



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

FLSA2009-15

January 15, 2009

Dear **Name***:

This is in response to your request for an opinion regarding whether time spent outside normal working hours by city employees studying for city-required training programs, seminars, and classes is compensable hours worked under the Fair Labor Standards Act (FLSA).¹ You also inquire whether the city can set a reasonable limit on the number of hours to be spent studying for such programs, seminars, and classes outside normal work hours. Under the circumstances you describe, it is our opinion that all time spent studying is compensable, but the city may limit the time the employees spend studying.

The city requires certain employees to attend and pass various training programs intended to help the employees become more proficient at their jobs. The city employees attend training during normal work hours. During the training, the instructor informs the employees that they must read and/or study selected material and be prepared to discuss this material during the next class. Employees leave the classroom and go home or to their hotel (if the training is out of town) to study or read the assigned material.

The FLSA requires that an employer compensate an employee for all hours worked. Section 3 of the FLSA defines “employ” as including “to suffer or permit to work.” 29 U.S.C. § 203(g); *see also* [29 C.F.R. § 785.11](#). This rule applies to work performed away from the premises or the job site, including work performed at home. “If the employer knows or has reason to believe that the work is being performed, he must count the time as hours worked.” [29 C.F.R. § 785.12](#).

Under certain circumstances, time spent by employees of state and local governments attending required training outside of regular working hours is considered to be non-compensable. [29 C.F.R. § 553.226\(b\)](#). Examples of non-compensable time include time which is

required by law for certification of public and private sector employees within a particular governmental jurisdiction (*e.g.*, certification of public and private emergency rescue workers), . . . [or] required for certification of employees of a governmental jurisdiction by law of a higher level of government (*e.g.*, where a State or county law imposes a training obligation on city employees), . . . even if all or part of the costs of the training is borne by the employer.

¹ Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

29 C.F.R. § 553.226(b)(1)-(3).

It does not appear that the training you describe falls within the regulations governing compensability of training time applicable to employees of state and local governments. We will, therefore, consider the question under the regulations for determining the compensability of training time applicable to all FLSA-covered employees, which are set forth in [29 C.F.R. §§ 785.27](#) through [785.32](#).

Participation in training programs need not be counted as working time if all of the following 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.

“Attendance is not voluntary, of course, if it is required by the employer. It is not voluntary in fact if the employee is given to understand or led to believe that his present working conditions or the continuance of his employment would be adversely affected by non-attendance.” [29 C.F.R. § 785.28](#). Further, “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 a new or additional skill.” [29 C.F.R. § 785.29](#). As a result, time spent in mandatory training is generally compensable.

According to the information provided, the training occurs during normal work hours. The city requires the employees to attend and pass the training program. The purpose of the training is to help the employees become more proficient in their jobs. Since the above criteria in (a), (b), and (c) are not met, the time spent participating in the training programs you described is compensable hours worked.

The particular circumstances determine whether time spent studying for the training programs outside the classroom after normal work hours is compensable. Time spent in outside study is not compensable if the studying is not required by the employer. *See* Wage and Hour Opinion Letter September 27, 1984 (copy enclosed) (“Time spent in reading or studying at home would not be compensable hours of work if time is allotted during regular working hours but some employees voluntarily do extra work at home on their own to bolster their ability.”); Wage and Hour Opinion Letter July 17, 1980 (copy enclosed) (time spent studying after regular working hours, in connection with a training program, is not compensable because the excess study is not required by the employer); Wage and Hour Opinion Letter July 27, 1971 (copy enclosed) (supplemental after hours reading assignments that are not supervised or tested, and are not necessary to pass the

final examination are primarily for the employee's benefit and may be excluded from compensable hours of work).

When completion of homework is a requirement of a compensable training class, however, time spent completing assignments for such training is compensable. Mandatory homework is addressed in Wage and Hour Opinion Letter September 9, 1970 (copy enclosed), which states,

[t]he employee's participation in the program, both with respect to classroom work and . . . practice at home, is not voluntary . . . if . . . attendance is required for the continuance of . . . employment and if such . . . practice at home is necessary to qualify under the program. In such a case the time spent in classroom training as well as the time devoted to . . . practice at home would be considered as compensable hours of work which the employer may not disregard in determining the employee's compensation.

The circumstances in your example closely resemble the situation described immediately above. Therefore, the time spent outside the classroom and after normal work hours completing required assignments, such as the required reading and studying of materials that you describe, is compensable hours worked.

The city may establish a specific amount of time to be spent completing assignments outside the classroom and after normal work hours. However, as noted in [29 C.F.R. § 785.13](#):

[I]t is the duty of the management to exercise its control and see that the work is not performed if it does not want it to be performed. It cannot sit back and accept the benefits without compensating for them. The mere promulgation of a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so.

If employees spend more time completing the assignment than allowed by the city, the time may be compensable. *See* 29 C.F.R. § 785.12. The city could control the study time by allowing the employees a realistic time to complete their reading and study assignment within the class period or within the normal work day. *See* Wage and Hour Opinion Letter September 27, 1984.

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 issues 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,

Alexander J. Passantino
Acting Administrator

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