

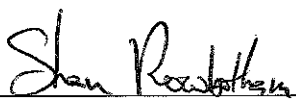
RESOLUTION No. 768  
A RESOLUTION OF THE BOARD OF COMMISSIONERS FOR  
WASHINGTON STATE INDUSTRIAL INSURANCE COVERAGE

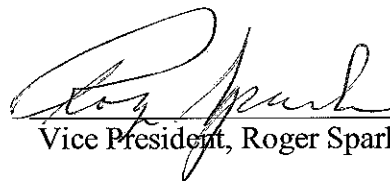
WHEREAS, per RCW 51.12.020, elected officials are not considered "excluded employment" for the purpose of Washington State Industrial Insurance coverage. Department of Labor & Industries requires Kittitas County PUD #1 to calculate the premium for elected officials on actual hours worked based on monthly time records or 480 hours per quarter. Hours worked includes travel time, training and meeting time which Kittitas County PUD authorized or required, known or reasonably believed by the employer to be on duty on the employer's premises or at a prescribed work place. WAC 296-126-002, RCW 49.46.

NOW, THEREFORE, BE IT RESOLVED, that the Commissioners of Kittitas County PUD #1 declares actual hours worked will be reported beginning with January 1, 2013.

IN WITNESS WHEREOF, the undersigned, being all the members of the Board of Commissioners of Kittitas County PUD #1, have executed this Resolution of the Board of Commissioners on this 16th day of May, 2013.

  
\_\_\_\_\_  
President, Paul Rogers

  
\_\_\_\_\_  
Secretary, Shan Rowbotham

  
\_\_\_\_\_  
Vice President, Roger Sparks



## Chapter 2: Coverage and Exclusions

### Mandatory Coverage

Generally employers must provide workers' compensation (industrial insurance) coverage for their employees and other eligible workers.

There are two ways to provide this coverage depending on the financial resources of your business. Most businesses participate in the state's workers' compensation program – the Washington State Fund. Companies with at least \$25 million in assets, and some governmental entities, may qualify for self-insurance.

The Department of Labor & Industries, Insurance Services Division, manages the Washington State Fund. This fund derives its income solely from premiums paid by you and your employees. The fund receives no money from general tax revenues.

The definitions of "employer" and "worker" used for workers' compensation purposes are located in Appendix A. All Washington workers must be covered through the State Fund or by a certified self-insured employer, unless they are subject to an exclusion listed in the next section.

### Excluded Employment

The information provided in this section is a summary. For a complete description of excluded employment, please see RCW 51.12.020.

#### **Workers not covered**

You are not required to provide coverage for the following employees. These are the only exclusions allowed:

1. A domestic worker in a private home. However, if two or more are employed regularly for 40 or more hours each per week, all must be covered.
2. A person employed to do gardening, maintenance, repair or similar work at an employer's private home. This does not include an individual hired to do home improvements or upgrades.
3. A person who is not a regular employee of the trade, business or profession of the employer and is not working at the employer's private home. This exclusion refers to a person hired to perform a personal errand or chore that benefits the employer as an individual, but not the business. For example, a professional golfer would need to provide coverage for a golf caddy, but a recreational golfer would not.
4. A person working only in return for aid or sustenance from a religious or charitable organization.
5. A child under age 18 employed by a parent in agricultural activities on the family farm.
6. A horse-racing jockey who is participating in a racing meet.
7. An employee whose work activity is covered through the Federal Employees' Compensation Act, Longshoremen's and Harbor Workers' Compensation Act, Jones Act, or Law Enforcement Officers and Fire Fighters Compensation Plan.

8. Musicians or entertainers, if:
- Your primary business is other than entertainment.
  - They don't also work for your primary business.
  - They don't perform on a regular and ongoing basis for you.

**Example:** A bar owner is not required to report a musician as long as the musician doesn't also work in the bar when not performing and the contract is **not** regular and continuous (such as a long-term piano player at a piano bar).

9. A newspaper carrier who sells or distributes papers on the street or from house to house.
10. An insurance producer.
11. A cosmetologist, beautician or barber who rents or leases booth space.
12. K-12 students working without wages as part of a public school program.

