

FLSA-313

July 28, 1982

Thank you for your letters of June 30 and July 13, 1982, requesting, on behalf of one of your clients, an opinion as to whether time spent by persons in a training program run by your client is compensable working time under the Fair Labor Standards Act.

You state that the training program is intended for persons who wish to work as "home health aides." Applicable Medicare/Medicaid regulations specify that such aides must have at least one year of experience working in a hospital on a medical/surgical floor to be employed as a home health aide. However, under the regulations that requirement is waived for aides who have successfully completed a 42-hour approved curriculum. The 42-hour training program offered by your client, which, we presume, would be approved, consists of instruction and training in the following areas: anatomy, physiology, nutrition and meal preparation, basic patient care procedures, body mechanics skills, medical terminology, and preparation of patient charts. During the 42-hour program, the individuals do not perform any productive work for your client. You state anyone may take the course on a first-come, first served basis regardless of whether such person has applied for employment with your client. The training is offered free-of-charge. Successful graduates may apply for employment with any employer and be hired by them and your client will not require that the trained aide reimburse him/her for the training provided. No employment guarantee is given to those persons who have applied for employment with your client and who will be attending the training program. Nor, while they are undergoing training will they be treated as employees of your client. Your client is offering the training program so that the pool of qualified home health aides will be expanded. In conclusion, you state that the training is designed to teach supportive health care techniques to lay people so that they can function as skilled health care aides.

On the basis of the above, and on the assumption that the trainees are not necessarily entitled to a job at the end of the training period, it is our opinion that an employer-employee relationship would not exist between your client and the trainees during the training period. Our conclusion rests on the total situation, including the purpose, scope, operation, and effect of the training program as a whole as described in your letters. Therefore, such training time would not be compensable working time.

Sincerely,

William M. Otter
Administrator