



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

FLSA2009-13

January 15, 2009

Dear **Name***:

This is in response to your letter requesting an opinion regarding whether time spent by employees taking web-based prerequisite classes at home in preparation for a voluntary job-related training class is compensable time under the Fair Labor Standards Act (FLSA).¹ Based on the information provided, it is our opinion that such time is compensable under the FLSA.

Your client, a communications company (“the Company”), employs technicians who install, monitor, and service voice and data communications circuits. The technicians’ duties include working with a networking system manufactured by Tellabs. The networking system, the Tellabs 5500, connects offices within a company and allows different offices to use the same server and to access the same data.

Tellabs offers advanced training in the Tellabs 5500 equipment. The Company hired Tellabs to teach a training class to some of the Company’s technicians about the Tellabs 5500’s new and advanced features. The training class is voluntary. The class will be offered during regular working hours. Technicians who take the class will be compensated for time spent in the class. There will only be spaces for eight of the Company’s approximately 75 technicians and spaces will be offered on a first-come-first-served basis.

You state that technicians who complete the class will be able to perform some of their present job duties involving the Tellabs 5500 equipment more proficiently by using the system’s advanced features. Technicians who do not take the class will nonetheless be able to perform their current job duties, as they are already skilled in the system’s basic functions.

Tellabs requires that technicians taking the training class must first complete four web-based prerequisite classes. It is expected that the technicians will take the prerequisite classes on their own time at their homes. It is estimated that each prerequisite class will take approximately ten hours to complete.

You seek an opinion on the following question: “Is the Company legally obliged to compensate employees for the time they spend outside of normal working hours at their own home completing the required prerequisite classes prior to taking the voluntary Tellabs training class?”

¹ Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

The FLSA requires that an employer compensate an employee for all hours worked. Section 3 of the FLSA defines “employee” as “any individual employed by an employer,” 29 U.S.C. § 203(e)(1), and “employ” as including “to suffer or permit to work.” 29 U.S.C. § 203(g); *see also* [29 C.F.R. § 785.11](#). This rule applies to work performed away from the premises or the job site, including work performed at home. “If the employer knows or has reason to believe that the work is being performed, he must count the time as hours worked.” [29 C.F.R. § 785.12](#).

The Department’s regulations provide that certain training activities need not be treated as hours worked. The general rules for determining the compensability of training time are set forth in [29 C.F.R. §§ 785.27](#) through [785.32](#). Sections 785.27, [785.29](#), and [785.31](#) are of particular relevance to your question. As indicated in section 785.27, “training programs and similar activities need not be counted as working time if the following four criteria are met”:

- a) Attendance is outside of the employee’s regular working hours;
- b) Attendance is in fact voluntary;
- c) The course, lecture, or meeting is not directly related to the employee’s job; and
- d) The employee does not perform any productive work during such attendance.

Based on the information you provided, the prerequisite classes appear to meet the foregoing criteria (a), (b), and (d). Criterion (c), however, is not met because the prerequisite classes are directly related to the technicians’ jobs. Section 785.29 provides that “training is directly related to the employee’s job if it is designed to make the employee handle his job more effectively as distinguished from training him for another job, or to a new or additional skill.” The training classes and the prerequisite classes offer instruction to enable the technicians to perform their present jobs better by giving them greater abilities to use a network system they are presently using. By making the technicians better able to perform their jobs, the training and the prerequisite classes are directly related to the technicians’ jobs.

While there are “special situations” in which voluntary attendance, outside working hours, at courses that are directly related to an employee’s job would not be hours worked, the prerequisite classes do not qualify as a special situation. *See* 29 C.F.R. § 785.31. Section 785.31 states that even if the training is clearly related to an employee’s job, voluntary participation outside of working hours need not be compensated if, for example, the course corresponds to courses offered by independent bona fide institutions of learning. The prerequisite classes, which are focused on learning ways to utilize a particular product, do not appear to correspond to courses offered by bona fide institutions of learning. Consequently, under sections 785.27, 785.29, and 785.31, the time spent in the prerequisite classes would be compensable.

Therefore, based on the information provided and our assumption about the nature of the prerequisite classes, it is our opinion that the Company is obligated to compensate technicians for the time they spend at home completing required prerequisite classes in order to take the voluntary but job-related Tellabs training classes.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issues addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Alexander J. Passantino
Acting Administrator

*** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**