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

FLSA2009-1

January 7, 2009

Dear **Name***:

This is in response to your request for an opinion regarding whether time spent by child care center employees in State-mandated training programs, offered by the employer and required of the employee as a condition of maintaining her State certificate, is hours worked under the Fair Labor Standards Act (FLSA).[1] It is our opinion that the time is not hours worked under the FLSA.

Your client operates facilities in several states that provide day care and education to children ranging in age from infants to school age. The facilities are licensed by the State and State-certified child care teachers and assistants staff the facilities. Your client offers in-service training or continuing education after regular business hours at day care centers in those states that require employees to take such training in order for the employees to maintain their state certification. The courses correspond to those offered by independent bona fide institutions of learning. Attendance at the training is voluntary and employees do not perform work during the training. The teachers and assistants may also attend training offered by other organizations that meet the state mandated training requirements.

Under 29 C.F.R. § 785.27, "[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.

Based on the information provided, the training your client provides appears to meet the criteria for training that does not constitute hours worked. The in-service training is offered only after regular working hours, thereby satisfying criterion (a). Criterion (b) is met because the employer does not require attendance at such training, but rather it is the employee's decision whether to participate in the training. Further, we understand that the employer does not impose additional requirements on the employee, such as taking a

[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.

particular course. Therefore, the attendance at the training is voluntary. *See* Wage and Hour Opinion Letter September 9, 1996 (copy enclosed).

With respect to criterion (c), 29 C.F.R. § 785.31 provides an exception from the requirement that the training not be directly related to the employee's job where the training is for the benefit of the employee and corresponds to courses offered by independent bona fide institutions of learning. Voluntary attendance of such training by the employee outside normal working hours would not be hours worked even though the training is clearly related to the employee's job. *See* Wage and Hour Opinion Letter September 10, 1998 (copy enclosed); 29 C.F.R. § 785.31. In the child care industry, we regard child care training to be for the benefit of the employees when it provides instruction of general applicability that enables an individual to gain or continue employment with any child care service provider. *See* Wage and Hour Opinion Letter September 9, 1996. Here, the courses correspond to those offered by bona fide institutions of learning and qualify the employees to gain employment with any child care service provider. Therefore, criterion (d) is met so long as the employees are not performing any productive work during the training.

Therefore, it is our opinion that the time spent by employees voluntarily attending in-service training or continuing education required by the State and provided at your client's day care center is not hours worked under the FLSA. This is true even if the State requires that individuals may only be employed by the employer if they meet the in-service or continuing education requirements, so long as the State does not require the employer to provide the training.

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).**