



## Don't Fall Asleep On DOL's New Guidance For Time Truck Drivers Spend In Sleeper Berth

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In a recent Department of Labor Opinion Letter, [FLSA2019-10](#), the Wage and Hour Division (WHD) addressed the question of whether the Fair Labor Standards Act (FLSA) requires employers to pay truck drivers for time spent not working in the truck's sleeper berth. The WHD offered its opinion that time spent in a sleeper berth in which a driver is relieved of all duties and permitted to sleep is presumptively non-working, off-duty time that is not compensable. The WHD relied on the plain language of FLSA regulations, which provide that "[a]n employee who drives a truck, bus, automobile, boat or airplane . . . is working while riding, except during bona fide meal periods or when he is permitted to sleep in adequate facilities furnished by the employer." 29 C.F.R. § 785.41.

In reaching its opinion, the WHD withdrew several previous opinion letters that took the position that only up to eight hours of sleeping time could be excluded in a trip that is 24 hours or longer and no sleeping time could be excluded from trips under 24 hours. In changing course, the WHD called its prior guidance "unnecessarily burdensome."

While the WHD refers to its newly adopted guidance as being "straightforward," employers should remember that issues involving waiting, sleeping, and travel time under the FLSA are highly fact-specific. Indeed, the WHD acknowledged that facts suggesting that a driver is "on-duty or on-call" may rebut the presumption that time spent in the sleeper berth is not compensable.

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