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## 29 C.F.R. § 790.7

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### “Preliminary” and “postliminary” activities.

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(a) Since section 4 of the Portal Act applies only to situations where employees engage in “preliminary” or “postliminary” activities outside the workday proper, it is necessary to consider what activities fall within this description. The fact that an employee devotes some of his time to an activity of this type is, however, not a sufficient reason for disregarding the time devoted to such activity in computing hours worked. If such time would otherwise be counted as time worked under the Fair Labor Standards Act, section 4 may not change the situation. Whether such time must be counted or may be disregarded, and whether the relief from liability or punishment afforded by section 4 of the Portal Act is available to the employer in such a situation will depend on the compensability of the activity under contract, custom, or practice within the meaning of that section. <sup>[1]</sup> On the other hand, the criteria described in the Portal Act have no bearing on the compensability or the status as worktime under the Fair Labor Standards Act of activities that are not “preliminary” or “postliminary” activities outside the workday. <sup>[2]</sup> And even where there is a contract, custom, or practice to pay for time spent in such a “preliminary” or “postliminary” activity, section 4(d) of the Portal Act does not make such time hours worked under the Fair Labor Standards Act, if it would not be so counted under the latter Act alone. <sup>[3]</sup>

(b) The words “preliminary activity” mean an activity engaged in by an employee before the commencement of his “principal” activity or activities, and the words “postliminary activity” means an activity engaged in by an employee after the completion of his “principal” activity or activities. No categorical list of “preliminary” and “postliminary” activities except those named in the Act can be made, since activities which under one set of circumstances may be “preliminary” or “postliminary” activities, may under other conditions be “principal” activities. The following “preliminary” or “postliminary” activities are expressly mentioned in the Act: “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.” <sup>[4]</sup>

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