



Interpretive Notice & Formal Opinion (“INFO”) #20A: What Is and Isn’t “Time Worked” That Must Be Paid under Colorado Law

Overview: Employees must be paid for any time that counts as “time worked,” also called “compensable time” or “paid time.” This INFO #20A explains what does and doesn’t count as time worked under Colorado law, in particular the definition in [Colorado Overtime and Minimum Pay Standards Order \(“COMPS”\) Order Rule 1.9](#). INFO #20B explains how time worked applies to different pay types; #20C explains travel time and sleep time.

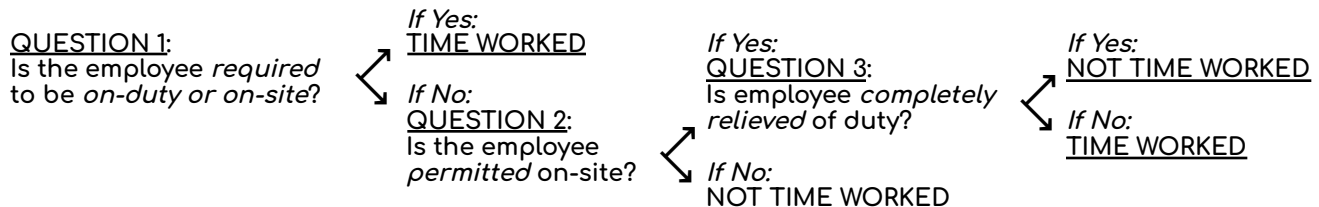
General Rule: Time worked is **all time** performing **labor or services** for employer **benefit**. That includes:

- **Performing work.** Time an employer **benefitted** from and **permitted**, even if it didn’t **require** the time.
 - **Benefit** to an employer doesn’t require an employer to actually **control** the employee activities, under Rule 1.9 and the statute defining an employee “performing labor or services.”¹
 - **Permission** includes work the employer **didn’t expressly authorize** — **if** the employer **knew**, or had **reason to believe**, employees worked for its benefit,² including:
 - work an employer **knew** or had **reason to believe** was done **outside scheduled shifts**; and
 - **off-site** work, if the employer permitted it, such as allowing **remote or home-based** work.³

Example 1: An employee works overtime without authorization. The employer forbids overtime, but doesn’t monitor time worked. It must pay for the unauthorized overtime worked.⁴

- **On-premises time** depends on why the employee is on premises. Time an employee is:
 - **Required** to be “**on ... premises, on duty or at a prescribed workplace**”⁵ **is time worked**, whether or not any productive work is done; “there need be no exertion at all.”⁶
 - **Choosing** to be on-site, **if completely relieved of duty, is not time worked** — for example, arriving early or staying late to socialize with co-workers, eat, or watch TV in a break room.

FIGURE 1: Is it “time worked,” based on 3 questions



¹ [C.R.S. § 8-4-101\(5\)](#) (performing labor or services for “benefit” of employer who “may” exercise control defines “employee”).

² [Blue Ribbon Distributing](#), DLSS Case #0758-18 (Hearing Decis. #19-017, Feb. 19, 2019) (employer “suffered or permitted” off-clock work; evidence undercut its denial of knowing of the work); [Todd M. Roby DDS](#), DLSS Case #2629-16 (Hearing Decis. #18-008, Feb. 27, 2018), at 6-7; [Bender Medical Group](#), DLSS Case #2997-16 (Hearing Decis. #17-084, Oct. 18, 2017), at 5-6. [Accord 29 C.F.R. §§ 785.11](#) (work compensable if not requested, but suffered or permitted), [785.12](#) (“must count” offsite work employer “knows or has reason to believe”), [785.13](#) (it is the “duty of the management to exercise its control and see that the work is not performed if it does not want it”; “It cannot sit back and accept the benefits without compensating”); [Chao v. Gotham Registry, Inc.](#), 514 F.3d 280, 290-91 (2d Cir. 2008) (“the law does not require ... any particular course to forestall unwanted work, but instead to adopt all possible measures to achieve the desired result”).

