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DOL Rules Time Spent on Wellness Activities not Compensable under the FLSA

Over the past several years, employers have increased the breadth and depth of their employee wellness programs. Many programs give rewards for biometric screenings and attending health fairs on the employer's premises, as well as fitness activities and weight loss activities. Other wellness programs reward employees for wearing fitness trackers and sleep trackers. Imagine if all this time spent on wellness activities had to be included in an employee's wages.

The DOL's Wage and Hour Division recently addressed this specific issue under the Fair Labor Standards Act ("FLSA"). As a general matter, the FLSA requires employers to compensate employees for their work. Compensable time depends on whether the time spent is predominantly for the employer's benefit or for the employee's benefit. Further, an employee is not entitled to compensation for "off duty" time.

One can already see the plaintiffs lining up for this one, because wellness programs benefit both the employer and the employee. Fortunately, this issue should not see a courtroom anytime soon, based on the DOL's recent opinion. In DOL Opinion FLSA 2018-20, the DOL ruled that an employee's participation in biometric screenings, wellness activities, and benefits fairs predominantly benefits the employee, because the activities provide direct financial benefit to only the employee. However, participation must be voluntary for the employee and participation must not be required by the employer. (The opinion does not discuss the employer's benefits received from sponsoring employee wellness programs, but presumably those are only indirect benefits.)

The opinion was expansive in scope as the facts of the opinion included the following wellness activities – (1) attending a health education class; (2) taking an employer-facilitated gym class or using the employer-provided gym; (3) participating in telephonic health coaching and online health education classes; (4) participating in Weight Watchers; and (5) voluntarily engaging in a fitness activity.

Not all wellness activities are included in the opinion as the opinion does not mention health risk assessments or tracking devices, such as sleep trackers and step trackers. But, there is no reason why such activities should be considered compensable under the FLSA, as again the direct benefits are received by the employee, with only indirect benefits received by the employer.