

## **FLSA-257**

June 4, 1976

This is in reply to your letter of May 3, 1976, regarding the application of the Fair Labor Standards Act to registered nurses who attend formally organized academic courses and seminars for the purposes of relicensure required by the State of California. The nurses are paid on an hourly basis.

You state that section 2811.5 of the Business and Professions Code provides that as of July 1, 1978, registered nurses requesting relicensure must show the completion of thirty units of continuing education during the preceding two years. The statute provides that a variety of programs may qualify for credit, including formally organized academic courses, as well as seminars and other programs put on by private and governmental organizations. Credit will be given for in-service programs offered by hospitals, provided the programs, their contents, and instructors have been approved prior to participation in the course. In addition, the hospital providing the course must be certified as a provider of the specific educational program.

Section 785.31 of 29 CFR, Part 785, copy enclosed, states that there are some special 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 his 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 would not be hours worked even if they are directly related to his job, or paid for by the employer.

Your questions pertaining to hours worked and compensation to be paid to those attending the training courses are answered in the same order as presented as follows:

1. Where a hospital provides the state-required continuing education courses, time spent in attendance during off-duty time does not constitute hours worked under the Act. Attendance during on-duty time constitutes hours worked under the Act.
2. (a). The same answer as given in 1 above is applicable. It is immaterial whether the nurses are employed by the hospital providing the instruction or are employed by other hospitals which authorized their attendance. You state that employees are paid in accordance with a collective bargaining agreement that requires payment of overtime after 8 hours per day, and for hours worked in excess of 40 per week or 80 hours in a bi-weekly pay period depending on whether the 80 hour option is used. Accordingly, if the time spent on training courses is time worked in excess of 8 hours per day, or 40 hours per week, or 80 hours during a fourteen day work period, and is performed during on-duty time, the overtime requirement of the Act must be met. If the attendance is outside of duty hours, and is completely voluntary, as you say it is, no payment is required for such hours since they do not constitute hours worked.

(b). The same answer as given in 2(a) above is applicable. It is immaterial whether the nurses attending the training classes are employed by the hospital providing the training or employed by other hospitals which authorized their attendance.

(c). "Open Enrollment" would not affect the answers given above.

3. Our answers are not affected by the fact that a registration fee is levied to defray the cost of instruction.

4. Time spent in attending educational courses while on paid educational leave does not constitute hours worked.

5. Our answers are not affected by the fact that the instruction is provided by an outside public or private organization using the facilities of a hospital for the purpose of conducting the training.

Sincerely,

Ronald J. James  
Administrator

Enclosure