U.S. Department of Labor

Wage and Hour Division
Washington, DC 20210

FLSA2018-20

August 28, 2018

Dear **Name***:

This letter responds to your request for an opinion concerning whether the Fair Labor Standards Act (FLSA) requires compensation for the time an employee spends voluntarily participating in certain wellness activities, biometric screenings, and benefits fairs. This opinion is based exclusively on the facts you have presented. You have represented that you do not seek this opinion for any party that the Wage and Hour Division (WHD) is currently investigating, or for use in any litigation that commenced prior to your request.

BACKGROUND

Your letter states that an employer allows its employees to voluntarily participate in "biometric screening" both during and outside of regular work hours. The screening tests, among other things, an employee's cholesterol levels, blood pressure, and nicotine usage. An employee's participation in the screening may decrease his or her health insurance deductibles. The employer does not require the screening, and the screening is not related to the employee's job. It is purely the employee's choice whether to participate.

An employee may also participate in the following "wellness activities" to potentially decrease his or her monthly insurance premiums:

> (1) attending an in-person health education class and lecture (*e.g.*, nutrition or diabetes management); (2) taking an employer-facilitated gym class or using the employer-provided gym; (3) participating in telephonic health coaching and online health education classes through an outside vendor facilitated by the employer; (4) participating in Weight Watchers; and (5) voluntarily engaging in a fitness activity (*e.g.*, going to personal gym, exercising outdoors, participating in a Fitbit challenge).

Similar to the biometric screening, these wellness activities are not mandatory and do not directly relate to the employee's job.

Finally, an employee may also choose to attend a benefits fair to learn about topics such as financial planning, employer-provided benefits, or college attendance opportunities. These fairs are not part of new employee orientation, are open to all employees, are not related to the employees' job duties, and are entirely optional.

You have represented that the employer receives no direct financial benefit as a result of employee participation in any of the above-described activities.

GENERAL LEGAL PRINCIPLES

The FLSA, as a general matter, requires employers to compensate employees for their work. The FLSA defines "employ" as including "to suffer or permit to work," 29 U.S.C. § 203(g), but does not explicitly define what constitutes compensable work. The U.S. Supreme Court has determined that the compensability of an employee's time depends on "[w]hether [it] is spent predominantly for the employer's benefit or for the employee's." *Armour & Co. v. Wantock*, 323 U.S. 126, 133 (1944); *see also, e.g.*, *Reich v. S. New England Telecomms. Corp.*, 121 F.3d 58, 64 (2d Cir. 1997) (time is compensable when employees "perform duties predominantly for the benefit of the employer").

Regulations separately provide that an employee is not entitled to compensation for "off duty" time—that is, "[p]eriods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes." 29 C.F.R. § 785.16.

OPINION

Based on the facts you have provided, an employee's voluntary participation in biometric screenings, wellness activities, and benefits fairs as described predominantly benefits the employee. The activities provide direct financial benefit to only the employee, and they also help the employee make more informed decisions about matters unrelated to his or her job. Participation is wholly optional for the employee; the employer never requires it. The employer likewise does not require the employee to perform any job-related duties while he or she participates in the activities. Because the activities described in your letter predominantly benefit the employee, they do not constitute compensable worktime under the FLSA. *See Armour*, 323 U.S. at 133; *cf. Watterson v. Garfield Beach CVS*, 120 F.Supp.3d 1003, 1006-09 (N.D. Cal. 2015) (holding that an employee's time spent voluntarily participating in "annual health screenings" and "wellness reviews" was not compensable and did not constitute "hours worked" or "time the employee [was] suffered or permitted to work").

Additionally, the activities you have described also constitute noncompensable "off duty" time under 29 C.F.R. § 785.16. When the employer allows an employee to voluntarily participate in the above-described activities, the employer is relieving the employee of all job duties. You have not indicated that the employer restricts the amount of time an employee may participate in such activities; we assume that the time allowed is long enough for the employee to use it effectively for his or her own purposes. Under these circumstances, the time spent participating in such activities is noncompensable "off duty" time under 29 C.F.R. § 785.16.

In sum, the FLSA does not require compensation for the time employees choose to spend engaged in the activities described in your letter.[1] Our conclusion is the same regardless of whether the activities occur on-site or during regular working hours.

We trust that this letter is responsive to your inquiry.

Sincerely,

Bryan Jarrett
Acting Administrator

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

[1] It is important to note, however, that work breaks up to 20 minutes in length are ordinarily compensable, regardless of how an employee chooses to spend his or her time during the break. 29 C.F.R. § 785.18; s*ee also* WHD Opinion Letter, 1995 WL 1032460 (Jan. 25, 1995) ("[I]t is immaterial with respect to compensability of such breaks whether the employee drinks coffee, smokes, goes to the restroom, etc."). Thus, for example, if the employer provides all employees with a 20-minute break each day, the employer must still compensate an employee for that break if he or she chooses to spend it participating in the wellness activities, biometric screenings, and benefits fairs described in your letter.