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**DOL ISSUES TWO OPINION LETTERS
REGARDING COMPENSABLE TIME FOR WORKERS UNDER THE FLSA**

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Wendy R. Hughes, Esquire

On November 3, 2020, the United States Department of Labor's (DOL) Wage and Hour Division (WHD) issued two opinion letters regarding compensable worktime under the Fair Labor Standards Act for employees who [1] attend voluntary training programs not involving any productive work (FLSA2020-15) and [2] travel to and from various job-site locations (FLSA2020-16). The rules in question apply only to non-exempt employees (overtime-eligible).

FLSA2020-15 Letter – Compensability of Voluntary Employee Training

Generally, the FLSA requires employers to compensate employees for their work. WHD regulations provide that “[a]ttendance at lectures, meetings, training programs and similar activities” does not need to be counted as working time, if the following four criteria are met.¹

- Attendance is outside of the employee’s regular working hours.
- Attendance is voluntary.
- The lecture, course, meeting, or training program is not directly related to the employee’s job.
- The employee does not perform productive work during attendance.

Two exceptions (special situations) exist to the criterion that the class or program not be directly related to the employee’s job. These exceptions include where the employer has established an instructional program for its employees that is comparable to courses offered by “independent bona fide institutions of learning,” or where an employee on her own initiative attends an independent school after work hours.² In these two instances, the WHD does not consider an employee’s attendance time to be hours worked – even where the courses are job-related.

In its opinion letter, the WHD considered a hospice care provider that funds continuing education units (CEU) for its employees. The employer does not require its workers to use the CEU funds or attend any particular continuing education class. Employee participation is always voluntary, and employees do not get any work-related benefit from attending these classes. The employer presented the WHD with six different scenarios. For each of these scenarios, the employees did not perform any productive work during attendance.

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Scenario	Opinion
<p>1. On-demand webinar <i>directly related</i> to the employee’s job and with CEUs that count toward the employee’s licensing requirements. Employee views webinar <i>outside</i> work hours.</p>	<p>Not compensable time under the “special situations” exceptions.</p> <p>Given the CEU offering, it appears that an independent bona fide institution of learning presented the webinar. When the employee <i>could have</i> viewed the webinar is immaterial. The WHD’s focus here is when the employee <i>actually</i> views the webinar – during or outside work hours.</p>
<p>2. On-demand webinar <i>directly related</i> to the employee’s job and <i>without</i> CEUs. Employee views webinar <i>outside</i> work hours.</p>	<p>Insufficient information to provide an opinion.</p> <p>WHD needed additional facts, such as whether the webinar meets the requirements for one of the special situations that serve as exceptions to the WHD’s general rule. WHD noted that it is not clear whether an independent bona fide institution of learning offered the webinar.</p>
<p>3. Same as scenario 2, except the employee watches the webinar <i>during</i> work hours.</p>	<p>Compensable time because it takes place during work hours.</p> <p>The WHD noted that an employer could prohibit viewing during regular work hours, if desired.</p>
<p>4. On-demand webinar <i>not directly</i> related to the employee’s job and without CEUs. Employee views webinar <i>during</i> work hours.</p>	<p>Compensable time because it takes place during work hours.</p> <p>The WHD noted that an employer could prohibit viewing during regular work hours, if desired.</p>

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<p>5. On-demand webinar <i>not directly</i> related to the employee’s job and with CEUs. Employee views webinar <i>during</i> work hours.</p>	<p>Compensable time because it takes place during work hours.</p> <p>The WHD noted that an employer could prohibit viewing during regular work hours, if desired.</p>
<p>6. In-person, out-of-state, weekend conference with partial CEUs. Some of the conference will relate directly to the employee’s job. Travel and the conference cut across the employee’s normal work hours, and the conference takes place on days that the employee does not work.</p>	<p>Not compensable for time spent at the conference under the “special situations” exceptions.</p> <p>Travel time also is excluded as personal travel time.</p>

FLSA2020-16 Letter – Compensability of Work-Related Travel

In this opinion letter, the WHD examined three scenarios involving travel of a construction company’s non-exempt foremen and laborers to and from local and remote job sites. Travel time is compensable when it is “integral and indispensable to the principal [job] activities.”³

Generally, “walking, riding, or travelling to and from the actual place of performance of the [employee’s] principal activity or activities” is not compensable worktime when it occurs before the employee starts her principal work activities or after she completes them.⁴ When an employee is required to report to a work site to obtain instructions, to perform work there, or to pick up tools, her travel time is compensable.⁵

Overnight travel may be compensable depending on when the employee travels and how she travels. Travel away from home during normal work hours is compensable because travel substitutes for other employee duties. This statement is true for travel on non-work days as well. However, the WHD does not consider passenger travel away from home and outside of regular working hours to be compensable.

The construction company has job sites at various locations. For safety and security purposes, the company keeps its trucks at its principal place of business. For each scenario, the foremen have to travel to the employer’s place of business to get a company truck and drive the truck to the job site where it is used to move around equipment and tools. In each of the three scenarios, the foremen’s travel time between the employer’s principal place of business and the job sites is compensable according to the WHD because it is integral and indispensable to their principal job activities. However, the foremen’s travel from home to the employer’s place of business and back is not compensable.

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Scenario	Opinion
<p>1. The job site is close to the company’s principal place of business. Laborers may choose to drive to the job site from home or drive to the principal place of business and ride to the job site with the foremen.</p>	<p>Not compensable travel time for either travel option to and from the local job site.</p>
<p>2. The job site is 1.5 to 4.5 hours travel time from the company’s principal place of business. The company pays for hotel accommodations close to the job site and the laborers stay at the hotel for the duration of the job. Laborers are to drive their personal vehicles to and from the remote job site at the beginning and end of the job. Some laborers prefer to drive their vehicles to the company’s principal place of business and ride with the foremen to the remote job site and back.</p>	<p>Not compensable travel time for travel to and from hotel to job site each day. Compensable time for laborers’ travel time to and from remote job site at the beginning and end of the job to the extent that it occurs during normal work hours, even if during a non-work day.</p> <p>If the company provides laborers with the option of riding to the remote job site with a foreman in a company truck, the company may choose to count as hours worked either (i) the actual amount of compensable time the laborer accrues in driving to the remote job site or (ii) the amount of time that would have accrued during travel in the company’s truck.</p>
<p>3. Same facts as 2 but the laborers instead opt to travel between the job site and their homes each day rather than stay in a hotel.</p>	<p>Not compensable travel time to and from the remote job site each day. Once the laborers are relieved of their work duties for the day, that time is not compensable.</p>

These scenarios are illustrative and the WHD notes that the FLSA regulations do not address every employment scenario. To read the WHD’s opinion letters in their entirety, please click [here](#). If you have questions about compensating employees for voluntary training or travel time, call us. We are here to help.

¹ 29 C.F.R. § 785.27.
² 29 C.F.R. § 785.31.
³ Integrity Staffing Solutions, Inc. v. Busk, 135 S. Ct. 513, 519 (2014).
⁴ 29 U.S.C. § 254(a).
⁵ 29 C.F.R. § 785.38.

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