

**PAYING EMPLOYEES FOR TRAINING AND OTHER ACTIVITIES OUTSIDE THEIR
NORMAL DUTIES
By Karen Sutherland**

There are times when employees engage in activities that are tangentially related to their work, and issues can arise regarding whether the employees should be paid for those activities. Many employers mistakenly believe that, if the activities are voluntarily undertaken and provide some benefit to the employee, then the employee need not be paid for them. Employers may also believe that if the activities are offsite and are outside of normal working hours, or that if the employee agrees the time is not compensable, the employee need not be paid. These assumptions, however, are often incorrect. The rules under the Fair Labor Standards Act relating to these issues are as follows:

- Work not requested but suffered or permitted is work time. For example, an employee may voluntarily continue to work at the end of the shift to finish an assigned task or correct errors, prepare time reports or other records. The reason is immaterial. The employer knows or has reason to believe that the employee is continuing to work and the time is working time. The rule is also applicable to work performed away from the premises or the job site, or even at home. If the employer knows or has reason to believe that the work is being performed, the employer must count the time as hours worked. Management cannot sit back and accept the benefits without compensating the employee for them. Having a rule against such work is not enough. Management has the power to enforce the rule and must make every effort to do so. 29 CFR 785.11-29 CFR 785.13.
- Attendance at lectures, meetings, 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. 29 CFR 785.27.
- Training is considered directly related to the employee's job if it is designed to make the employee handle the job more effectively as distinguished from training the employee for another job, or to do a new or additional skill. For example, a stenographer who takes a stenography course is engaged in an activity to make her a better stenographer, and time spent in such a course given by the employer or under its auspices is hours worked. However, if the stenographer voluntarily takes a course in bookkeeping, it may not be directly related to her job and the time the stenographer spends on it, outside of regular working hours, need not be counted as working time. Where training is for the bona fide purpose of preparing for advancement through upgrading employees to a higher skill, and is not intended to make employees more efficient in their present jobs, the training is not considered directly related to the employees' jobs even though the course incidentally improves their skill in doing their regular work. 29 CFR 785.29.

- If employees on their initiative attend an independent school, college or independent trade school after hours, the time is not hours worked even if the courses are related to their jobs. 29 CFR 785.30.
- There are some situations where the time spent in attending lectures, training sessions and courses of instruction is not regarded as hours worked. For example, an employer may establish for the benefit of its employees a program of instruction which corresponds to courses offered by independent bona fide institutions of learning. Voluntary attendance by an employee at such courses outside of working hours is not hours worked even if directly related to the job, or paid for by the employer. 29 CFR 785.31.
- Time spent by an employee in waiting for and receiving medical attention on the premises or at the direction of the employer during the employee's normal working hours on days when he is working constitutes hours worked. 29 CFR 785.43.
- Time spent in work for public or charitable purposes at the employer's request, or under its direction or control, or while the employee is required to be on the premises, is working time. 29 CFR 785.44
- Generally, time spent by employees outside of their regular working hours in developing suggestions under a general suggestion system is not working time, but if employees are permitted to work on suggestions during regular working hours, the time spent must be counted as hours worked. Where an employee is assigned to work on the development of a suggestion, the time is considered hours worked. 29 CFR 785.45.

This brief article is a broad summary only. It lacks specificity about the law and about the effects of different fact patterns, and thus shall not be applied without consulting an attorney. It also focuses on Washington State law and federal law, and the laws of other jurisdictions may vary materially. The information set forth in this article is a broad and general overview of complex topics, and is not legal advice. It also does not take into account any changes to the law or in interpretations of the law that may have occurred since it was written. For more information, contact Karen Sutherland at ksutherland@omwlaw.com or Ross Farr at rfarr@omwlaw.com