



Portal-to-Portal Act of 1947

When and where does the workday begin? Who decides? Imagine a vast manufacturing plant with a security checkpoint or a data center requiring employees to be bussed to different work areas. Does the workday begin when the employee walks through the gate, boards the bus, or arrives at their designated workstation? What about time spent putting on safety gear in a clean room?

The Fair Labor Standards Act (FLSA) of 1938 established minimum wage and overtime pay requirements, but a grey area emerged regarding compensable non-productive work time. The Portal-to-Portal Act, [U.S. Code, Title 29 Chapter 9](#), helps to provide clarity to those questions.

Where does it come from?

The Portal-to-Portal Act arose from numerous lawsuits interpreting the FLSA's reach, specifically what is considered non-productive compensable time spent by employees.

Beginning with a United Mine Workers lawsuit, the Supreme Court ruled that, "physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer" constitutes non-productive compensable time [Tennessee Coal Co. v. Muscoda Local 123, 321 U.S. 590 \(1944\)](#).

Following this, the Supreme Court further clarified non-productive compensable time under the FLSA. The Court ruled that, preliminary activities after arriving at work, "such as putting on aprons and overalls, taping or greasing [equipment] arms, preparing equipment for productive work, ... -- must be... compensated accordingly" [Anderson v. Mt. Clemons Potter Co., 328 U.S. 680 \(1946\)](#). The Court argued that these tasks are necessary prerequisites for productive work.

These rulings *along with others*, prompted congress to pass the Portal-to-Portal Act of 1947 to provide employers with relief from the expansive interpretations of compensable time.

Portal-to-Portal Breakdown

The Portal-to-Portal Act clarifies which types of activities qualify for compensation, including:

- Principal Activities – activities that are compensated, they include all actions which are an integral part of an employee's responsibility as well as those that are closely related and indispensable to the employee in the performance of their principal activity.
 - If an employee works at a chemical plant and performs electrical work, then performing electrical work would be a principal activity.

- If that same employee was required to put on safety equipment, such as a full body suit, or they weren't allowed to enter the premises, that would be indispensable to that employee's job duties and therefore a principal activity.
- Preliminary & Postliminary Activities (when integral and indispensable from the principal activity) – A preliminary or postliminary activity is an activity engaged in by an employee before the commencement, or after the conclusion, of their “principal activity”, such as, walking, riding, or traveling to or from the actual place of performance of the principal activity or activities, which the employee is employed to perform.
 - A preliminary or postliminary activity can turn into a principal activity; if an employer requires an employee to show up at a designated area to participate in stretch-and-flex before they begin their work, that may be considered a primary activity, as it is at the explicit direction of the employer and therefore, compensated as such.
- *Generally*, travel between home and the workplace is not considered compensable under the Portal Act.
- Some states may have stricter interpretations of the Portal Act via State Commissions or Doctrines. Recently, the Supreme Court of California ruled that under the Industrial Welfare Commission (IWC) an employee that undergoes an “employer-mandated exit procedure that includes the employer’s visual inspection of the employee’s personal vehicle” is considered compensable time when that employee is leaving a jobsite. ([Huerta v. CSI Electrical Contractors, Inc.](#))
- ***It's important to note that there's no one-size-fits-all answer, and the specific job duties and company practices may play a role in determining what qualifies as compensable.***

Navigating compensable time for employees requires a two-pronged approach. The FLSA establishes a baseline for work hours and overtime, while the Portal-to-Portal Act clarifies which work related activities beyond the core workday qualify for compensation. By understanding the distinction between principal activities and non-compensable time, employers can ensure their employees are paid fairly and in accordance with the law.

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Compensable vs. Non-Compensable Time for Preliminary and Postliminary Activities under the FLSA

(Please note that these are examples and not an exhaustive list)

Principal Activities: The primary duties employee was hired to perform.

Preliminary Activities: Engaged in before principal activities for workday.

Postliminary Activities: Engaged in after completing principal activities for workday.

Compensable

Walking, riding, or traveling between actual place of performance of principal activities and any other job site See 29.U.S.C § 254(a).

Activities either before or after the regular work shift if integral and indispensable part of principal activities See *Steiner v. Mitchell*, 350 U.S. 247, 256 (1956).

First principal activity of the day and any waiting time after first principal activity and before end of last principal activity for the day, but not waiting time before first principal activity. See *IBP, Inc. v. Alvarez*, 546 U.S. 21, at 37 (2005).

Preparation of equipment necessary to perform principal activities (including time spent changing clothes at start of shift). See *Steiner v. Mitchell*, 350 U.S. 247, 256 (1956).

Oiling, greasing, cleaning, or performing maintenance activities on machine at start of workday. See 29 CFR §§ 785.24 & 790.8(b)(1).

Arriving early to prepare workspaces or equipment for other employees. See 29 CFR §§ 785.24 & 790.8(b)(2).

Donning/ doffing PPE to perform principal activities involving hazardous elements, or showering on employer premises because principal activities include exposure to hazardous elements. See 29 CFR § 785.24| *Steiner v. Mitchell*, 350 U.S. 247, 256 (1956).

Non-Compensable

Time spent traveling between home and work. See 29 U.S.C § 254(a)

Time spent waiting to don/doff PPE before first principal activity of the day. See *IBP, Inc. v. Alvarez*, 546 U.S. 21, at 40-42 (2005)

Changing clothing or showering on employer premises as convenience to employee. See 29 CFR § 785.24

Clocking/checking in and out or waiting in line to do so. See 29 CFR § 785.24.

Activities explicitly excluded from compensable time per Collective Bargaining Agreement. See 29 CFR § 785.