U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

March 3, 2006 **FLSA2006-5**

Dear **Name***:

This is in response to your request for an opinion regarding English language lesson materials that your client distributes to its non-English speaking staff. It is our opinion that time employees voluntarily spend studying these materials outside their regular work hours is not compensable working time under the Fair Labor Standards Act (FLSA).

You state that your client is in the restaurant business and has many employees who speak little to no English. These employees do not work in jobs requiring English proficiency, but the ability to speak English would likely provide them greater opportunities in the workforce and enhance job satisfaction and workplace morale. Therefore, your client has developed a language skills training program for teaching basic English words and phrases. The materials cover such topics as "greetings, numeric concepts (time, money, sequence), dates, days of the week, punctuality, hygiene, anatomy, nationality, safety, kitchen tools, food concepts, cleaning concepts (broom, vacuum, etc.), and customer service (smile, polite, 'thank you,' 'excuse me,' and 'you're welcome')." Currently, your client does not allow employees to leave the client's premises with the written materials, and employees are allowed to study the materials during only their regular working hours, for which they are compensated. The employees have expressed an interest in taking the materials home for further study and to share with family members. Your client would like to give the employees permission to voluntarily take the materials home and study outside of working hours, and your question is whether such after-hours self-study must be compensated as hours worked.

Subject to certain exemptions not applicable here, under the FLSA an employer must compensate its employees at a rate at least equal to the minimum wage for every hour worked, with time and a half for every hour worked over 40 in a workweek. 29 U.S.C. §§ 206(a), 207(a) (copies enclosed). The Department's regulations provide that certain training activities need not be treated as hours worked. *See* 29 C.F.R. §§ 785.27-.31; WH Opinion Letter October 18, 1994 (copies enclosed). Section 785.27 states that "[a]ttendance 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. Whether the training is directly related to the employee's job depends on whether the training "is designed to make the employee handle his job more effectively as distinguished from training him for another job, or to a new or additional skill. . . . Where a training course is instituted for the bona fide purpose of preparing for advancement through upgrading the employee to a higher skill, and is not intended to make the employee more efficient in his present job, the training is not considered directly related to the employee's job even though the course incidentally improves his skill in doing his regular work." 29 C.F.R. § 785.29.

Under the facts you present, the first two requirements of 29 C.F.R. § 785.27 are met because the studying will be done outside of the employees' regular working hours and will be entirely voluntary. See 29 C.F.R. § 785.28. You indicate that the employer will continue to provide paid time for the employees to study the materials. This does not affect time spent training voluntarily outside of the employees' regular working hours. Time spent in training during regular working hours is hours worked, but time spent outside of regular working hours may not be hours worked if the requirements of 29 C.F.R. § 785.27 are met. The third requirement of section 785.27 is satisfied because the training is general in scope and is designed to aid the employee's English skills, not to "make the employee handle his job more effectively." 29 C.F.R. § 785.29. The training is designed to help the employee advance in society and in work. The fact that the training may have an indirect effect on an employee's current job does not remove the training from the scope of section 785.27. Finally, the fourth requirement is fulfilled because the employees do not perform any productive work while studying the materials.

Moreover, when "an employer establish[es] for the benefit of his employees a program of instruction which corresponds to courses offered by independent bona fide institutions of learning," the hours spent in such training are not hours worked even if the training is directly related to an employee's job. 29 C.F.R. § 785.31. The training

offered by the employer need not be identical to any particular course but must be the same type of course as is offered at an institution of learning, and "the course content . . . must not be tailored to any peculiar requirements of a particular employer or of the particular job held by the individual employee." WH Opinion Letters May 21, 1969 and April 30, 1984 (copies enclosed). Here, the training presented in your client's study materials is similar to English proficiency classes offered by local community colleges.

For these reasons, it is our opinion that the employees may voluntarily take the language skills materials home and study them outside their regular work hours without the study time being counted towards the employees' hours worked.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Acting Administrator

Enclosures:
FLSA §§ 3(g), 6(a), and 7(a)
29 C.F.R. §§ 785.27-.31
WH Opinion Letters May 21, 1969, April 30, 1984, and October 18, 1994

Note: * The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7)