

Training time outside work hours: Is it compensable?

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Are you required under the Fair Labor Standards Act (FLSA) to pay for time spent outside normal working hours by municipal employees studying for municipal-required training programs, seminars, and classes? Can the municipality set a reasonable limit on the number of hours to be spent studying for such programs, seminars, and classes outside normal work hours?

These two questions were recently answered in an opinion letter signed by Acting Wage and Hour Administrator Alexander Passantino. In Wage and Hour Opinion Letter FLSA 2009-15 (Jan. 16, 2009), the Wage and Hour Division (WHD), found "it is our opinion that all time spent studying is compensable, but the city may limit the time the employees spend studying."

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

WHD stated the FLSA requires an employer to compensate an employee for all hours worked which apply to work performed away from the job site, including work performed at home. WHD recognized there are certain circumstances where time spent by employees of municipalities attending required training outside of regular working hours is considered to be noncompensable. An example of noncompensable time includes time which is required by law for certification of employees, even if all or part of the cost of the training is borne by the municipality. WHD did not find the training described fell within the regulations governing compensability of training time applicable to municipal employees. WHD found that time spent outside the classroom and after normal work hours completing required homework, such as required reading and studying of material, is compensable since it was not voluntary. WHD further found that the municipality could establish a specific amount of time to be spent completing assignments outside the classroom and after normal work hours. However, if employees spent more time completing the assignment than allowed by the municipality, the time still may be compensable.

WHD's opinion letter provides guidance to municipalities on how to avoid this compensability issue. First, municipalities should communicate to their employees that time spent in studying outside normal work hours is not required by the municipality. Second, any supplemental after-hour assignments should not be supervised or tested, and employees should be made aware that they are not necessary to pass the final exam, but are primarily for the employees' benefit and will not be considered compensable hours of work.

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