**Note:** Students who are enrolled in a university, college, or vocational school and are participating in an unpaid internship sponsored by their school are not covered workers and coverage cannot be elected for them.

### **Business owners, partners, corporate officers and members/managers**

Individuals who own and control any type of business are generally excluded from mandatory workers' compensation coverage. However, there are limits on both the number of owners who can be excluded and the level of control required for exclusion. There are also special provisions for some family-run businesses. If you own and operate a business and have questions about your excluded status, please contact your Employer Services account manager or call 360-902-4817.

### **Exclusion on family farms**

A child under age 18 employed by a parent in agricultural work on the family farm is excluded from mandatory coverage. After age 18, the parent must report and pay premiums for the child unless they submit an Application for Exclusion/Inclusion Mandatory Coverage (Family Farm). After age 21, children working on their parents' family farms are under mandatory coverage and may no longer be excluded from coverage.

### **Optional (Elective) Coverage**

Workers' compensation coverage is available for some individuals excluded from mandatory coverage. This coverage is referred to as optional or "elective" coverage.

To apply for "elective" coverage, you must complete and return an *Application for Elective Coverage*. For more information, contact Employer Services in Tumwater at 360-902-4817.

### **Insuring Minors**

Workers' compensation laws protect virtually all employees, including minors (workers under 18 years of age). Even minors working for a parent in the family business are covered. The only exception is a minor working on a family farm. (See "Excluded Employment" on Page 2.)

Before you hire a minor employee, you must obtain a minor work permit endorsement on your Business License. This can be done through any Department of Revenue or L&I office or online at [www.Business.wa.gov/BLS](http://www.Business.wa.gov/BLS).

In addition to the administrative requirements for hiring minors, you are responsible for knowing the limits on their hours of work and which specific work activities are prohibited. You can be assessed civil penalties or be subject to criminal penalties for violating child labor laws.


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## **RCW 51.12.020**

### ***Employments excluded.***

\*\*\* CHANGE IN 2013 \*\*\* (SEE [5476.SL](#)) \*\*\*

The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, "maintenance" means the work of keeping in proper condition, "repair" means to restore to sound condition after damage, and "private home" means a person's place of residence.

(3) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors or partners.

(6) Any child under eighteen years of age employed by his or her parent or parents in agricultural activities on the family farm.

(7) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter [67.16](#) RCW.

(8)(a) Except as otherwise provided in (b) of this subsection, any bona fide officer of a corporation voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation, who at all times during the period involved is also a bona fide director, and who is also a shareholder of the corporation. Only such officers who exercise substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor are included within this subsection.

(b) Alternatively, a corporation that is not a "public company" as defined in \*RCW [23B.01.400](#)(24) may exempt eight or fewer bona fide officers, who are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation and who exercise substantial control in the daily management of the corporation, from coverage under this title without regard to the officers' performance of manual labor if the exempted officer is a shareholder of the corporation, or may exempt any number of officers if all the exempted officers are related by blood within the third degree or marriage. If a corporation that is not a "public company" elects to be covered under subsection (8)(a) of this section, the corporation's election must be made on a form prescribed by the department and under such reasonable rules as the department may adopt.

(c) Determinations respecting the status of persons performing services for a corporation shall be made, in part, by reference to Title [23B](#) RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance shall control over form, and mandatory coverage under this title

shall extend to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

(d) A corporation may elect to cover officers who are exempted by this subsection in the manner provided by RCW 51.12.110.

(9) Services rendered by a musician or entertainer under a contract with a purchaser of the services, for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. A purchaser does not include the leader of a group or recognized entity who employs other than on a casual basis musicians or entertainers.

(10) Services performed by a newspaper carrier selling or distributing newspapers on the street or from house to house.

(11) Services performed by an insurance producer, as defined in **\*\*RCW 48.17.010(5)**, or a surplus line broker licensed under chapter 48.15 RCW.

(12) Services performed by a booth renter. However, a person exempted under this subsection may elect coverage under RCW 51.32.030.

(13) Members of a limited liability company, if either:

(a) Management of the company is vested in its members, and the members for whom exemption is sought would qualify for exemption under subsection (5) of this section were the company a sole proprietorship or partnership; or

(b) Management of the company is vested in one or more managers, and the members for whom the exemption is sought are managers who would qualify for exemption under subsection (8) of this section were the company a corporation.

