



Quick Quiz Answer: "Down Time" On A Business Trip

Insights

10.03.11

The answer to our September 23 Quick Quiz is, "None of it".

The relevant question under the federal Fair Labor Standards Act gets down to whether Ellen was "engaged to wait" (which is compensable worktime) or was "waiting to be engaged" (which is not). There is not always an obvious answer to whether this kind of time is or is not compensable work under the FLSA. As the U.S. Labor Department puts it, "Whether waiting time is time worked under the [FLSA] depends upon [the] particular circumstances." 29 C.F.R. § 785.14.

The Labor Department says that an employee is often "engaged to wait" even during periods of inactivity when he or she can leave the premises, because these periods of time are typically unpredictable and of short duration and do not permit the person to use the time effectively for his or her own purposes. According to the Labor Department, in these situations, the waiting periods are an integral part of the job so as to be compensable worktime. *See, e.g., 29 C.F.R. § 785.15*.

On the other hand, the Labor Department has also said that an employee's waiting time might not be hours worked in situations in which the employee:

- ◇ Is completely relieved of all duties and responsibilities;
- ◇ Is told in advance that he or she is permitted to leave the job;
- ◇ Is told in advance that work will not resume until a specified time; and
- ◇ Has a long-enough time to use the period effectively for his or her own purposes.

See, e.g., 29 C.F.R. § 785.16.(a). Once again, though, whether the amount of time involved is of a sufficient length "depends upon all the facts and circumstances . . ." *Id.*

In our hypothetical scenario, the best answer is that Ellen is "waiting to be engaged" between 8:45 p.m. Sunday and 7 a.m. Monday. She has no duties or responsibilities during that period; she performs no work during that time; she knows she is not required to be at the booth until 7 a.m. on Monday; and clearly the period is long enough for her to use it for her own, personal purposes. The fact that she is out-of-town is not enough in itself to cause that period of time to count as FLSA

"hours worked".