

NOV -2 1995

This is in response to your memorandum requesting an opinion concerning the application of the Fair Labor Standards Act (FLSA) to the proposed mechanical training program for employees of the _____ at the _____ at College Park.

You propose to establish a training program whereby employees of the company can update their skills in the mechanical and technical area. You state that the main thrust of the program is to upgrade employees to a higher skill, especially in areas of electronics and energy management. The training program would be strictly voluntary, and the employees' participation or non-participation will in no way affect their present working conditions or their employment status.

As you know, the Wage and Hour Division of the Department of Labor administers and enforces the FLSA, which is the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees must be paid a minimum wage of \$4.25 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek.

As explained in 785.27 of Regulations 29 CFR Part 785 (copy enclosed), time spent by employees in training programs need not be counted as compensable hours of work under the FLSA, if all 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, it is not possible to tell if criterion (c) has been met. However, as you know, there are "special situations" as discussed in section 785.31 which state that even if the training is clearly related to an employee's job, or paid for by the employer, voluntary attendance by an employee outside of his/her working hours need not be compensated if the course corresponds to courses offered by independent bona fide institutions of learning. Therefore, if the training you

have in mind corresponds to courses offered by independent bona fide institutions of learning, it is our opinion that time spent by employees in your proposed training program need not be counted as hours worked under the provisions of the FLSA.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein. You have also represented that this opinion is not sought on behalf of a client or firm which is under investigation by the Wage and Hour Division, or which is in litigation with respect to, or subject to the terms of any agreement or order applying, or requiring compliance with, the provisions of the FLSA.

We trust that the above information is responsive to your inquiry.

Sincerely

Daniel F. Sweeney
Office of Enforcement Policy
Fair Labor Standards Team

Enclosure