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## **Freight Engineers' Layover Time Was Not Hours Worked for FMLA Eligibility**

Locomotive engineers working on Union Pacific Railroad freight trains are often required to spend time, including overnight stays, near the railroad's away-from-home terminals. While at an away-from-home terminal, an engineer ready and available for work (in "OK" status) must be able to report for work in as little as an hour and a half, cannot consume alcohol or drugs, and must be rested enough to operate a train.

Union Pacific engineers sued under the Family and Medical Leave Act (FMLA) because the railroad refused to count the time in OK status near away-from-home terminals as hours worked when determining their eligibility for FMLA leave and the amount of leave available.

*Note:* To be eligible for FMLA benefits, an employee must have been employed by his or her employer for at least 12 months (not necessarily consecutively) and have worked at least 1,250 hours within the previous 12-month period (see *The Payroll Source*®, p. 4-34).

Here, a U.S. District Court rejected the engineers' position, explaining that the time in OK status was similar to "on call" time, which is not work if an employee can devote the time to "the ordinary activities of private life." The court said that engineers in OK status near away-from-home terminals were not working. They were free to eat, sleep, golf, fish, exercise, shop, or visit friends. They could travel up to an hour and a half from the terminal, and could monitor the railroad's train lineup system to get an idea of when they would be called to duty. The fact that engineers could be disciplined for certain types of behavior while near the away-from-home terminals and were expected to use some of their time to rest before being called to duty did not convert the time into work [*Brotherhood of Locomotive Engineers and Trainmen v. Union Pacific Railroad Co.*, No. 08 C 3591, 2009 U.S. Dist. LEXIS 84168 (ND Ill., 9-15-09)].