[2009 c 162 § 33; 2008 c 217 § 98; 1989 c 68 § 1; 1997 c 314 § 18. Prior: 1991 c 324 § 18; 1991 c 246 § 4; 1987 c 316 § 2; 1983 c 252 § 1; 1982 c 63 § 15; 1981 c 128 § 3; 1979 c 128 § 1; 1977 ex.s. c 323 § 7; 1973 c 124 § 1; 1972 ex.s. c 43 § 7; 1971 ex.s. c 289 § 3; 1961 c 23 § 51.12.020; prior: 1955 c 74 § 3; prior: 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part.]

### **Notes:**

**Reviser's note:** \*(1) RCW 23B.01.400 was amended by 2009 c 189 § 1, changing subsection (24) to subsection (25). RCW 23B.01.400 was subsequently amended by 2012 c 215 § 17, changing subsection (25) to subsection (26).

\*\* (2) RCW 48.17.010 was amended by 2010 c 67 § 2, changing subsection (5) to subsection (6), effective June 27, 2011.

**Effective date – 2009 c 162:** See note following RCW 48.03.020.

**Severability – Effective date – 2008 c 217:** See notes following RCW 48.03.020.

**Severability – 1991 c 324:** See RCW 18.16.910.

**Effective date – Conflict with federal requirements – 1991 c 246:** See notes following RCW 51.08.195.

**Effective dates – Implementation – 1982 c 63:** See note following RCW 51.32.095.

**Severability – Effective date – 1977 ex.s. c 323:** See notes following RCW 51.04.040.



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## WAC 296-126-002

[Agency filings affecting this section](#)

### Definitions.

(1) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, unless exempted by chapter 49.12 RCW or these rules. For purposes of these rules, the state or its political subdivisions, municipal corporations, or quasi-municipal corporations (collectively called "public employers") are considered to be "employers" and subject to these rules in the following manner:

(a) Before May 20, 2003, public employers are not subject to these rules unless the rules address:

- (i) Sick leave and care of family members under RCW [49.12.265](#) through [49.12.295](#).
- (ii) Parental leave under RCW [49.12.350](#) through [49.12.370](#).
- (iii) Compensation for required employee uniforms under RCW [49.12.450](#).

(iv) Employers' duties towards volunteer firefighters and reserve officers under RCW [49.12.460](#).

(b) On or after May 20, 2003, public employers are subject to these rules only if these rules do not conflict with the following:

- (i) Any state statute or rule.
- (ii) Any local resolution, ordinance, or rule adopted before April 1, 2003.

(2) "Employee" means an employee who is employed in the business of his employer whether by way of manual labor or otherwise. "Employee" does not include:

(a) Any individual registered as a volunteer with a state or federal volunteer program or any person who performs any assigned or authorized duties for an educational, religious, governmental or nonprofit charitable corporation by choice and receives no payment other than reimbursement for actual expenses necessarily incurred in order to perform such volunteer services;

(b) Any individual employed in a bona fide executive, administrative or professional capacity or in the capacity of outside salesperson;

(c) Independent contractors where said individuals control the manner of doing the work and the means by which the result is to be accomplished.

(3) "Employ" means to engage, suffer or permit to work.

(4) "Adult" means any person eighteen years of age or older.

(5) "Minor" means any person under eighteen years of age.

(6) "Student learner" means a person enrolled in a bona fide vocational training program accredited by a national or regional accrediting agency recognized by the United States Office of Education, or authorized and approved by the Washington state commission for vocational education, who may be employed part time in a definitely organized plan of instruction.

(7) "Learner" means a worker whose total experience in an authorized learner occupation is less than the period of time allowed as a learning period for that occupation in a learner certificate issued by the director pursuant to regulations of the department of labor and industries.

(8) "Hours worked" shall be considered to mean all hours during which the employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed work place.

(9) "Conditions of labor" shall mean and include the conditions of rest and meal periods for employees including provisions for personal privacy, practices, methods and means by or through which labor or services are performed by employees and includes bona fide physical qualifications in employment, but shall not include conditions of labor otherwise governed by statutes and rules and regulations relating to industrial safety and health administered by the department.

(10) "Department" means the department of labor and industries.

