



October 29, 2004

FLSA2004-18

Dear *Name*\*,

This is in response to your letter requesting an opinion regarding a proposed policy that your client wishes to adopt. This client is an employer who experiences a high degree of employee turnover and wishes to correct that situation by requiring applicants to “job view” prior to being hired. We have no record of receiving your prior request for an opinion on this issue. We regret the delay in responding to your letter.

You do not describe the job in question, but state that employees who leave the position say that they would not have taken the job if they had understood its requirements and working conditions. In response, your client proposes that potential employees spend approximately 7½ hours observing the job before they are hired. Some applicants may decide early in the day that they do not want the job and will leave, but even those who remain for the full job-view day will not be guaranteed employment. Applicants will already have been advised in writing that they will not perform any productive work or assist any employee during the job view and will not receive any pay for attending the job view. Your client contends that the proposal is in accord with *Walling v. Portland Terminal*, 330 U.S. 148 (1947). You also mention that your client’s proposal is “one step further removed” from the six criteria outlined in WH publication 1297, *Employment Relationship Under the FLSA*, that are used to evaluate the existence of an employment relationship.

You point out that both sides could benefit from this approach. The employer’s job turnover should markedly decrease. Applicants, having the opportunity to actually observe the job and question current employees about it, might not make the mistake of quitting current jobs to accept a position with your client only to discover that the new work does not suit them after all.

These six criteria you referred to are used to evaluate whether a job training situation creates an employment relationship. The factors are whether:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
2. The training is for the benefit of the applicants;
3. The trainees do not displace regular employees, but work under close observation;
4. The employer that provides the training derives no immediate advantage from the activities of the trainees, and on occasion his operations may actually be impeded;
5. The trainees are not necessarily entitled to a job at the conclusion of the training period; and
6. The employer and the trainees understand that the trainees are not entitled to wages for the time spent in training.

If these criteria are satisfied, Wage and Hour will not find that the situation creates an employment relationship. See *Field Operations Handbook*, 10b11; opinion letter dated January 30, 2001.

Based on the situation as you present it, and so long as applicants are clearly informed that they have not been hired prior to the proposed job-view day, we do not believe the pre-hire job view you describe initiates an employment relationship under the Fair Labor Standards Act. The job-view day has some elements similar to a training time situation, but such an orientation program does not create an employment relationship. See opinion letter of May 1, 1978.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have represented that this opinion is not sought by a party to pending 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 the above information is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.  
Acting Administrator

*Note: \* The actual name(s) was removed to preserve privacy.*