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This is in response to your inquiry concerning the application of the Fair Labor Standards Act (FLSA) to individuals in a company operated preemployment training program for school bus drivers. The issue of concern is whether the trainee bus drivers are employees for FLSA purposes during the training period.

You state that your client provides school transportation services at several locations in the U.S. and employs a substantial number of school bus drivers. Each state in which the employer operates has training and licensing requirements for school bus drivers. In order to meet these requirements as well as overall safety concerns, the employer has developed an in-house training program.

Before training the applicants, the employer screens them extensively. The screening process consists of an application, interview, reference check, motor vehicle record check, and a criminal record check. Applicants must then acquire a commercial driver's license which may require a drug test and a physical exam. The employer pays for the drug test and allows the applicant to use the employer's physician for the physical exam, if the applicant so chooses, at no cost. If these steps are successfully completed, the applicant is eligible for training.

Training consists of several components including those required by state law (e.g., first aid/CPR) as well as training in the employer's operating procedures. Training includes procedures for accidents/emergencies, loading/unloading of students, "management" of students, defensive driving, and etc. During the training period, applicants do not transport students or substitute for existing drivers. The training provided is free of charge.

Failure in any portion of the training program disqualifies an applicant for consideration for employment. While the employer seeks to immediately employ an applicant who has successfully completed the training program, there is no guarantee of employment. Applicants are not paid for the time spent in the training program. They are requested to sign an "acknowledgement" that describes the foregoing conditions.

In light of Walling v. Portland Terminal Co., 330 U.S. 148 (1947); Donovan v. American Airlines, Inc., 686 F.2d 267 (5th Cir. 1982); and Reich v. Parker Fire Protection District, 992 F.2d 1023 (10th Cir. 1993) you ask whether the persons in the training program are employees for FLSA purposes.

Whether "trainees" are employees of an employer under the FLSA will depend on all of the circumstances surrounding their activities with respect to the employer while in "training" status. We have taken the position that if all six of the following criteria apply, the "trainees" are not employees within the meaning of the FLSA:

- (1) the training, even though it may include 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 trainees;
- (3) the trainees do not displace regular employees, but may work under their close observation;
- (4) the employer derives no immediate advantages from the activities of the trainees, and sometimes the employer's operations may actually be impeded;
- (5) the trainees are not necessarily entitled to a job upon completion of the training period; and
- (6) the employer and the trainees have an understanding that the trainees are not entitled to wages for the time spent in training.

The information that you have provided is not, in our opinion, sufficient to determine whether the individuals in question are excluded from the FLSA as "trainees" under the criteria above and the cases cited. First, you indicate that the employer has operations at several locations in different states under which different training criteria may apply. Thus, we cannot easily evaluate all of the overall circumstances surrounding the various training operations.

Further, specific information as to the above factors, also discussed in the cases cited, is lacking. For example, what benefits flow to the employer under the arrangement? Why does the employer not derive immediate advantages from the training programs? How many "trainees" have been hired as compared to all trainees? These and similar facts with respect to the criteria are necessary in order to analyze their employment status.

While the information you have provided seems to suggest that the individuals at issue are not employees during the training program, we do not feel it is appropriate to take an unequivocal position absent more facts, or a formal record as in the cases cited.

We trust that the above is responsive to your inquiry.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator