



# Assessing The Risk:

## Wage and Hour Tip Of The Week

### Determining Whether Training Time Is Compensable

**TIP: Ensure that time spent by hourly employees in compensable training programs, lectures, and meetings is included in hours worked and paid accordingly.**

Generally, attendance by non-exempt employees at lectures, meetings, training programs, and similar activities is hours worked under the Fair Labor Standards Act and must be included in minimum wage and overtime calculations. If certain criteria are met, however, the time spent in such activities can be excluded from work time. Specifically, attendance need not be counted as working time if the following four criteria are met:

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

All four of these criteria must be met for the time not to be compensable. Thus, whether training or a similar activity is compensable work is driven by the specific working circumstances of the employee and the relationship between the subject matter of the training and the employee's duties.

While the first and last criteria are relatively straightforward, employers often struggle with the "voluntariness" and "directly related" requirements. Below are guidelines to keep in mind when evaluating these criteria, as well as tips regarding other questions that often arise regarding compensability of training and similar activities.

*Is attendance "voluntary"?* Obviously, attendance is not voluntary if it is mandatory – i.e., required by the employer. It also is not voluntary if the employee is led to believe that his working conditions or the continuance of his employment would be adversely affected by failure to attend.

*Is the training "directly related" to the employee's job?* Training is directly related to an employee's job if it is designed to make the employee handle his job more effectively, as distinguished from training the employee for another job, or a new or additional skill. Where a training course prepares an employee for advancement by increasing his skills, but the training is not intended to make the employee more efficient in his present job, the training is not considered directly related to the employee's job even if the course incidentally improves the employee's skill in his regular work. For example, an hourly worker on an assembly line in a manufacturing facility might take courses in the use of a suite of office productivity software that is not relevant to the employee's current work but will help the employee become better qualified for a promotion or transfer to another position.

*What if an employee attends training outside of working hours on his own initiative?* If an employee, on his own initiative, attends an independent school, college, or trade school outside of normal working hours, the time is not hours worked even if the courses are related to the employee's job.

*What about time spent studying outside of normal working hours for training that is itself compensable?* Time spent in outside study is not compensable if it is not required by the employer. For example, time spent reading or studying at home is not compensable if time is allotted during regular working hours but some employees voluntarily do extra work at home on their own. When completion of homework is a requirement of a compensable training class, however, time spent completing assignments for such training is compensable.

*Must employees be paid their regular hourly rate for compensable training?* Employers must pay employees their regular rate of pay for compensable training time unless they have an agreement with employees to compensate such hours at a lower rate. Under those circumstances, the training rate must be at least the minimum wage.

In sum, employers should ensure that they understand the rules regarding compensability of time spent in training and evaluate their practices to verify that they are in compliance with these rules.

*The above are "best practice" suggestions and are in no way meant either to guarantee that use of them creates a litigation risk-free environment or, alternatively, to suggest that any specific practice or policy maintained by an employer violates the law or is indefensible in litigation.*

By: [C.J. Eaton](#)

[C.J. Eaton](#) is located in Seyfarth Shaw's Boston office. If you would like further information please contact your Seyfarth attorney or C.J. Eaton at [ceaton@seyfarth.com](mailto:ceaton@seyfarth.com).

[www.seyfarth.com](http://www.seyfarth.com)



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