

## Updates

November 18, 2020

### DOL Issues Clarification Regarding Compensability for Voluntary Training/Continuing Education

The U.S. Department of Labor (DOL) recently published an opinion letter explaining compensability under the Fair Labor Standards Act (FLSA) of time spent in [voluntary continuing education programs](#). In [FLSA 2020-15](#), the DOL issued guidance clarifying whether time that employees spend attending voluntary training programs is compensable as hours worked. The employer asking the question was a hospice care provider with staff that had continuing education requirements related to their licensing.

The DOL started with the fundamental principle that the U.S. Supreme Court has determined that "work" performed by employees is compensable depending on whether the predominant benefit is for the employer or the employee. Training time is *not* compensable if:

1. Attendance is outside of the employee's regular working hours;
2. Attendance is in fact voluntary;
3. The course, lecture or meeting is not directly related to the employee's job; and
4. The employee does not perform any productive work during such attendance. 29 C.F.R. § 785.27.

Time spent may nevertheless be excluded from work time for FLSA purposes, even if the training directly relates to the employee's job, in two circumstances:

1. A "special situation" exists where the employer establishes "for the benefit of his employees a program of instruction which corresponds to courses offered by independent bona fide institutions of learning" and attendance is voluntary and outside of working hours. 29 C.F.R. § 785.31.
2. Where the employee, on his or her own initiative, attends an independent school, college, or independent trade school after hours. 29 C.F.R. § 785.30.

The DOL then opined on six hypothetical scenarios which are further explained in [FLSA 2020-15](#):

1. A nurse uses her employer-provided education funds for a webinar directly related to her job and continuing education requirement, but views it on her off-work time, though she could have watched it during her working hours.  
**Answer:** This time can be unpaid because she in fact watched on her off-work hours and the program was voluntary.
2. An accounting clerk submits a request to use his employer-provided education funds for a webinar directly related to his job, but that has no continuing education component. He views it on his off-work time though he could watch at any time.  
**Answer:** There are insufficient facts to answer whether it can be unpaid time. However, the DOL stated that if further facts showed the webinar corresponded to courses offered by independent bona fide institutions of learning, it may not be compensable.
3. An accounting clerk uses his education funds for a webinar directly related to his job that has no continuing education component. He views it during work hours. Can the employer require him to substitute paid time off for the time spent watching the webinar?  
**Answer:** No. This is compensable time because, though voluntary, the employee watched during working hours. The employer may however establish a policy prohibiting viewing of such trainings during regular working hours.
4. An accounting clerk uses his education funds for a webinar not directly related to his job and with no continuing education requirement. He views it during his work hours. Can the employer require him to substitute paid time off for the time spent watching the webinar?

**Answer:** No. This is compensable because he viewed it during regular work hours even though it was not related to his job. The employer may however establish a policy prohibiting viewing of such trainings during regular working hours.

5. A nurse uses her education funds for a webinar that is not directly related to her job but can go towards her licensing (continuing education) requirement. She views it during her regular hours, though she could view it at any time. Can the employer require her to substitute paid time off for the time spent watching the webinar?

**Answer:** No. This is compensable because she viewed it during regular work hours. The employer may however establish a policy prohibiting viewing of such trainings during regular working hours.

6. A nurse uses her education funds to attend a voluntary in-person weekend conference that covers some topics that directly relate to her job (but also others that do not). Continuing education credit is available. Both the travel and conference cut across her normal work hours, but the actual conference occurs on days she doesn't normally work. Does she have to be paid? If so, can the employer require her to substitute paid time off for the time spent traveling and attending?

**Answer:** No, she need not be compensated if participation is voluntary and she does not perform productive work during the trip. The training conference itself would be a "special situation" because the training is voluntary, occurs outside her regular working hours, and corresponds to courses offered by independent bona fide institutions of learning. Thus, the travel time would also be excludable.

## Takeaways

Employers should reach out to experienced counsel to help determine if employees who participate in certain trainings are entitled to be paid under the FLSA. Note that state and local laws may also impact the compensability of such training time.

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