



The FLSA's "Remedial Training" Overtime Exception

Insights

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Many employers find nowadays that at least some workers are unable to read, write, or do simple arithmetic beyond the lowest levels (if at all). Management wants to give the employees mandatory training in these areas, but not if that means incurring overtime costs when the instructional time causes the employees' hours worked to exceed 40 in a workweek. But, under the right circumstances, there is a little-known way to increase employees' basic academic abilities without having to pay FLSA overtime premium for the time they spend learning.

The General FLSA Training Rules

The U.S. Labor Department (DOL) says that time spent in employer training generally must be considered compensable work, unless four criteria are met. That is, the training time has to be added together with the employee's other hours worked (including for overtime-pay purposes), except where:

- ◇ The employee's attendance is truly voluntary;
- ◇ The employee's attendance is outside his or her regular working hours;
- ◇ The training is not directly related to the employee's current job; and
- ◇ The employee performs no productive work during attendance.

29 C.F.R. § 785.27. Where remedial education is concerned, an employer offering the instruction typically wants to *require* employees to undergo it. Also, it is often necessary to schedule the classes at some point during the employee's normal workday.

The Section 7(q) Overtime Exception

The FLSA's Section 7(q) (link to reproduction below) allows the employer to pay for up to ten overtime hours of qualifying instruction at the employee's straight-time regular rate of pay. In creating this exception, Congress wanted to encourage employers to help provide the fundamental educational background some employees need to succeed in the job market, both now and in the future. The exception is therefore available for certain basic education offered to employees who lack a high-school diploma or educational attainment at the eighth-grade level. The training provided cannot be job-specific.

DOL says that the remedial training must be designed to provide reading and other basic skills at an eighth-grade level or below, or to fulfill the requirements for a high-school diploma or a General Educational Development ("G.E.D.") certificate. 29 C.F.R. § 778.603. Also, DOL rules state that the training has to occur during discrete periods of time set aside for it and must be conducted away from the employee's work station "to the maximum extent practicable". *Id.* DOL regulations require employers to keep accurate records of both an employee's time spent in the remedial education each workday and each workweek and the compensation the employee is paid for this time. 29 C.F.R. § 516.34.

Don't Forget Other Overtime Laws

Of course, the Section 7(q) exception does not override overtime obligations imposed by any different federal law or by any other jurisdiction's requirements. An employer considering a remedial-training program designed around Section 7(q) should carefully evaluate whether the program will meet the requirements of all other applicable overtime provisions.

[FLSA Section 7q.pdf \(14.69 kb\)](#)