

## FLSA-694

April 30, 1984

This is in reply to your letter in which you request an opinion under the Fair Labor Standards Act (FLSA) as to whether the hours spent by Service employees in certain self-development training courses are compensable under the Act. Along with your letter you submitted manuals and other materials for four courses which you believe to be representative of the courses that can be offered on a non-compensable basis. You indicate that employees would participate in these courses on Service premises or take them as a self study correspondence program.

The courses fall into two general categories: (1) career-development courses, aimed at developing the knowledge and skills of employees for the purposes of career advancement in the Service, e.g., "Introduction to Supervision"; and (2) courses which correspond to courses offered by independent bona fide institutions of learning and which are not tailored to any requirements of a particular employer, e.g., "Accounting I."

The Department of Labor's Interpretative Bulletin on Hours Worked, 29 CFR Part 785, defines, in sections 785.27 through 785.32, the circumstances under which time spent by employees in training programs need not be counted as compensable hours of work under FLSA. Generally, as stated in section 785.27, four criteria must be met: (a) participation in the training is outside the employee's regular working hours; (b) participation is in fact voluntary; (c) the training course is not directly related to the employee's job; and (d) the employee does not perform any productive work during such participation.

It is usually not difficult for a employer to establish a training program of courses that would meet criteria (a), (b), and (d). Criterion (c), however, must be applied on a case by case basis to an individual employee taking a particular course. If the course is directly related to the employee's job to the extent that it is designed to make the employee perform his/her job more effectively, as distinguished from training him/her for another job, the time spent by the employee in taking such a course would constitute compensable hours of work under the Act. Conversely, if the course is unrelated to the employee's job, the hours spent in taking it would not be considered hours worked under the Act.

The requirement in (c) referred to above is inapplicable only in "special situations" as discussed in section 785.31. This section states that even if training is clearly related to an employee's job, or paid for by the employer, voluntary participation outside of working hours need not be compensated if the course corresponds to courses offered by independent bona fide institutions of learning. Such a course need not be identical to a particular course offered in a college or vocational school, but the course content, like that of other instruction in bona fide institutions of learning, must not be tailored to any peculiar requirements of a particular employer or of the particular job held by the individual employee. To qualify under section 785.31 a course must be such that the skill

or knowledge imparted through training would enable an individual to gain or continue employment with any employer. If the course is in fact established on this basis, time spent in taking it would not be considered compensable regardless of the fact that the training might be directly related to an employee's job.

Any conclusion that a particular training program constitutes a "special situation" under section 785.31 rests on all the facts in the situation including the purpose, scope, operation and effect of the training program as a whole.

The specific courses you submitted for review are discussed below:

1. The Service considers the time spent by supervisory employees in taking "Introduction to Postal Supervision" as compensable hours of work of work under FLSA. On the other hand, it is your position that since this course is not directly related to nonsupervisory positions, it can be offered to nonsupervisory employees on a noncompensable basis, provided the other requirements in section 785.27 are met. We agree with this position.

2. "Accounting I" is the type of course that falls within the discussion in section 785.31. If the requirements therein are met, the time spent by any employee, regardless of position, in taking this course need not be counted as hours worked under the Act.

1. While the other two courses, "Report Writing for Postal Managers" and "Basic Pneumatics and Hydraulics," may be similar to courses offered by independent institutions of learning, these courses appear to be tailored to the needs of the Postal Service and to the particular jobs held by the employees who would be interested in taking such courses. The Preface to the latter course states, "'Basic Pneumatic and Hydraulic Principles' is written for personnel for the United States Postal Service.... this course of instruction is designed to provide the employee with basic knowledge of fluid ... principles which are utilized in ... components of postal service equipment."

These two courses appear to be similar to "Introduction to Supervision" and should also be considered under section 785.27. Whether these courses correspond to courses offered by independent institutions of learning for purposes of section 785.31 is a question of fact that can only be determined after careful review has been made of all available information, including a review of the content of similar courses offered by independent institutions of learning.

We trust this is responsive to your inquiry. If we can be of further assistance, please do not hesitate to contact us again.

Sincerely,

William M. Otter  
Administrator

## **FLSA-956**

May 3, 1984

This is in reply to your letter of March 23 requesting an opinion as to whether or not the bonus plan of one of your clients will qualify as a percentage of total earnings bonus plan which satisfies the overtime pay requirements of the Fair Labor Standards Act (FLSA).

Under the plan, your client pays a bonus to employees based on a percentage of total monthly earnings, including overtime, when certain sales goals of a store are met or exceeded. For example, the bonus is computed at the rate of 70 percent of the employee's total weekly gross pay (including overtime pay) for four full sales weeks immediately preceding the close of a fiscal month. This amount is then divided by four, and the amount so computed is paid as a bonus to the employee.

Where an employer's payments under a bonus plan are based upon a percentage of total earnings of the employee, the payments may be excluded from the regular rate of pay if the conditions prescribed in section 778.210 of the enclosed copy of 29 CFR Part 778 are met. Under the method of allocation discussed in this section, where a bonus is paid as a production incentive percentage of the employee's total compensation, including straight time, overtime, bonuses, and commissions, the overtime pay due under the Act is automatically included and no additional computation or payment of overtime is required.

Based on the information contained in your letter, it is our opinion that the percentage of total earnings bonus plan would not affect the regular rate of pay and would comply with the overtime pay requirements of the Act.

If you have any further questions, please do not hesitate to let us know.

Sincerely,

William M. Otter  
Administrator

Enclosure