³ [Bull v. U.S.](#), 68 Fed. Cl. 212, 251-252 (2005) (employer knew “or had reason to know ... employees were constructing training aids at home because [it] did not provide ... an adequate tool room” or enough time during scheduled shifts).

⁴ [Rocky Mountain Business Advocate Group](#), DLSS Case #0513-18 (Hearing Decis. #19-026, Mar. 21, 2019); [Trimble True Value Hardware & Garden Center](#), DLSS Case #4585-17 (Hearing Decis. #18-071, Oct. 18, 2018).

⁵ [COMPS Rule 1.9](#); [Statement of Basis, Purpose, Specific Statutory Authority, and Findings for COMPS #36](#) (2020) (“2020 COMPS SBP”), at 11-16. (Both quoting and citing [Anderson v. Mt. Clemens Pottery Co.](#), 328 U.S. 680, 690-91 (1946)).

⁶ “[A]n employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen. Refraining from other activity often is a factor of instant readiness to serve.... Readiness to serve may be hired, quite as much as service itself....” [Armour & Co. v. Wantock](#), 323 U.S. 126, 133 (1944) (quoted in [29 C.F.R. § 785.7](#)).

Pre-/Post-Shift Time Worked

- *Federal* wage law (the Fair Labor Standards Act, "FLSA") originally counted pre-/post-shift tasks (screenings, gear time, etc.) as time worked — until a later federal statute (the Portal-to-Portal Act, "PTPA") excluded some "preliminary and postliminary" activity that isn't "integral and indispensable."⁷
- But **Colorado never adopted the federal statute excluding pre-/post-shift activities** from time worked (the PTPA),⁸ so **pre-/post-shift tasks** like these may take just seconds, but **count as time worked**:

- putting on or removing required clothes or gear, but not uniforms also worn outside work
- clock or check in/out, or security/safety screening
- set-up, clean-up, or other "off the clock" duties
- pre- or post-shift meetings, or other sharing or receiving of work-related information
- staying at work waiting for assignments
- waiting for activities like those listed here.

- **Other pre-/post-shift activity not listed in Rule 1.9:** The list in Rule 1.9 gives just **examples** of pre- or post-shift activity. For activities not in that list, apply the general rule: whether time is for employer benefit.

Example 2: Before restaurant servers clock in for a shift, the manager holds a pre-shift meeting. In the meeting, the manager talks about the day's menu, table assignments, and other information needed for the workday. Servers are not required to show up early to attend the meeting.

- The pre-shift meeting is time worked for all who attend, even if others don't. The employer is permitting anyone attending to perform work for the employer's benefit.

Example 3: Before remote call center staff start work, they start up and sign into their computers, which can take 5-15 minutes, because it includes multiple sign-ins (to the employer intranet, then to its timekeeping software), and sometimes waiting for software or database updates.

- Computer sign-in, whether or not delayed by updating, is essentially clock-in time, so it counts as time worked for employer benefit, as long as it takes over one minute.⁹

- **When Tracking the Duration of an Activity is Difficult.**

- A difficult-to-track activity of **under one minute** can be excluded from time worked **if** the employer shows, based on a balancing of these factors, that the time is not just difficult, but **infeasible**, to track:¹⁰
 - (A) the **difficulty of recording** the time, or in the alternative, **reasonably estimating** the time;
 - (B) the **aggregate amount** of the time, for each employee and **all employees** combined; and
 - (C) whether the activity was performed on a **regular** basis.
- A difficult-to-track activity of a minute or longer can't be excluded from time worked based on its length or a balancing of factors — but to be compensable,
 - the employee still must show that the activity qualifies as time worked, and
 - if the employer lacks relevant time records, the employee must offer at least a reasonable estimate of (or a reasonable method to estimate) the time spent on the activity.¹¹

⁷ 29 U.S.C. § 251 et seq.; e.g., *Integrity Staffing Solutions, Inc. v. Busk*, 574 U.S. 27, 33 (2014).

