

FLSA-652

March 1, 1984

This is in reply to your letter asking, on behalf of a client, whether an employer must, under the Fair Labor Standards Act (FLSA), reimburse employees for expenses they incur when purchasing occupational licenses.

You state your client operates in some States which require that security officers be licensed by the State or municipality. In some of the States, the license is issued to the individual, who is then free to take the personal license with him/her if (s)he accepts employment with another security firm. In other States, the license is valid only for work with a specific company, and is not transferable if the individual goes to work for a new employer.

Since you ask several questions we will respond to them in the order presented.

Question: You ask what the employer's liability is for payment of the license fee for procuring the license? You ask if there is any distinction to be made between the two situations mentioned above.

Answer: In response to the first part of your question, it is our position that where security guard licenses are required by State or local law, expenses incurred by individuals in obtaining them to gain employment impose no liability upon the prospective employer for reimbursement. In response to the second part of the question, we draw a distinction between a security guard license which is personal and one which is valid only for employment with a specific employer. In the latter case, even though the license is required by law, the fact that it is specifically tied to one employer makes it analogous to "tools of the trade", which are viewed as primarily for the benefit of the employer. As explained in section 531.35 of 29 CFR Part 531, copy enclosed, requiring employees to pay for "tools of trade" would result in a violation of the FLSA in any workweek when the cost of such tools purchased by the employee cuts into the minimum wage or overtime compensation required to be paid him/her. Further, when changing employers, if a transfer fee must be paid to transfer a license from one employer to another, the prospective employer must bear the cost since the fee is necessitated by the change of employment and is specifically tied to one particular employer.

On the other hand, if there is no State or local law requiring licensure, or if the law requires the employer to bear the cost, the employee must be reimbursed for such expenses incurred on behalf of the employer no later than the next regular payday.

Where an employer requires a prospective employee to obtain the security guard license as a condition of employment, the employee must be reimbursed no later than the next regular payday. The amount of reimbursement depends on the extent to which the

employee's pay was reduced below the applicable minimum wage or overtime compensation required by the Act.

Question: As a prerequisite to obtaining licensure or certification, 40 hours of classroom training is required by the State or municipality. You ask if an employer is required to compensate persons for the time spent in such classroom instruction. You state the training involves neither actual security work nor on-the-job training. You ask whether our answer would be different if an employee has already been hired, contingent upon successful completion of the classroom training. You point out that in some cases, the classroom training is conducted by supervisors of your client, while in other cases, either the State or municipality, or an outside organization, conducts the classroom training.

Answer: Where a State or local government has required the training, which is of general application and not tailored to meet the particular needs of individual employers, we take the position that time spent in such training on the employer's premises, or elsewhere, is not compensable. If the training is conducted on the employer's premises and/or by employees of the employer, it must be similar to the type of training offered by the State or municipality, or outside organization. The fact that a person has been hired contingent upon completion of the training program would not alter our response. Where the State or municipality statute or rule requires, or is later amended to require, an employer to pay for such training time, the employer would have to pay for this time in accordance with the applicable State statutes. While we would still maintain that this time is not compensable under FLSA, the Act does not preempt State statutes which are more beneficial to employees than FLSA itself.

Question: You state that in all areas where your client operates, it requires new employees to attend a four-hour program which deals with the specific performance expected of security guards by your client and the owner of the facilities where the employees are to perform their duties. You ask if the time so spent is to be considered as compensable hours worked.

Answer: Yes, we would consider such time as compensable hours worked. As stated in Section 785.7 of 29 CFR Part 785, copy enclosed, an employer subject to the FLSA must be paid for all time spent in physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.

We trust the above is responsive to your inquiry.

Sincerely,

William M. Otter
Administrator

Enclosures