

## Department of Labor Issues Helpful Opinions Re: When Training Is Compensable “Work Time”

*Labor & Employment Advisor – Spring 2009*

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One of the most confusing wage and hour questions for employers is whether or not to pay employees for attending training when the training occurs off-hours. The Federal Department of Labor's Wage Hour Division recently released several opinion letters providing some clarification. In one case, childcare workers could voluntarily sign up for “in-service training,” allowing employees to maintain their state certifications. The employer-provided training was similar to training offered by institutions of higher learning. The second case involved Web-based courses preparatory to paid training for technicians employed by a communications company. The Web-based programs were offered at employees’ homes. The third case involved attendance at training programs offered by a municipal employer intended to help employees become more proficient at their jobs. Again, as with the training by the communications company, the class required the study of preparatory materials during the employees’ spare time.

In the first case involving the childcare training, the federal Wage and Hour Division ruled that the training time was not compensable work time since: 1) the training occurred outside of regular work hours; 2) attendance was voluntary; 3) the training was very general and was not directly related to the employees’ jobs; and 4) there was no productive work occurring during the training period. The Division noted that, in particular, the type of childcare training received by the employees was of “general applicability that enables an individual to gain or continue employment with any childcare service provider.”

The requisite element of “general” versus “direct” applicability was the focus of the other two opinion letters as well. With regard to the inquiry regarding the communications company, the Division determined that, although the Web-based courses were voluntary and took place outside working hours, the at-home training time was compensable because it was directly related to the technicians’ job. This “direct applicability” requirement is met if, according to the Division, it “is designed to make the employee handle his or her job more effectively as distinguished from training the employee for another job, or for a new or additional skill.” Since the training was specific to the communications company’s product, it was compensable “work time.”

With regard to the municipality providing homework to its employees, the Division focused on the voluntariness of the training. It determined that the homework was necessary for the compensable training class and, as such, was not voluntary. As a result, it was compensable. The Division suggested that the employer could make this time non-compensable by providing homework time during the class period or within the normal work day.

As a result, not all training time is compensable, but if it is directed at skills necessary for performing the employee's work, and is not of general applicability, it may constitute compensable “work time,” even if it occurs off hours.