⁸ Having never adopted or applied the PTPA, Colorado law parallels the broader time worked definition of the pre-PTPA FLSA, as the Division explained in the 2019 proposed version, and 2020 final version, of the [2020 COMPS SBP](#), at 11-16. E.g., *Universal Protection Service*, DLSS Case #1839-20 (Hearing Decis. #21-073, July 2, 2021), at 13-17 ("Colorado has not adopted PTPA-like exemptions. ... Thus, to the extent federal precedent is helpful in interpreting ... COMPS on what counts as time worked, that guidance is to be found in the pre-PTPA/pre-§ 203(o) cases."); *Busk v. Integrity Staffing Solutions, Inc.*, 905 F.3d 387, 405 (6th Cir. 2018) (finding "nothing to suggest" state law follows PTPA and "refus[ing] to read-in such a significant statute by inference or implication" when Nevada and Arizona never adopted PTPA provisions).

⁹ *Peterson v. Nelnet Diversified Solutions*, 15 F.4th 1033, 1035 (10th Cir. 2021) ("booting ... computers and launching certain software before ... clock in" is time worked); *Cadena v. Customer Connexx LLC*, 51 F.4th 831, 839 (9th Cir. 2022) ("[D]uties require ... a functional computer, so turning on or waking up their computers ... is integral and indispensable Because clocking in to the timekeeping program occurs after booting ... — the first principal activity of the day — it is compensable.").

¹⁰ *Peterson* listed these as factors for the ultimate question: whether activities are "*insubstantial or insignificant periods of time beyond the scheduled working hours, which cannot as a practical administrative matter be precisely recorded,*" and thus "may be disregarded." 15 F.4th 1033, 1042 (10th Cir. 2021) (quoting [29 C.F.R. § 785.47](#); emphases added).

¹¹ An employee can satisfy their initial burden of showing time worked with an estimate from their recollection; employees

Example 4: Factory employees spend 15-45 seconds at the factory entrance clocking in (including waiting in line to do so), then 5 minutes walking to their station, with no duties on the walk.

- The clock-in time qualifies as time worked. Though it's less than one minute, the employer can't show that the balance of relevant factors makes it infeasible to record or estimate.
 - (A) Though recording the time is difficult, the employer *could* record on-premises activity, but more readily could estimate it, by watching and averaging a number of clock-ins.
 - (B) The aggregate time is (i) modest but not minimal per employee (about 2 hours annually, if the average is 30 seconds), and (ii) moderate to high if there are many employees (roughly 200 hours for 100 employees, or 2000 hours for 1000 employees).
 - (C) The activity is regular — both frequent and predictable — which also lessens the difficulty of tracking or estimating (factor (A)) and increases the aggregate time (factor (B)).
- The walk *alone* wouldn't qualify as time worked, but does under the continuous workday rule (see below): it follows other time worked (clock-in), and is too short to be an unpaid break.

Example 5: Same as Example 4, except that the factory sets up extra clock-in stations, eliminating the wait to clock in on most days. Clocking in typically takes 1-15 seconds — typically one or a few seconds, but sometimes employees pull out their swipe cards more slowly, need to swipe a second time, etc. Lines are infrequent, and typically raise the total time to 5-45 seconds.

- The clock-in doesn't qualify as time worked. It's under one minute, and the balance of relevant factors shows it is infeasible to record or estimate.
 - (A) Recording the time is difficult, and even a reliable estimate is somewhat difficult: times not only vary widely (1-30 seconds), but are distributed irregularly enough (cases of more than one or a few seconds appear irregular and infrequent) to complicate an estimate of how many longer-duration clock-ins to work into any average.
 - (B) The aggregate time is minimal per employee: if the average is 5 seconds (since one to a few seconds is most common), roughly 20 minutes annually. With enough employees, the aggregate could be moderate, but still not high (e.g., 333 hours for 1000 employees).
 - (C) Only the trivially short ordinary clocking (one to a few seconds) is regular. Longer times are irregular — which also increases the difficulty of tracking or estimating this infrequent, unpredictable activity (factor (A)), and decreases the aggregate time (factor (B)).
- The walk doesn't qualify as time worked (see INFO #20C), and isn't part of a continuous workday or shift because it doesn't follow other time worked (since clock-in doesn't qualify).

