

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210



JAN 23 1997

This is in response to your July 19, 1996 letter to the Secretary of Labor asking a number of questions concerning the application of the Fair Labor Standards Act (FLSA) to the training time spent by public safety trainees attending the Department of Correction's training academy. We understand that you have already received a partial response from the Bureau of Apprenticeship and Training (BAT). This letter will address questions you raised which are within the purview of the Wage and Hour Division (Division).

Question 1: What has been the historic application of 29 C.F.R. 785.32 to the compensability of time spent in apprenticeship training?

Section 785.32 represents a narrow exception to the general FLSA rule for determining the compensable nature of training time. The general rule, found at 29 C.F.R. 785.27, indicates that training time will be compensable hours of work if, the training is:

1. During regular working hours; or
2. Required by the employer; or
3. Directly related to the employee's job; or
4. Involves the performance of any productive work.

The Division has always judged that the first three of these criteria are satisfied for training time at bona fide fire or police academies, making such time compensable hours of work. 29 C.F.R. 553.214, 553.226(c).

In questioning the application of Section 785.32, you have incorrectly described it as an overtime exemption to the FLSA. It actually provides a narrow exception to the general Section 785.27 test discussed above.

As an enforcement policy, the Division has historically interpreted the Section 785.32 exception to allow employers to treat time spent in bona fide apprenticeship programs as noncompensable only when each of the following criteria are met:

1. **The time is spent in an organized program of related supplemental instruction;**
2. **The apprentices are employed under a written apprenticeship agreement or program which substantially meets the fundamental BAT standards; and**
3. **The program does not involve productive work or the performance of the apprentice's regular duties.**

The time spent at academies such as that operated by the _____ constitutes the primary and regular duty of the apprentices so engaged. It thus does not meet the supplemental instruction and other-than-regular duty criteria necessary for the application of the Section 785.32 exception.

Question 2: Is the application of Section 785.32 limited only to certain types of bona fide apprentices?

No.

Question 3: What is the Department's interpretation of "related, supplemental instruction?"

For purposes of Section 785.32 only, the Wage and Hour Division has interpreted "related supplemental instruction" to be theoretical instruction designed to give apprentices a better understanding of the mechanical activities which they will be called upon to perform in their trades. It should be noted, however, that it does not include time spent by apprentices in performing their regular duties or in any active work.

The enclosed Memorandum Opinion in the case of James O'Neil, et al. v. State of Washington By and Through the Washington State Patrol, No. 88-2-00852-1 (April 10, 1992), also provides an interpretation of the meaning of "related supplemental instruction" as used in Section 785.32.

Question 4: Is full time attendance at a training academy considered compensable as regular work hours for FLSA overtime purposes?

Yes, however, see the special provisions applicable to employees of state and local governments found in Section 553.226.

Question 5: Are any of the preceding answers dependent upon the mixture of employer(s) and union(s) who compose a bona fide apprenticeship program?

No.

You indicate that the State and appropriate unions have agreed that overtime will not be paid to trainees while at the academies. We note that the courts are reluctant to recognize the validity of such agreements on the basis that employees subject to the

Act may not choose to "decline" the protections of the Act. Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290, 302 (1985).

Please note that the FLSA only requires the payment of minimum wage, currently \$4.75 an hour, for the academy training time. Further, trainees may be covered by the partial FLSA Section 7(k) overtime exemption (see Section 553.214). The FLSA does not require payments in excess of these requirements.

We trust this satisfactorily responds to your inquiry. If you have further questions on this matter, please contact Michael Ginley of my staff at (202) 219-8412.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Echaveste", written over a horizontal line.

Maria Echaveste
Administrator

Enclosure