

FLSA-648

May 24, 1978

This is in reply to your letter of May 1, 1978, asking whether time spent by an employee in undergoing a physical examination and the expense thereof are compensable under the Fair Labor Standards Act.

Your questions are answered in the same order as presented as follows:

Question No. 1 Would the time spent in taking a pre-employment physical examination be considered compensable time worked under the Fair Labor Standards Act?

Answer: We would not assert that the time spent in undergoing a physical examination prior to employment or to a commitment to employ is compensable hours of work.

Question No. 2: Would the corporation be required to pay for the cost of the pre-employment physical examination if payment by the employee reduces his pay below the statutory minimum wage? This assumes that the applicant was, in fact employed.

Answer: If an employer-employee relationship is established prior to undergoing a physical examination, the cost thereof must be borne by the employer to the extent that such a cost, paid by the employee, reduced his or her wages below the applicable minimum wage rate or the proper overtime compensation that may be due. The time spent in undergoing the physical examination is also compensable under the Act.

Question No. 3: If the applicant was not employed, would the company be under any obligation to pay for time spent in taking the examination or for reimbursement of the cost of the examination?

Answer: If an employer-employee relationship has not in fact been established, the employer would not be required to bear the expense of the physical examination and the time spent undergoing it. See the answer to question one.

Question No. 4: Would time spent in taking an annual physical examination be compensable if it is given outside normal working hours, i.e., the regularly scheduled hours of an employee?

Answer: Yes it is immaterial whether the time spent in undergoing a required physical examination is during the employee's normal working hours or during nonworking hours. The physical examination and the time spent undergoing it are essential requirements of the job and thus primarily for the benefit of the employer.

Question No. 5: Does the corporation have to reimburse the employee for the cost of the annual physical examination, if the cost borne by the employee reduces the wages below the statutory minimum wage required by the Fair Labor Standards Act?

Answer: Yes. See our answer to question number two.

Question No. 6: If an applicant for employment as a secretary is required to spend time taking a test to determine shorthand and typing skills, and if this test is administered by the State's Employment Security Commission, is the applicant's time devoted to taking the test and traveling to and from the location of the test considered hours worked and compensable, if:

(a) The applicant was hired?

(b) The applicant was not hired?

Answer: No. If the person is a job applicant and an employer -employee relationship has not been established, the person is not an employee at the time the test is given. This opinion would be the same whether or not the applicant was or was not subsequently hired.

Enclosed is a copy of WH Publication 1297 (Employment Relationship under the Fair Labor Standards Act) which you may find of interest.

With respect to your request for a copy of an opinion letter dated April 10, 1941, we regret that we do not have a copy of that letter in our files.

Sincerely,

Herbert J. Cohen
Assistant Administrator

Enclosure