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Training Time

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Training Time

Reference Number: CTAS-989

The rules governing compensability of training time^[1] for employees are often confusing. The general rule is that attendance at lectures, meetings, training programs, and similar activities must be considered working time *unless* the following four requirements are met:

1. Attendance is outside the employee's regular working hours;
2. Attendance is voluntary;
3. The course, lecture, or meeting is not directly related to the employee's job; and
4. The employee does no productive work while attending.^[2]

Attendance is not voluntary if it is required by the employer or if the employee is led to believe that his employment would be adversely affected if he does not attend.^[3] Training is considered to be directly related to the employee's job if it is designed to help the employee perform his present job more effectively. On the other hand, training to learn a new job or an additional job skill or training for the purpose of advancement to another position is not considered directly related to the employee's job, even though it may incidentally improve the employee's skill in doing his regular job.^[4] There is an exception to the requirement that an employee be paid for training directly related to the employee's job – if an employee on his own initiative voluntarily attends a public school or takes training in an employer-sponsored on-the-job training program outside working hours, the time is not considered hours worked even if the courses are job related.^[5]

Questions about employee training often arise in the context of firefighters and law enforcement officers. The regulations are reasonably clear that when firefighters and law enforcement officers attend training at a bona fide fire or police academy or other training facility that is required by the employing agency, the time is compensable. However, it is only the time actually spent in classes or training that is compensable time; law enforcement officers or firefighters who are in attendance at a police or fire academy or other training facility are not considered to be on duty during those times when they are not in class or at a training session if they are free to use their time for personal pursuits.^[6]

With regard to non-required training for law enforcement officers, in a letter dated January 2, 1987, the DOL addressed a question concerning the compensability of work-related training sessions for police officers. The police officers attended state-certified training programs on a voluntary basis, sometimes during scheduled shifts and sometimes on their days off. The topics covered at these sessions included fingerprint analysis, accident investigation techniques, high-speed pursuit driving techniques and other law enforcement related training. The DOL noted that these training sessions are not compensable working hours only if the following criteria are met:

1. Participation in the training is outside the employee's regular working hours;
2. Participation is in fact voluntary;
3. The training is not directly related to the employee's job; and
4. The employee does not perform any productive work during such participation.

The DOL found that the first criterion was not met in some instances and the third criterion was not met at all. The training sessions were directly related to the employee's job, according to DOL. Therefore, the hours attending the police training sessions were compensable working hours, whether attendance was on a work day or not. Since the training program was work related, all hours of attendance were compensable under the FLSA.

In a Wage and Hour Opinion Letter dated February 16, 2001, the DOL was asked to address whether corrections deputies who "ride along" with road patrol deputies to gain experience for advancement opportunities must be paid for their time. The DOL found that because the deputies were providing hands-on assistance to the patrol deputies in the form of assistance in searching for weapons, handcuffing, etc., the fourth requirement that the employee not perform any productive work was not met and the time was compensable.

Finally, there are regulations setting out special situations in which employees of state and local governments do not have to be compensated for training time. These regulations state that while time spent attending training required by the employer is normally considered compensable time, state and local government employees do not have to be compensated for time spent in training under the following limited circumstances:

1. Attendance outside of regular working hours at specialized or follow-up training, that is required by law for certification of public and private sector employees within a particular governmental jurisdiction (e.g., certification of public and private emergency rescue workers), does not constitute compensable hours of work for public employees within that jurisdiction and subordinate jurisdictions.
2. Attendance outside of regular working hours at specialized or follow-up training, that is required for certification of employees of a governmental jurisdiction by law of a higher level of government (e.g., where a state or county law imposes a training obligation on city employees), does not constitute compensable hours of work.
3. Time spent in the training described in 1 and 2 above is not compensable, even if all or part of the cost of the training is borne by the employer.^[7]

The intent of the foregoing regulation is far from clear, but in an Opinion Letter dated September 30, 1999, the DOL found that this regulation allows a law enforcement agency to deny compensation for time spent on tests for promotion administered to law enforcement officers by the civil service board. The tests were required by the state for an officer to become a commissioned police officer, they were voluntarily taken, and they occurred outside the regular hours of work.

The regulations discussed above are confusing, and the opinion letters interpreting them are not always consistent. In situations where it is not clear whether payment for attendance at training sessions is required under the regulations, it may be best to remember that an employer may choose to pay for training time even when it is not required by the FLSA. Before denying compensation for attendance at job-related training, the employer should discuss the matter with the county attorney.

[1] Training for current employees should be distinguished from true trainees who have not yet been employed and who may be excluded from coverage under the FLSA if all of the following six conditions are met: (1) the training is similar to that which would be given in a vocational school; (2) the training is for the benefit of the trainees; (3) the trainees do not displace regular employees but work under close observation; (4) the employer providing the training derives no immediate advantage from the activities of the trainees and on occasion his operations may actually be impeded; (5) the trainees are not necessarily entitled to a job at the completion of the training period; and (6) the employer and the trainees understand that the trainees are not entitled to wages for the time spent in training. See Wage and Hour Opinion Letter dated Jan. 6, 1969. This type of arrangement is rarely encountered in county government.

[2] 29 C.F.R. § 785.27.

[3] 29 C.F.R. § 785.28.

[4] 29 C.F.R. § 785.29.

[5] 29 C.F.R. §§ 785.30 and 785.31.

[6] 29 C.F.R. §§ 553.214 and 553.226(c). A law enforcement agency may be able to enter into an agreement allowing it to recoup some of the cost of training a new officer if he or she leaves employment within a specified time after training as long as certain conditions are met, including not reducing the officer's pay below minimum wage or reducing overtime payments for earned overtime. See *Heder v. City of Two Rivers*, 295 F.3d 777 (7th Cir. 2002); Wage and Hour Opinion Letter FLSA2005-18 (May 31, 2005).

[7] 29 C.F.R. § 553.226.

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