Example 6: Several control room operators at a hydroelectric dam regularly arrive at work typically 5 minutes before their shift. On a small minority of days, they realize they need to know something about the prior day's work, so they spend 5-30 seconds reviewing their "log book."

- No part of the 5 minutes of pre-shift time qualifies as time worked. Waiting for a shift to start, with no duties, doesn't qualify. The 5-30 seconds of log book reviewing is the type of activity that ordinarily would qualify as time worked — but it doesn't qualify based on the three factors for analyzing whether a difficult-to-track activity of under one minute qualifies.¹²
 - (A) It is difficult to record such short, unanticipated activities. Estimating is difficult as well, given the high variance in how long the activity takes.
 - (B) The aggregate time is low, just one-twelfth to one-half a minute on a minority of days. No multiple-employee aggregate is much higher, since there are few control room operators.
 - (C) The activity is both infrequent and unpredictable, and therefore irregular.

fail that burden if they cannot provide *any* estimate. [Adams v. Bloomberg L.P.](#), No. 20-cv-7724 (RA), 2023 U.S. Dist. LEXIS 158522, at *26-27 (S.D.N.Y. Sep. 7, 2023) (finding no reasonable estimate when employee "could not provide even a rough estimate of the amount of unpaid overtime 'Q: As you sit here today, can you recall a single time ... where you did work beyond your scheduled hours in a week . . . and didn't report that time accurately ...? A: I don't remember.'").

¹² [Lindow v. United States](#), 738 F.2d 1057, 1059-60, 1063-64 (9th Cir. 1984).

Example 7: Same as Example 6, but log review ranges from 1 minute to all 5 minutes from arrival to shift.

- The log book review time qualifies as time worked. It is not under one minute, so there is no exclusion based on that duration and a balance of factors. The activity therefore starts their continuous workday or shift — so if they review the log book for 1 minute upon arriving, then wait 4 minutes to start their shift, then the whole 5 minutes qualifies. However:
 - the employee must show they recorded, or can reasonably estimate, time in the activity; and
 - though employers must pay for known work outside regular shifts, it can enforce a rule against working outside shifts — e.g., not to spend time reviewing log books before shifts.

"Continuous Workdays" Include All Time Not Fully on Break, Until the Last Time Worked Activity

- Even if time isn't otherwise time worked, it counts as part of a **"continuous workday"** of time worked if it's **after** other time worked **starts**, and **before** other time worked **ends** — excluding long enough breaks:¹³
 - ✗ periods of **20 minutes** or longer when **"completely relieved from duty"** (e.g., meal breaks, or time between separate shifts) are **not** time worked;
 - ✓ **shorter** breaks, even if completely relieved from duty (e.g., coffee breaks or time for snacks of under 20 minutes) are considered paid rest time that **"must be counted** as hours worked."¹⁴

Example 8: Customers at times ask questions of grocery employees on otherwise duty-free 30-minute meal breaks. It typically takes **less than one minute** to answer each question, or just several seconds to refuse by saying they're on break.

- If employees *answer* customer questions, the entire break is time worked. To be non-compensable, a break must be completely relieved from duty under the continuous workday rule. If a break includes any time worked, then it is not time completely relieved from duty, so the entire break (not just the time performing work) is compensable time worked.
- If employees *refuse* to answer the questions, that *isn't* time worked. Refusing to answer customer questions when on break is not enough of an interruption,¹⁵ analogous to refusing to answer customer questions when off-site and off-duty. However, time spent refusing to answer questions *is* time worked if the grocery store subjects employees to those questions, such as by requiring that breaks be taken in places near and visible to customers.

Rounding Time

- **Rounding of time** (e.g., the nearest 5 or 10 minutes) is **allowed if it doesn't tend to under-count** time¹⁶ — a problem if, for example, a recurring activity takes less than half of the minimum rounding increment.

Example 9: A factory rounds time to the nearest 10 minutes — for example, paying for 8 hours if an employee works 7 hours and 56 minutes, or if an employee works 8 hours and 4 minutes. One of the factory janitors regularly works an extra 1-4 minutes at the end of their 8-hour shift to put away cleaning equipment and supplies. The rounding impermissibly under-counts the janitor's time, because it consistently deprives pay for 1-4 minutes of time worked.¹⁷

¹³ [29 C.F.R. § 790.6](#) ("time between the commencement of the employee's first" activity that counts as time worked, "and the completion of [their] last" activity that counts as time worked, "must be included in the computation of hours worked").

