

SEP 15 1997

This is in response to your letter of April 23, 1997, requesting an opinion regarding the application of the Fair Labor Standards Act. (FLSA) to time spent in classroom training and testing to obtain and maintain State-mandated agent licenses. We have no record of receipt of your letter dated December 9, 1996.

You represent an insurance company which would like to know whether or not it is required to compensate its non-exempt employees for time spent in classroom training and testing to obtain and maintain agent licenses required by State-mandated continuing education requirements.

The relevant facts you present include the following:

- (1) The States in which your client operates require persons involved in solicitation or negotiation of insurance to obtain and maintain agent licenses. The requirements include not only a passing grade on the licensing exam, but also extensive classroom time. In some cases 90 hours per person are required by State licensing procedures to obtain and annually maintain licenses.
- (2) Attendance at all licensing classes and continuing education courses are scheduled outside of regular working hours.
- (3) Employees who do not meet the State licensing requirements may continue employment with the company in other positions.
- (4) The employee does not perform productive work during his or her attendance at the classes.
- (5) The licensing training and continuing education components are general in nature, and the license can

be used by the employee if he or she goes to work for another insurance company.

- (6) The licensing training and continuing education courses are sponsored by and mandated by the State (not the company), and is not training tailored to meet the needs of either an individual employer or the company in particular.

As you know, sections 785.27 through 785.32 of Regulations 29 CFR Part 785 discuss the subject of training programs as hours worked under the FLSA. Attendance at training programs 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, it appears that criteria (a) and (d) are met. As for criterion (c), although the training is clearly related to the employee's job, sections 785.30 and 785.31 provide that even such training need not be compensated if it is secured at or it corresponds to courses offered by independent bona fide institutions of learning and is voluntarily attended by an employee outside normal working hours. The information you provided to a member of my staff indicates that the courses to be taken by the employee would be general/basic courses (e.g., property damage insurance, casualty insurance) offered by independent institutions that provide general instruction which enables the employee to gain or continue employment with any employer in the insurance business. We would regard this training as primarily for the benefit of the employee and not the employer. In training of this type, where the employee is the primary beneficiary, section 785.31 indicates that criterion (c) does not have to be met.

With regard to criterion (b), where the State has imposed the licensing training requirement on the individual and not on the employer, and the training is of general applicability and not tailored to meet the particular needs of individual employers, it is our opinion that non-exempt employees would not have to be compensated for time spent in such training.

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. If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

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