

**Date: 3/12/09**

**Re: Recent Wage & Hour Opinions on Compensable Training Time.**

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The Department of Labor Wage and Hour Division recently released three Opinion Letters addressing whether time spent by workers in training is compensable under the Fair Labor Standards Act ("FLSA") (FLSA2009-1, FLSA2009-13, FLSA2009-15). Two of the letters FLSA2009-1 and FLSA2009-13 are particularly instructional on how to determine whether training is compensable time.

Under, the FLSA attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following **four** criteria are met:

- a. Attendance is outside of the employee's regular working hours;
- b. Attendance is in fact voluntary;
- c. The course, lecture, or meeting is not directly related to the employee's job; and,
- d. The employee does not perform any productive work during such attendance.

29 C.F.R. § 785.27

**Opinion Letter FLSA2009-1**

The employer requested an opinion regarding whether time spent by child care center employees in State-mandated training programs, offered by the employer and required of the employee as a condition of maintaining a State certificate, is hours worked under the FLSA.

The employer operates facilities in several states that provide day care and education to children. The facilities are licensed by the State and State-certified child care teachers and assistants staff the facilities. The employer offers in-service training or continuing education after regular business hours at day care centers in those states that require employees to take such training in order for the employees to maintain their state certification. The courses correspond to those offered by independent bona fide institutions of learning. Attendance at the training is voluntary and employees do not perform work during the training. The teachers and assistants may also attend training offered by other organizations that meet the state mandated training requirements.

Based on the information provided, the Wage and Hour Division found the training met the 29 C.F.R. 785.27 criteria for training that does not constitute hours worked. It noted that: (1) the in-service training is offered only after regular working

hours; (2) the employer does not require attendance at such training; (3) the employer does not impose additional requirements on the employee, such as taking a particular course; and, finally (4) that 29 C.F.R. § 785.31 provided an exception from the requirement that the training not be directly related to the employee's job as the training was for the benefit of the employee and corresponded to courses offered by independent bona fide institutions of learning. The Wage and Hour Division was particularly influenced by the fact that the continuing education was for the benefit of the employees as it "enables an individual to gain or continue employment with any child care service provider." Thus, voluntary attendance of such training by the employee outside normal working hours would not be hours worked even though the training is clearly related to the employee's job.

Importantly, the Wage and Hour Division's opinion applies "even if the State requires that individuals may only be employed by the employer if they meet the in-service or continuing education requirement, so long as the State does not require the employer to provide the training."

### **Opinion Letter FLSA2009-13**

This letter addresses whether time spent by employees taking web-based prerequisite classes at home in preparation for a voluntary job-related training class is compensable time. The employer, a communications company, offered advanced training regarding equipment used by the employees. The training is voluntary, after hours, and compensated. However, prior to taking the class the employees must complete four web-based prerequisite classes.

The Wage and Hour Division found that criterion (c) of 29 C.F.R. 785.27 was not met because the web-based prerequisite classes are directly related to the technician's jobs. The division noted that "training is directly related to the employee's job if it is designed to make the employee handle his job more effectively as distinguished from training him for another job, or to hand a new or additional skill." 29 C.F.R. 785.29. The training classes and web-based prerequisites "enable[d] the technicians to perform their present jobs better by giving them greater ability to use a network system they are presently using.

### **Conclusion**

As the opinion letters outline, training is not compensable time if it is (1) done outside regular hours, (2) voluntary, (3) not directly related to the employee's job, and (4) there are no additional requirements. Importantly, with regard to the "not directly related to the employee's job" criterion, a significant exception is allowed for training that corresponds to "courses offered by independent bona fide institutions of learning." Thus, if the employees have continuing education requirements, the employer need not compensate them if the course corresponds to one offered by a institution of learning and is designed to meet continuing education requirements.