¹⁴ [COMPS Rules 1.9.1](#) (excluding time "completely relieved from duty"), [5.1](#) (as to meal breaks, "[e]mployees must be completely relieved of all duties and permitted to pursue personal activities for a period to qualify as non-work, uncompensated time"); accord [29 C.F.R. §§ 785.18](#) (breaks under 20 minutes are compensable "rest period" time), [785.19\(a\)](#) (for longer breaks, "ordinarily 30 minutes or more," to be "not worktime ... [an] employee must be completely relieved from duty"); [Chao v. Tyson Foods, Inc.](#), 568 F. Supp. 2d 1300, 1307 n.4 (N.D. Ala. 2008) (applying "completely relieved" standard; rejecting proposed alternative that breaks "predominantly" for employee benefit are non-compensable).

¹⁵ See [Reich v. IBP](#), 38 F.3d 1123, 1126 (10th Cir. 1994) (holding that a task was not "work" — even under the pre-PTPA definition — when it "takes all of a few seconds and requires little or no concentration").

¹⁶ [29 C.F.R. § 785.48\(b\)](#); [Aguilar v. Mgmt. & Training Corp.](#), 948 F.3d 1270, 1287 (10th Cir. 2020) ("rounding policy that works in the employer's favor 94% of the time is probably not neutrally applied"); [Alonzo v. Maximus, Inc.](#), 832 F. Supp. 2d 1122, 1126 (C.D. Cal. 2011) (allowing "consistent rounding policy that, on average, favors neither over ... nor underpayment").

¹⁷ See Miller Nash LLP, ["As Time Goes by: Pay Practices Which May Be a Surprising Risk for Employers"](#) (Jan. 24, 2023) ("Rounding time clock entries to the nearest 15-minute ... started when employers primarily used mechanical time clocks

Specific Types of Activity

(A) Clothing and Gear

- Time worked includes **putting on** ("donning") and **removing** ("doffing"), as well as **picking up, loading, and dropping off**, required work clothes or gear (other than uniforms also worn outside work).¹⁸

Example 10: An employer gives security guards mandatory uniforms and gear: shirts, pants, ballistic vests, badges, and duty belts holding firearms and tools. It also specifies what shoes the guards must wear, has uniform condition and appearance rules, and notes how uniforms are key to guards' work deterring crime. The employer lets guards put on uniforms and gear at home or work, but forbids wearing them other than on duty or commuting in employee vehicles.

- Time putting on and taking off all parts of the uniform, whether at home or at work, is time worked. The uniform is for employer benefit, and can't be worn in public.¹⁹

Example 11: Poultry plant employees start with 2-3 minutes to pick up and put on required smocks, boots, gloves, and sleeves (all worn in addition to their regular clothes). As the day ends, it takes 3-5 minutes to remove, rinse, and sanitize that gear, then wash their hands. Federal safety rules require the sanitizing to avoid contaminating other workers or the public. Showering and changing into new clothes, to remove any poultry residue, is allowed but not required.

- All gear time — picking up, putting on and off, cleaning, and waiting for those tasks — is time worked. It's for required work gear or to prevent hazards from work for employer benefit.²⁰
- All cleaning and sanitizing time — cleaning and sanitizing the gear, washing hands, and the optional showering and clothes-changing time — is time worked. The time is for health measures to protect against hazards from work that's for employer benefit.²¹

Example 12: Dancers at an adult entertainment club are required to wear performance clothes they select and supply themselves, but that must meet the employer's specific guidelines. The clothes are revealing, so dancers typically don't wear them to or from work; they change at the club.

