

Performing Work at Home Does Not Convert Commute into Paid Time

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Millions of employees now use laptops and PDAs, such as iPhones and Blackberries, to perform their work. They often check their devices before leaving for work in the morning and after returning home in the evening. A recent case involved whether, under the “continuous workday rule,” employees using electronic devices at home were entitled to be paid for the time spent commuting to and from the office because they worked prior to and after their commute.

The Second Circuit Court of Appeals, which covers Connecticut, recently ruled that the use of electronic devices at home does not entitle employees to be paid for their commute time under the continuous workday rule. Kuebel v. Black & Decker, Inc., 2011 U.S. App. LEXIS 9448 (2d Cir. May 5, 2011). Under the rule, employees are entitled to be paid for time spent traveling after the workday begins, and up to the time it ends. However, normal commute time between the home and office is typically unpaid. The question here turned on whether the employee began and ended his workday prior to and after the commute; thereby converting the commute time into a compensable period. The court held that using an electronic device at home did not convert the commute into compensable time.

In Kuebel, plaintiff was a retail specialist responsible for merchandising and marketing the company’s products at Home Depot stores in his territory. He did not report to a main office, but instead worked from home and commuted each day to various stores that were 20 minutes to 3 hours from his home. Plaintiff used a company issued PDA to electronically report certain information to headquarters, including time spent at various stores. Reporting was accomplished

by plugging his PDA into his company issued computer located in his home, which then synchronized with Black and Decker's servers. The task took about one minute to complete. In addition, he used the computer to review and respond to email, view sales reports, and prepare for store visits. The employee was paid for the time spent on these activities.

Importantly, Black and Decker never required the employee to perform his synchronization or computer related work at any given time, and in particular, never required him to do it just prior to leaving home or immediately upon returning. In addition, the employer paid for time spent commuting from home to the first store visit, and from the last store visit to home, where such time exceeded a "reasonable" commute time of 60 minutes. For instance, if the commute was 3 hours, the employee was paid for 2 hours.

Kuebel sued claiming that all time spent commuting should be compensable under the "continuous workday rule." He based his argument on the fact that he performed paid work prior to and after his commute. Therefore, time spent commuting was not normal home to work travel, but was instead travel during the normal workday.

The Second Circuit disagreed, ruling that for over 50 years the Department of Labor has considered ordinary home to work travel to be non-compensable. Further, because the employee had the flexibility to perform the work at any time, and not immediately before or after commuting, the commute time does not become compensable just because the employee may have chosen to perform the work contiguous with his commute.

This case points out the need to give employees flexibility as to when certain tasks are performed at home, and not require them to be done immediately before or after traveling to company or customer worksites. Also, where the home work is "integral and indispensable" to the employee's work duties, it must be considered paid time.

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