(11) "Director" means the director of the department of labor and industries or the director's designated representative.

[Statutory Authority: Chapter 49.12 RCW. 10-04-092, § 296-126-002, filed 2/2/10, effective 3/15/10; Order 76-15, § 296-126-002, filed 5/17/76; Order 74-9, § 296-126-002, filed 3/13/74, effective 4/15/74.]



## ADMINISTRATIVE POLICY

### STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

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<b>TITLE:</b>	<b>HOURS WORKED</b>	<b>NUMBER:</b>	<b>ES.C.2</b>
<b>CHAPTER:</b>	<b><u>RCW 49.12</u></b> <b><u>WAC 296-126</u></b>	<b>REPLACES:</b>	<b>ES-016</b>
		<b>ISSUED:</b>	<b>1/2/2002</b>
		<b>REVISED:</b>	<b>6/24/2005</b>
		<b>REVISED:</b>	<b>11/28/2007</b>
		<b>REVISED:</b>	<b>9/2/2008</b>

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#### ADMINISTRATIVE POLICY DISCLAIMER

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, or judicial proceedings. 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.

#### **1. The department has the authority to investigate and regulate "hours worked" under the Industrial Welfare Act.**

**"Hours worked,"** means all hours during which the employee is authorized or required, known or reasonably believed by the employer to be on duty on the employer's premises or at a prescribed work place. An analysis of "hours worked" must be determined on a case-by-case basis, depending on the facts. See WAC 296-126-002(8). See Administrative Policy ES.C.1.

The department's interpretation of "hours worked" means all work requested, suffered, permitted or allowed and includes travel time, training and meeting time, wait time, on-call time, preparatory and concluding time, and may include meal periods. "Hours worked" includes all time worked regardless of whether it is a full hour or less. "Hours worked" includes, for example, a situation where an employee may voluntarily continue to work at the end of the shift. The employee may desire to finish an assigned task or may wish to correct errors, prepare time reports or other records. The reason or pay basis is immaterial. If the employer knows or has reason to believe that the employee is continuing to work, such time is working time.

**An employer may not avoid or negate payment of regular or overtime wages by issuing a rule or policy that such time will not be paid or must be approved in advance. If the work is performed, it must be paid. It is the employer's responsibility to ensure that employees do not perform work that the employer does not want performed.**

The following definitions and interpretations of "hours worked" apply to all employers bound by the Industrial Welfare Act, even those not subject to the Minimum Wage Act. There is no similar



definition of "hours worked" in RCW 49.46, the Minimum Wage Act, or in WAC 296-128, Minimum Wage rules. Therefore, these definitions and interpretations apply to all employers subject to RCW 49.12, regardless of whether they may be exempt from or excluded from the Minimum Wage Act.

## **2. What is travel time and when it is considered hours worked?**

### **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)]. This policy is not intended to address or cover all employee travel time issues. Instead, it is limited to the particular issues raised in the *Brink's* case regarding whether time spent driving a company-provided vehicle between home and the first or last job site of the day constitutes compensable "hours worked."

### **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 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.

Time spent driving a company-provided vehicle from the employer's place of business to the job site is considered hours worked. Time spent riding in a company-provided vehicle from the employer's place of business to the job site is not considered hours worked when an employee voluntarily reports to the employer's location merely to obtain a ride as a passenger for the employee's convenience, is not on duty, and performs no work. Time spent driving or riding as a passenger from job site to job site is considered hours worked.

**Factors to consider in determining IF AN EMPLOYEE IS "on duty" 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. Following is a non-exclusive list of factors to consider when making a determination if an employee is "on duty." There may be additional relevant factors that the Supreme Court or L&I have not considered. All factors must be considered and weighed in combination with each other. The mere presence or absence of any single factor is not determinative.

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 and must spend time writing down the assignments and mapping the route to reach the first job site before beginning the drive.

**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. Following is a non-exclusive list of factors to consider when making a determination if an employee is "on the employer's premises or at a prescribed work place." There may be additional relevant factors that the Supreme Court or L&I have not considered. All factors must

be considered and weighed in combination with each other. The mere presence or absence of any single factor is not determinative.