- Time changing into required performance clothing not worn outside work is time worked.²²

- But time worked **doesn't** include **basic tasks** commuting employees do to **prepare for a day** — as long as those tasks don't materially **add** to the time it takes to prepare for a day of work outside home. Examples:
 - ✗ dressing appropriately and packing a light bag/briefcase with food, paper, light supplies/gear, etc.; and
 - ✗ unloading or unpacking that bag or case, or undressing, at the end of the day.

or paper timecards, with paychecks ... calculated by hand. In today's world, most employers use electronic or digital time clocks that can easily record time and calculate pay to the minute. That technology may make ... rounding a more risky proposition.... [N]eutral rounding policy can inadvertently result in an underpayment in the aggregate ... if rounding down is occurring more frequently than rounding up ..., such as ... telling employees they cannot leave ... until the exact scheduled end of their shift, when it will take ... time to walk to the time clock, which time will probably get rounded down.").

¹⁸ As with PTPA, *Colorado* never adopted [29 U.S.C. § 203\(o\)](#), another *federal* statute that excludes certain time on work-related clothing and hygiene. [2020 COMPS SBP](#) at 13-15; [Universal Protection Service](#), DLSS Case #1839-20 (Hearing Decis. #21-073, July 2, 2021), at 16 ("to the extent federal precedent is helpful in interpreting ... COMPS on what counts as time worked, that guidance is to be found in the pre-PTPA/pre-§ 203(o) cases.").

¹⁹ Compare [Universal Protection Service](#) (above) at 11-20 (under Rule 1.9, guards putting on uniforms and gear is "labor or services for the employer's benefit, ... not because s/he chose to do it, but because the employer required it for its own ends ... , e.g., having its employees create a crime-deterring effect and avoiding penalties or fines" employer might otherwise face) with [Bamonte v. Mesa](#), 598 F.3d 1217 (9th Cir. 2010) (PTPA excludes putting on uniform or gear, if doable at home).

²⁰ Time worked under Colorado law thus includes various *gear time* federal law excludes. E.g., [Castaneda v. JBS USA, LLC](#), 819 F.3d 1237, 1250 (10th Cir. 2016) (PTPA excludes time donning, doffing, and washing meatpacking equipment); [Salazar v. Butterball LLC](#), 644 F.3d 1130, 1133 (10th Cir. 2011) (same for donning, doffing, and sanitizing turkey processing "frocks, aprons, gloves, boots, hard hats, safety glasses, knife holders, and arm guards"); [Gorman v. Consol. Edison Corp.](#), 488 F.3d 586, 594 (2d Cir. 2007) (same for donning helmets, safety glasses and steel-toed boots).

²¹ Time worked under Colorado law thus includes various *health or sanitation time* federal law excludes. E.g., [Reich v. IBP](#), 38 F.3d 1123, 1126 (10th Cir. 1994) (PTPA excludes "donning, removing, picking up, and depositing for laundering sanitary outer garments" that, "although required and of some value to the employer, ... are primarily for the benefit of the employee").

²² Time worked under Colorado law thus includes various *clothing time* excluded by a federal statutory exemption, [29 U.S.C. § 203\(o\)](#), that permits collective bargaining agreements to exclude certain clothing time.

Example 13: Before leaving home, a hospital employee packs a stethoscope, pad, and multi-colored pen (to mark different points on patient charts) in a briefcase they bring to and from work.

- Packing a briefcase or backpack with light items doesn't materially add to the time it takes to prepare for a day of work outside home, so it isn't time worked.

Example 14: Medical clinic staff must load medical equipment into their cars before leaving home, then unload it after work; the employer prohibits leaving it in cars. The several items total 100 pounds, so loading and unloading takes 15 minutes of walking between the car and home.

- The loading and unloading materially add to the time it takes to prepare for (or return from) a day of work, and they are for employer benefit, so they count as time worked.²³

(B) Screening

- Time worked includes time in, or waiting for, a **screening or search** required to work for the employer —
 - including for **health, safety, or security**, and
 - whether **discretionary** with the employer or **legally required**.

Example 15: Federal rules require radiation screening for nuclear plant guards entering or exiting work.

- The screening is for hazards from work for employer benefit, so it is time worked.²⁴

Example 16: For security screening to prevent theft, exiting warehouse employees must spend 10-15 minutes to wait in line, remove belts, empty pockets, and walk through metal detectors.

