



What Activities Do You "Pay For"?

Insights

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ABC Corporation sometimes conducts in-house, during-the-workday, performance-improvement training for its employees. Its Policy Manual includes a sentence saying, "The Company pays for the time employees spend in work-related training."

One day, Human Resources Director Janice gets a visit from Electronics Technician Bob. Bob says that he has been improving his job performance on his own by taking an Electronics Manufacturing and Servicing night course at the local community college for the last three months. He wants to know how he goes about getting compensated for this class attendance and home study.

Janice replies that the U.S. Department of Labor says an employer does not have to pay federal Fair Labor Standards Act wages for the time a worker spends at his or her own initiative taking courses at an independent college after hours, even if the courses are directly related to the employee's job. Bob responds that he is not concerned about the FLSA; he just wants ABC to do what it says it will.

"Pay For" vs. "Hours Worked"

Employers sometimes speak in terms of what they will "pay for" when instead they mean to specify what they treat as *worktime* for non-exempt employees. Where the FLSA is concerned, at least, these are separate concepts.

The first step toward complying with the FLSA's wage requirements is determining what counts as "hours worked" for those purposes in the first place. How much (if anything) the employer must "pay for" that work under the FLSA is a different matter involving additional considerations.

In the hypothetical, Janice has accurately stated a general FLSA principle. *See, e.g., 29 C.F.R. § 785.30.* And if Bob's educational pursuits are not FLSA "hours worked", then that law does not require ABC to pay him *anything* for his time.

However, it might be that ABC's Policy Manual statement creates an arguably-enforceable obligation of one kind or another under a state law or on some other basis.

The Bottom Line

This is just one scenario in which the inapt use of "pay for" or a comparable phrase might create unanticipated disputes that do not implicate the FLSA. Moreover, wage claims based upon non-FLSA legal theories are more common today than ever before.

As we have written in the past, management should be careful to say what it means and to mean what it says.