

FLSA-1093

June 28, 1983

This is in further response to your letter of April 5, 1983, in which you requested an opinion on whether *** could offer an unpaid pre-shop program to handicapped workers in a sheltered workshop. In my initial response to you on May 9, 1983, I proposed bringing this program to the attention of the Advisory Committee on Sheltered Workshops for its consideration. After reviewing the Committee's discussion of this question and our own experience, the following is the position of the Department regarding the unpaid pre-shop program.

Many training or evaluation programs include work samples or simulations. Work samples or simulations may be broadly defined as activities which are structured to resemble the work performed in a workshop but are performed away from the normal production area, do not yield output which the workshop includes as a part of any contractual obligations or otherwise receives any economic benefit from, are supervised by nonproduction staff personnel, and are a specific part of a well defined program of rehabilitation.

The Department considers time spent in rehabilitation services not to be hours worked provided the services are not primarily for the purpose of increasing such worker's productivity on the job. Work samples or simulations could be a part of such services.

In general, hours spent on work samples or simulations which are an integral part of a curriculum of a workshop for purposes of providing evaluation or training, or are an integral part of an individual's development program, would typically be considered to be primarily rehabilitative and, thus, not hours worked. Our position would be the same whether samples were taken from current subcontracts of the workshop, provided the completed samples are discarded or recycled.

Where the material is to be sent to salvage, there would be no apparent problem provided the handicapped worker was not involved in the actual sorting of goods into salvageable and nonsalvagable categories.

Work samples or work simulations which are not a part of a curriculum or program but are closely related to work being performed by the workshop, or work to be performed, would not be considered in the same light. Such activities would ordinarily be considered to be primarily for increasing productivity on the job and thus deemed to be hours worked.

The above general guidelines may be applied to any program. In the summary you have submitted, the time spent in the pre-shop would not appear to be hours worked. However, the determination of whether the time spent on work samples or simulations are hours worked would depend in each case on the total facts.

Sincerely,

William M. Otter