Coates' Canons Blog: Is Training Time “Work” That Must Be Paid?

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Amanda works in the information technology department of Paradise County government. She is nonexempt under the Fair Labor Standards Act, meaning that she is entitled to overtime premium pay for hours worked over 40 in a week. But she is entitled to pay only for hours she actually works. Amanda has been accepted to the School of Government’s Municipal and County Administration course. She is excited to get a chance to understand the larger responsibilities and workings of local government, which will better enable her to design and code programs for the county’s very different departments. She is a little less excited when her department head tells her that she will not be paid for the time she spends in class. “That can’t be right!” she thinks. “After all, the class time all takes place during regular working hours and I’m attending the class as an employee of Paradise County.” Under the Fair Labor Standards Act (FLSA), is the time Amanda spends in the Municipal and County Administration course “work” for which she must be paid?

Yes. The time Amanda spends attending the Municipal and County Administration course is compensable. Her situation satisfies the FLSA’s standards for compensable training time: the training will take place during regular working hours and it is directly related to her job.

Background

The FLSA requires employers to pay employees time-and-one-half their regular rate of pay for all hours over 40 that employees work in a given week, unless an employee is exempt under the FLSA’s salary basis test (see here) and one of either the executive, administrative or professional duties tests. (On the duties tests, see here, here, here, here and here). Exempt employees must be paid the same salary even if they work fewer than 40 hours, and they are not entitled to overtime pay when they work more than 40 hours.

When exempt employees attend continuing education or training courses, they continue to receive their regular salary, neither more nor less, whether the class is held during or after regular working hours. But because nonexempt employees are paid only for the hours they actually work, whether during or outside of regularly scheduled hours, the question necessarily arises: must nonexempt employees be paid for the time they are in classes and other forms of training and does that time count toward overtime? Is the training time “work”?

The General Rule

Under the FLSA, time employees spend on job-related training activities is generally compensable. The general rule is that employees do not have to be compensated for training time if:

1. attendance is outside the employee’s regular working hours;
2. attendance is voluntary;
3. the course is not directly related to the employee’s job; and
4. the employee does not perform any productive work during time in attendance at the course.

Time spent on training and similar activities must satisfy all four requirements for it to be treated as not compensable (keep in mind, however, that an employer may choose to pay nonexempt employees for their training time even if under the FLSA, they do not have to do so because these four conditions are satisfied). Let’s take a closer look at these requirements.

Outside Regular Working Hours

The requirement that attendance at the training be outside of an employee's regular working hours to be noncompensable is fairly straightforward. For Amanda, it is clear that her participation in the Municipal and County Administration course will be compensable to the extent that class time is all scheduled within the hours she regularly works. Should class time spill over into what would normally be Amanda's nonworking hours, the other three factors would have to be considered to determine whether those hours are compensable.

Voluntary Attendance

The FLSA regulations expressly state here that attendance is not voluntary if the employer requires the employee to take the class. It is also not voluntary if employees are led to believe that their present working conditions or their continued employment would be adversely affected by not attending the class.

Here's a tricky situation. Is training time voluntary when employees undertake the training outside of regular working hours in order to pass a test that is required by the employer? This question frequently arises in the context of public safety, where law enforcement officers, firefighters and sometimes paramedics and EMTs are required to pass a physical abilities test. In cases such as these, the training time would be compensable if the employer required its employees to take a particular fitness class outside of work or to follow a specific training regimen in preparation for the test. But where employees are not required to spend a specific amount of time training for the test or do specific exercises or activities, the training time is not compensable. This is true even where it would be quite difficult to pass the test without training or preparation. For cases with extended discussions of this issue, see here and here.

Training Not Directly Related to the Employee's Job

Whenever training is directly related to an employee's job it is compensable. The FLSA regulations explain that training is directly related to the employee's job if it is designed to make the employee handle his or her job more effectively. Training whose purpose is to prepare an employee for another job, or to teach an employee a new or additional skill is not considered directly related to the employee's job. As the regulations explain:

Where a training course is instituted for the bona fide purpose of preparing for advancement through upgrading the employee to a higher skill, and is not intended to make the employee more efficient in his present job, the training is not considered directly related to the employee's job even though the course incidentally improves his skill in doing his regular work.