- The screening is for employer benefit, so it is time worked.

- One specific form of screening or search, **drug testing**:
 - **is** time worked when required of **employees**, but
 - **is not** time worked when required of **applicants** as a **condition** of, and **before starting**, the job.

Example 17: An employee's first day on the job includes a number of required activities, one of which is drug testing. The employer also requires annual drug testing for all employees.

- The drug test is time worked: it's required, for employer benefit (whether for efficiency, safety, or legal compliance), and subject to employer control (whether or not done by a third party).²⁵

Example 18: An employer requires new employees to take, and pass, a drug test before starting the job.

- The drug test is not time worked. It is part of the hiring process, like an interview or a written test, because passing it is a condition of starting the job.

(C) Waiting and "On-Call" Time

- **Waiting:** Time worked includes waiting, at the worksite or another prescribed location, for instructions or assignments, even if employees are ultimately sent home without getting any work or instructions.²⁶

Example 19: For safety and sanitation, meatpacking employees must wear specialized gear that they wait in line for several minutes to pick up at the start, and drop off at the end, of their shifts.

- Time waiting to get or return required gear is time worked, like time donning and doffing it.²⁷

²³ [Wilson v. PrimeSource Health Care](#), No. 16-cv-1298 (N.D. Ohio July 5, 2017); [Stevens v. Brink's Home Security](#), 169 P.3d 473, 476 (Wash. 2007) (commute in company truck was time worked; it was strictly controlled, including a mandate to be available to aid other sites); [Dooley v. Liberty Mutual Insur.](#), 307 F. Supp. 2d 234 (D. Mass. 2004) (real estate appraisers' calls and emails before driving from home to first job are time worked). INFO #20C covers pre-/post-commute work.

²⁴ Time worked under Colorado law thus includes various *health or safety screening time* that federal law excludes. [Olive v. TVA](#), No. 5:15-cv-00350 (N.D. Ala. Aug. 7, 2015) (PTPA excludes legally required radiation scans because the nuclear plant employees "are employed to provide security, not to wait in line and undergo radiation scanning").

²⁵ [Safway Services LLC](#), DLSS Case #2272-17 (Hearing Officer Decis. No. 18-050, Aug. 10, 2018) at 5-6 ("required ... first day's orientation/training and drug test activities" were "subject to Safway's control," and thus time worked); [Bonds v. GMS Mine Repair & Maint.](#), No. 13-cv-1217 at *14 (W.D. Pa. Jan. 8, 2014) (same, safety meetings and drug/alcohol tests).

²⁶ [Donovan v. 75 Truck Stop, Inc.](#), No. 80-9-Civ-Oc (M.D. Fla. July 20, 1981) (wait was time worked: though free to "go across the street to go swimming at the Days Inn ... [employees] were expected to be available to commence work immediately" if customers arrived); [Armour & Co. v. Wantock](#), 323 U.S. 126, 133 (1944) ("[A]n employer, if he chooses, may hire [employees] ... to do nothing but wait for something to happen Readiness to serve may be hired, quite as much as service itself").

²⁷ [IBP, Inc. v. Alvarez](#), 546 U.S. 21, 40 (2005) (compensable under PTPA: *donning* protective gear, but not *waiting* to don).

Example 20: In downtime between appointments, a hairstylist stays at the salon for walk-in customers.

→ The hairstylist must be compensated for time spent waiting for work.²⁸

- **On-Call:** Time worked includes being "on call" (required to report when called) *if* work rules (response time, location, etc.) or realities (call length, frequency, etc.) prevent routine personal activity while on call.

Example 21: Firefighters on 24-hour on-call shifts must arrive by 20 minutes after a call, preventing activity taking more time, or further away, than 20 minutes. Those with children need child care available. Shifts average 3-5 calls, taking on average 1 hour each, but can have up to 13 calls.

→ The on-call time is time worked; it precludes routine personal activity, for employer benefit.²⁹

(D) Travel Time & Sleep Time — INFO #20C gives the details, and examples, of these basic rules.