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. The extent to which the company-provided vehicle serves as a location where the employer authorizes or 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 this policy may be used to determine whether or not drive time between home and the first or last job site of the day in a company-provided vehicle is compensable. These examples are illustrative and are not intended to create additional factors or address other scenarios where the facts differ from those below.**

**COMPENSABLE EXAMPLE:**

1. In this example, the facts establish that the drive time between home and the first or last job site of the day in a company-provided vehicle is compensable. For purposes of this example, all of the following facts are present. 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 nonpersonal tools and equipment in the vehicle between home and the first or last job site of the day; 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 EXAMPLE:**

2. In this example, the facts establish that the drive time between home and the first or last job site of the day in a company-provided vehicle is not compensable. For purposes of this example, all of the following facts are present. 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

- 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.

### **3. What constitutes training and meeting time and when is it considered “hours worked”?**

Training and meeting time is generally interpreted to mean all time spent by employees attending lectures, meetings, employee trial periods and similar activities required by the employer, or required by state regulations, and shall be considered hours worked.

Time spent by employees in these activities need *not* be counted as hours worked if all of the following tests are met:

3.1 Attendance is voluntary; and

3.2 The employee performs no productive work during the meeting or lecture; and

3.3 The meeting takes place outside of regular working hours; and

3.4 The meeting or lecture is not directly related to the employee's current work, as distinguished from teaching the employee another job or a new, or additional, skill outside of skills necessary to perform job.

If the employee is given to understand, or led to believe, that the present working conditions or the continuance of the employee's employment, would be adversely affected by non-attendance, time spent shall be considered hours worked.

Time spent in training programs mandated by state or federal regulation, but *not* by the employer, need not be paid if the first three provisions are met; that is, if attendance is voluntary, the employee performs no productive work during the training time, and the training takes place outside of normal working hours.

A state regulation may require that certain positions successfully complete a course in Cardio-Pulmonary Resuscitation (CPR). The rules may require that in order to be employed in such a position the person must be registered with the state or have successfully completed a written examination, approved by the state, and further fulfilled certain continuous education requirements. However, should the employer require all employees to attend training, all employees attending the training must be paid for the hours spent in the training course.

Although the training course may be directly related to the employee's job, the training is of a type that would be offered by independent institutions in the sense that the courses provide generally applicable instruction which enables an individual to gain or continue employment with any employer which would require the employee to have such training, then this training would be regarded as primarily for the benefit of the employee and not the employer. In training of this type, where the employee is the primary beneficiary, the employee need not be paid for attending.

Where an employer (or someone acting on the employer's behalf), either directly or indirectly, requires an employee to undergo training, the time spent is clearly compensable. The employer in such circumstances has controlled the employee's time and must pay for it. However, where

the state has required the training, as in the example stated above, a different situation arises. When such state-required training is of a general applicability, and not tailored to meet the particular needs of individual employers, the time spent in such training would not be compensable.

When state or federal regulations require a certificate or license of the employee for the position held, time spent in training to obtain the certificate or license, or certain continuous education requirements, will not be considered hours worked. The cost of maintaining the certificate or license may be borne by the employee.

#### **4. What determines an employment relationship with trainees or interns?**

As the state and federal definition of "employ" are identical, the department looks to the federal Fair Labor Standards Act for certain training conditions exempted from that act. Under certain conditions, persons who without any expressed or implied compensation agreement may work for their own advantage on the premises of another and are not necessarily employees. Whether trainees are employees depends upon all of the circumstances surrounding their activities on the premises of the employer. If all six of the following criteria are met, the trainees are not considered employees:

- 4.1** The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school; and
- 4.2** The training is for the benefit of the trainee; and
- 4.3** The trainees do not displace regular employees, but work under their close observation; and
- 4.4** The business that provides the training derives no immediate advantage from the activities of the trainees, and may in fact be impeded; and
- 4.5** The trainees are not necessarily entitled to a job at the conclusion of the training period; and
- 4.6** The trainees understand they are not entitled to wages for the time spent in the training.

#### **5. What constitutes paid or unpaid work for students in a school-to-work program?**

Students may be placed in a school-to-work program on a paid or unpaid basis. The department will not require payment of minimum wage provided all of the following criteria are met. If all five requirements are not met, the business will not be relieved of its obligation to pay minimum wage, as required by the Minimum Wage Act.