This requirement has been the basis of no small amount of litigation. One court held that any training that does not apply to a specific job, but only to better performance in the workplace in general, is not work directly related to an employee's job. In that case, an employer required its operating engineers, who were not required to have college degrees, to pass a series of foundational skills assessments. Elsewhere, the federal Eleventh Circuit Court of Appeals found that off-duty fitness training undertaken by police officers in order to pass a required physical fitness test provided health benefits that extended beyond their employment and was not directly related to their job. In an earlier case, the Eleventh Circuit had found that training that related to work that represented only ten percent of an employee's job duties was not directly related to his job. Finally, the U.S. Department of Labor itself said in an opinion letter that where a job did not require proficiency in English, an employee's study of employer-provided written instruction in English outside working hours was not directly related to the employee's job. DOL agreed with the employer that while such instruction might enhance the employees' job satisfaction, improve morale at work and provide the employees with greater opportunities in the outside workplace, it did not help the employee perform his job more efficiently. The fact that the training may have had an indirect effect on an employee's current job (as one might assume greater facility in English would have) did not make it directly related to the job.

Training That Is a Precondition of Employment

What if training of a certain kind is a precondition of employment, but the employer will allow applicants to complete the training on their own time after they have begun work? In one case, Chao v. Tradesmen International, Inc., the federal Sixth Circuit Court of Appeals found that such time was not compensable. The employer, Tradesmen International, was a

skilled tradesmen leasing company that required all field employees to have completed a 10-hour OSHA general construction safety course. It allowed applicants to complete the training post-hire, after regular working hours, with the understanding that Tradesmen would terminate their employment if they did not register for the training course within sixty days of hire and complete it within a reasonable amount of time afterwards.

The court in this case did not analyze the situation under the training time regulation we have considered so far. Instead, it looked at the provisions of the Portal-to-Portal Act, an amendment to the FLSA that requires employers to compensate employees for activities that may occur before or after the workday proper, but are nonetheless an integral and indispensable part of the principal activities for which they are employed. The court found that the safety course, although required by the employer, was not an integral and indispensable part of the tradesmen's duties. See here for a case where the court found that the time spent by members of private campus police force in EMT training, which was a precondition to their hiring, was not an integral and indispensable part of their job duties.

A Special Rule Applicable to Government Employers Only

The FLSA regulations, here as elsewhere, make a concession to the ways in which public-sector employment sometimes differs from private-sector employment. In 29 CFR § 553.226, the DOL identifies as noncompensable time any time a state or local government employees spends outside of working hours in a class or training session that is required for certification of persons performing their jobs. Thus, the training that the state of North Carolina requires for certification and recertification of paramedics and EMTs is not compensable time. This is true even if the local government employer is paying for the cost of the training (again, the employer is not forbidden from treating the training time as compensable work; it just does not have to do so under the FLSA).

Similarly, when a local law enforcement officer is attending class at a law enforcement training facility or a firefighter is attending a fire academy, the hours not spent in class are not compensable, even where the participants are residing on-campus for the period of the training program. Although employees are not "home" and are not free to pursue their usual off-duty activities while at the training site, they may still use the hours not spent in class for their own purposes: reading, sleeping, surfing the internet or watching TV. If Amanda, in the opening hypothetical, is not returning home each night, but is staying in a hotel in Chapel Hill for each night during the Municipal and County Administration course, her time outside of class is not compensable even though she is not home. Of course, if she performs work that she would otherwise be doing back in her office in Paradise County in her hotel room at night, the time she spends on that work would be compensable.

Note that an employer that takes advantage of this special local government exception does not have to satisfy the general rules for compensating training time discussed above.

When Employees Enroll in Classes or Training at Their Own Initiative

The FLSA regulations also address both training that employees enroll in of their own accord and special employer-offered courses of which employees may voluntarily take advantage. When an employee enrolls in a course or college program after working hours at his or her own initiative, the time is not compensable even if the coursework is directly related to the employee's job. Occasionally, an employer will offer a free class or training opportunity after working hours for the benefit of its employees. If attendance is not required and the employee's participation is voluntary, the time spent in such classes would not be considered hour worked. For the regulations, see here and here.

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