- **Travel** for employer benefit is time worked, except not commute time, and not most travel within employer property to go to and from the employee's assigned workstation — with exceptions noted in INFO #20C.
- **Sleep** time within shifts can be excluded from time worked under certain conditions — mainly whether the employee has a real opportunity for a lengthy period of sleep without interruption, as INFO #20C details.

(E) Training Time

- **For New Employees.** Training required for new employees is time worked if the training **either**:
 - (A) provided the employer "**productive work**" (even if trainees weren't yet fully productive, or benefitted from hands-on supervision) or "**testing**"; or
 - (B) is employer-specific, not "**transferable** within the industry" (*i.e.*, useful for jobs at other employers).³⁰
- **For Existing Employees.** Training time for *existing* employees more **presumptively must be paid** than for *new* employees: attendance at lectures, meetings, training programs and similar activities must be counted as working time unless all of the following four criteria are met — the employee's training must:³¹
 - (A) be **outside** their **regular work hours**;³²
 - (B) be genuinely **voluntary**;³³
 - (C) **not be directly related** to their current job;³⁴ and
 - (D) not include **productive work**.

For More Information: Visit the Division [website](#), call 303-318-8441, or email cdle_labor_standards@state.co.us.

²⁸ [HHCP LLC](#), DLSS Case #0291-18 (Hearing Decis. #19-018, Feb. 20, 2019); [Lassen v. Hoyt Livery, Inc.](#), 120 F. Supp. 3d 165, 177 (D. Conn. 2015) ("Time spent . . . waiting for passengers, even those who cancel, is compensable time").

²⁹ [Renfro v. Emporia](#), 948 F.2d 1529 (10th Cir. 1991); [29 C.F.R. §§ 785.17](#) ("An employee ... required to remain on call on the employer's premises or so close ... that he cannot use the time effectively for his own purposes is working while 'on call'") and [553.221\(c\)-\(d\)](#) ("Time ... away from the employer's premises under conditions ... so circumscribed that they restrict ... effectively using the time for personal pursuits also constitutes compensable hours Time ... at home on call may or may not be compensable depending on whether the restrictions ... preclude using the time for personal pursuits.").

³⁰ [Reich v. Parker Fire Protection Dist.](#), 992 F.2d 1023, 1028 (10th Cir. 1993) (required firefighter training, at academy of the department that hired them, wasn't time worked: "in acquiring skills transferable within the industry ... , the trainees benefitted from their training"; time worked includes "training [that] consists merely of supervising trainees as they carry out employees' duties ... but" this employer "was not immediately benefitted by the trainees' activities"); [Navajo Express Inc.](#), DLSS Case #5652-19 (Citation & Notice of Assessment, Aug. 21, 2020) (time worked included three-day "training and orientation" comprised of "necessary paperwork" and testing whether individuals met required standards: a drug/alcohol test; a "physical and agility pre-trip test," a "road test," "if needed a written English ... test", and a "DOT physical test").

³¹ [29 C.F.R. § 785.27](#); [Dreamquest Academy](#), DLSS Claim #5971-16 (Hearing Decis. #18-018, Apr. 12, 2018); [Trinity Resources dba Subway](#), DLSS Claim #0618-20 (Hearing Decis. #21-022, Feb. 26, 2021).

³² For this purpose, meal breaks otherwise fully relieved from duty would count as being outside regular work hours.

³³ Attendance isn't voluntary if the employer leads a reasonable employee to believe non-attendance may yield negative consequences. [29 C.F.R. § 785.28](#); [Maynor v. Dow Chem. Co.](#), 671 F. Supp. 2d 902, 916-19 (S.D. Tex. 2009) (training and studying for a skills test were compensable where hours were tracked and relied on by the employer for disciplinary action).

³⁴ Training is "directly related" to an employee's job if it is for helping them handle their current job more effectively, rather than for a new or additional skill, or for another job. [29 C.F.R. § 785.29](#); [Haszard v. Am. Med. Response Nw.](#), 237 F. Supp. 2d 1151, 1165 (D. Or. 2001) (job-related training that was beyond minimum state certification requirements, and wouldn't enable employees to gain or continue work at other employers, "is not primarily for the benefit of the employee").