

SEP 15 1997

This is in response to your letter on behalf of several clients in the trucking industry who are subject to the Department of Transportation's mandatory random and post-accident drug testing regulations. You inquire whether time spent in drug testing and in physical examinations required by the Department of Transportation for commercial licensing purposes may be considered compensable hours of work under the Fair Labor Standards Act (FLSA).

The FLSA is the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid not less than the minimum wage of \$5.15 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.

We agree with the comment in your letter that the regulation at 29 C.F.R. 785.43, pertaining to the receipt of medical attention, is inapplicable to this case. However, attendance by an employee at a meeting during or outside of working hours for the purpose of submitting to a mandatory drug test imposed by the employer would constitute hours worked for FLSA purposes, as would attendance at a licensing physical examination during or outside of normal working hours.

Generally, whenever an employer imposes special requirements or conditions that an employee must meet before commencing or continuing productive work, the time spent in fulfilling such special conditions is regarded as indispensable to the performance of the principal activity the employee is hired to perform. Included in this general category are required physical examinations and drug testing. Where the Federal government requires employees to submit to physical examinations and drug testing as a condition of the employer's license to operate its business, both the drug tests and physical examinations are for the benefit of the employer.

Time spent in these activities is time during which the employee's freedom of movement is restricted for the purpose of serving the employer and time during which the employee is subject to the employer's discretion and control. It is immaterial whether the time spent in undergoing the required physical examination and drug testing is during the employee's normal working hours or during nonworking hours.

The physical examination and the drug testing are essential requirements of the job and thus primarily for the benefit of the employer. Therefore, it is our opinion that the time so spent must be counted as hours worked under 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 that 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.

I trust that this satisfactorily responds to your inquiry.

Sincerely,

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