

An Update on Continuing Education

By Frank Hotchkiss and Tim Twigg

Continuing education is an important aspect in any well-run practice. It is both to the employer's and employee's benefit.

First, continuing education helps employees be more proficient and successful in their job. Second, compared to the cost of staff turnover, investing in continuing education is significantly less expensive. Cost estimates, regarding the cost of turnover for a particular position, are equal to one year's compensation when you factor in lost production plus the time needed to recruit and train new employees.

Correctly handling the many facets of continuing education is important. In fact, the failure to do so can lead to hefty Labor Board penalties and fines. This article is intended to provide you with the latest, and most up-to-date, information regarding addressing continuing education issues.

The first factor to examine, relative to your continuing education obligation, is whether the course, seminar, or training is for the purposes of maintaining licenses or certifications that are a "condition of employment". If so, then all costs associated with this type of continuing education can be the responsibility of the employee. It is important that this information be delineated in your Policy Manual, as well as an integral part of the employee's job description.

Note: To avoid misunderstandings and problems, have each staff member who is *voluntarily* attending a seminar or workshop in order to fulfill licensure or certification requirements sign a statement to that s/he is attending for that purpose and place it in the employee's personnel file (Continuing Education for Recertification Agreement, Form #407).

If the associated continuing education is not part of the employee's condition of employment, then your obligation is typically broken down into three categories:

- Time attending workshops, seminars, or trainings,
- Time traveling to and from the continuing education,
- Travel expenses associated with the workshops, seminars, or trainings, i.e. transportation, meals, and lodging, and course related expenses, i.e. tuitions, books, or materials.

Adherence to the compliance aspects of these categories can be challenging and often complicated. The federal regulations addressing these matters are the Fair Labor Standards Act (FLSA) and provide guidelines that most states defer or use to significantly pattern their own requirements.

Time attending workshops, seminars, or trainings

Attendance at meetings, lectures, and training programs must be counted as hours worked and the time paid for when such sessions are:

- Conducted during an employee's normal work schedule.
- Attendance is required* by the employer outside the normal work schedule. *When an employee is given to understand or led to believe that they are expected to attend and/or continuance of employment or present working conditions would be adversely affected by non-attendance.
- The course is directly related training to assist the employee in performing his or her job duties more effectively in contrast to training the employee for another position.

- The employee performs productive work during the training. Typically, even if the meeting is limited to team building activities, it is still considered that the employers are providing productive work.

You should also be aware of Federal and individual State regulations that require employers pay non-exempt employees overtime (time and one-half the regular hourly rate) for time worked over a specific number of hours in one workweek or a workday. That means that you may have to pay overtime for seminar attendance.

Time traveling to and from the Continuing Education Event

The following guidelines should be used when handling training-related travel:

One Day Travel:

- Travel time for the purposes of attending a meeting, seminar or other types of training during or outside of the normal work hours is considered time worked and must be paid. The usual mealtime during which no work activities take place may be deducted.
- When traveling is a part of an employee's regular work assignment, (i.e. when traveling from one job site to another during work hours) the travel time must be paid.
- The time spent traveling between the office and the terminal of a common carrier is considered time worked. The usual mealtime may be deducted. The time spent traveling between home and the terminal of a common carrier need not be counted as travel time or as time worked. We recommend the employer pay for the travel time to the common carrier less the normal travel time from home to the office.

Overnight Travel-Out of Town:

Travel time incurred during the normal work hours is counted as hours worked (*on both normal workdays and days that are normal days off*). The time spent driving/traveling between home and office to the point of departure, e.g. an airport or rail station, is paid. If leaving from home, the usual travel time between home and office will be deducted. Federal regulations state that time spent outside the normal working hours while traveling as a passenger on a train, bus, airplane, boat, or automobile is not counted as time worked and therefore no compensation given. However, some states have regulations that require that all travel time is paid time.

Travel expenses and course related expenses

Paying for expenses are negotiable. In most states as with Federal regulations, these expenses may be shared upon mutual agreement of both parties or reimbursed after a mutually agreed upon time of continued employment.

An effective expense reimbursement policy might stipulate that reimbursement for the agreed upon expenses is provided when:

- Evidence of completion of the course,
- A verified statement of tuition paid and/or receipts of expenses paid.

Employers may request a copy of certificates and units earned which will then be placed in the employee's file.

Different Capacity Work Rate

When attending a seminar or workshop employees may be paid as follows at a different rate from their regular rate of pay called *Different Capacity Work Rate*.

1. The hourly rate of pay must equal or exceed your state's minimum wage requirements.
2. Each affected employee agrees in writing that s/he understands the special hourly rate will apply and that any overtime will be paid based on a weighted average involving the special rate and the employee's regular rate of pay. Although all states do not require a written agreement, it is recommended that proper documentation occur. The agreement must show the date of the agreement and the period of time that it covers (Ask about Different Capacity Work Rate form).
3. The employer should keep records showing:
 - a. The regular hourly rate at which the staff member is employed,
 - b. The special hourly rate of pay paid for the time attending seminars or workshops and
 - c. The number of overtime hours worked in the workweek at each separate hourly rate.

Overtime and Continuing Education

In all states other than California, Nevada, Colorado, Florida, and Alaska, the overtime "trigger" is consistent with the requirement imposed by the FLSA, which is 40 hours in a week. Therefore, non-exempt employees (even salaried non-exempt) must be paid overtime when they work more than 40 hours in a week.

- In California, Nevada, Colorado, Florida and Alaska the overtime "trigger" is a daily overtime requirement.
- Alaska, California, Puerto Rico and Nevada-8 hours in one day, (Nevada exemption: not applicable if, by mutual consent, the employee agrees to work 10 hours per day for 4 calendar days within any scheduled work week or if the employee earns 1½ times minimum wages);
- Florida—10 hours for manual laborers; Colorado—12 hours.

Wage and Hour laws change, check state labor laws periodically to assure compliance.

In situations where a different capacity work rate has been established, the rate of pay for any overtime hours, when an employee is paid two or more different rates for hours worked by the same employer during the workweek, is determined by the "weighted average method". Using this method, an employee's total weekly compensation is divided by the total hours worked at all jobs, to determine the effective hourly rate for the workweek. Total weekly compensation equals all hours worked times their appropriate rate plus any other forms of compensation, such as bonuses or commissions, are to be included in the total weekly compensation.

In summary, when evaluating whether it is necessary to pay for continuing education and related travel time, employers must ensure that the four Department of Labor criteria mentioned above are used.

While the challenges associated with the payment of wages related to lectures, meetings and training programs can be tricky, if you adhere to the guidelines described in this article supplemented by technical assistance from your local Bureau of Labor or Bent Ericksen & Associates, you will have met compliance requirements.