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HEADS UP!

MEETINGS, SEMINARS AND TRAINING COURSES ARE COMPENSABLE TIME

One persistent problem area for employers is the failure to pay wages for the time employees spend attending training seminars, lectures and similar activities. Generally speaking, any and all time employees spend attending such activities is treated by California law as compensable hours worked.

If travel is required, the time spent traveling is also compensable. Lastly, if the employee is required to travel in his/her vehicle, the employee would be entitled to mileage to reimburse him/her for fuel and wear and tear to the vehicle.

The law does provide an exception to the general rule stated above, provided all of the following apply:

1. Attendance on the part of employees is entirely voluntary. This means that no pressure, coercion or even "friendly encouragement," express or implied, is communicated to prompt attendance. If an employee has reason to believe that his/her terms of employment could be adversely affected by a failure to participate, attendance is not voluntary;
2. Attendance must not occur, in whole or in part, during an employee's normal working hours;
3. The training offered at the lecture or meeting must not, as a general rule, be directly applicable to the attending employee's job duties, unless it is provided by a school or college independent of the employer, which is attended by employees before or after working hours on their own volition. In such a case, the training will not be deemed hours worked, even if it is job-related. Training is considered to be directly related to an employee's job if it is intended to facilitate more effective performance in the employee's present job, as opposed to training the employee for another job or to learn

new skills. If the program is offered for reasons other than to make the employee perform more efficiently in his/her present position, the time attending training sessions is not considered to be directly related to the employee's job, even if one derivative result is that it in fact improves performance in the employee's present job;

4. While attending the training, no productive work can be performed for the employer.

These four criteria are applicable to in-house training programs, as well as to programs that, though conducted by entities independent of the employer, are conducted on behalf of the employer, or under circumstances indicating that employee attendance is required.

CLASS ACTION ALERT: Employers who violate the law, as summarized above, generally do so as a product of their failure to understand exactly what the law requires. For this reason, violations are rarely limited to one employee, and usually extend to an entire class or category of employees, if not the entire workforce. As a result, violations of the above rules make employers who are in violation an ideal target for class action lawsuits or representative actions, which are brought by one named employee on behalf of all other similarly-situated employees.

(See the Blog archive for a discussion of the dangers posed by employee class actions, and how properly-drafted employee handbooks and arbitration policies can provide employers with potent protection from them. <http://www.jaygputnam.com/category/blog/>)