- 5.1** The training program is a bona fide program certified and monitored by the school district or the Office of the Superintendent of Public Instruction; and
- 5.2** A training plan exists that establishes a link to the academic work, e.g., a detailed outline of the competencies to be demonstrated to achieve specific outcomes and gain specific skills. The worksite effectively becomes an extension of the classroom activity and credit is given to the student as part of the course; and
- 5.3** The school has a designated district person as an agent/instructor for the worksite activity and monitors the program; and
- 5.4** The worksite activity is observational, work shadowing, or demonstrational, with no substantive production or benefit to the business. The business has an

investment in the program and actually incurs a burden for the training and supervision of the student that offsets any productive work performed by the student. Students may not displace regular workers or cause regular workers to work fewer hours as a result of any functions performed by the student, and

**5.5** The student is not entitled to a job at the completion of the learning experience. The parent, student, and business all understand the student is not entitled to wages for the time spent in the learning experience.

If a minor student is placed in a paid position, all requirements of the Minimum Wage Act, the Industrial Welfare Act, and minor work regulations must be met. Minor students placed in a paid position with public agencies are subject to the Industrial Welfare Act.

Public agencies are not subject to the state minor work regulations, but they are subject to payment of the applicable state minimum wage. Note: Public agencies employing persons under age 18 are subject to the federal Child Labor Regulations and should contact the United States Department of Labor for specific information on hours and prohibited occupations.

#### **6. What constitutes “waiting time” and when is it considered “hours worked”?**

In certain circumstances employees report for work but due to lack of customers or production, the employer may require them to wait on the premises until there is sufficient work to be performed. “Waiting time” is all time that employees are required or authorized to report at a designated time and to remain on the premises or at a designated work site until they may begin their shift. During this time, the employees are considered to be engaged to wait, and all hours will be considered hours worked.

When a shutdown or other work stoppage occurs due to technical problems, such time spent waiting to return to work will be considered hours worked *unless* the employees are completely relieved from duty and can use the time effectively for their own purposes. For example, if employees are told in advance they may leave the job and do not have to commence work until a certain specified time, such time will not be considered hours worked. If the employees are told they must “stand by” until work commences, such time must be paid.

#### **7. Is there a requirement for “show up” pay?**

An employer is not required by law to give advance notice to change an employee’s shift or to shorten it or lengthen it, thus there is no legal requirement for show-up pay. That is, when employees report to work for their regularly scheduled shift but the employer has no work to be performed, and the employees are released to leave the employer’s premises or designated work site, the employer is not required to pay wages if no work has been performed.

## **8. What constitutes "on-call" time and when is it considered "hours worked"?**

Whether or not employees are "working" during on-call depends upon whether they are required to remain on or so close to the employer's premises that they cannot use the time effectively for their own purposes.

Employees who are not required to remain on the employer's premises but are merely required to leave word with company officials or at their homes as to where they may be reached are not working while on-call. If the employer places restrictions on where and when the employee may travel while "on call" this may change the character of that "on call" status to being engaged in the performance of active duty. The particular facts must be evaluated on a case-by-case basis.

## **9. What constitutes preparatory and concluding activities and when is this time considered "hours worked"?**

Preparatory and concluding activities are those activities that are considered integral or necessary to the performance of the job. Those duties performed in readiness and/or completion of the job shall be considered hours worked. When an employee does not have control over when and where such activities can be made, such activities shall be considered as hours worked.

Examples may include the following:

**9.1** Employees in a chemical plant who cannot perform their principle activities without putting on certain clothes, or changing clothes, on the employer's premises at the beginning and end of the workday. Changing clothes would be an integral part of the employee's principle activity.

**9.2** Counting money in the till (cash register) before and after the shift, and other related paperwork.

**9.3** Preparation of equipment for the day's operation, i.e., greasing, fueling, warming up vehicles; cleaning vehicles or equipment; loading, and similar activities.

## **10. When are meal periods considered "hours worked"?**

Meal periods are considered hours worked if the employee is required to remain on the employer's premises at the employer's direction subject to call to perform work in the interest of the employer. In such cases, the meal period time counts toward total number of hours worked and is compensable. See Administrative Policy ES.C.6.