer during the drive including work related calls or redirection.

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