

What are the rules on 'optional' meetings?

July 2, 2015

My boss holds optional evening meetings once or twice a month. We do not get paid for attending these because they are officially "optional." However, in my review he made note that I don't attend these meetings and it contributed to a less-than positive evaluation. Several co-workers are experiencing the same. But I know two co-workers who attend every meeting and they received great reviews and a bonus. Can my employer legally penalize us for not attending "optional" meetings that we don't get paid for?



*(Photo: Markow-Kent Photography;
Beth Entringer)*

Don Johnsen

Gallagher & Kennedy

Yes. The law does not prohibit this. An employer might designate any particular activity as "optional," but that does not prohibit the employer from rewarding workers who show up, or from being critical of workers who do not attend.

To use an extreme example, suppose that a manager organizes a company softball team and says that it's purely voluntary. But suppose that the manager looks more favorably on workers who participate than on workers who don't. That might not be the best management technique and it might not make for good morale, but it would not be illegal.

However, penalizing workers because they fail to participate in optional meetings can have an impact on some workers' eligibility for overtime compensation. Under the Fair Labor Standards Act, non-exempt workers are eligible for overtime if they work more than 40 hours in any week. Under the law, time spent in workplace meetings that are not truly optional is "working time." And a meeting is not "optional" if employees are led to believe that their working conditions or continuance of employment would be adversely affected by non-attendance.

In this case, if the boss really is giving some workers less favorable reviews and no bonus because they are not attending the meetings, then the meetings are not truly optional. Under those circumstances, employees who do attend the meetings are entitled to have the meetings count as working time when calculating any eligibility for overtime compensation in weeks in which the meetings occur.



Rose McCaffrey, attorney with
Kelly McCoy PLC. (Photo:
Georgann Yara)

Rose McCaffrey

Kelly McCoy, PLC

While it may be permissible for your employer to penalize you for not attending the "optional" meetings, it is likely unlawful for your employer to not pay those employees who do attend such meetings.

Under the Fair Labor Standards Act (FLSA), employees must be compensated for attending any meeting that is required by the employer or deemed as mandatory. Hours worked under the FLSA include all the time during which an employee is required to be on the employer's premises, on duty or at a prescribed workplace.

The following criteria must be met in order for attendance at meetings to not be counted as work time: attendance must be outside of your regular working hours; attendance is truly voluntary; the meeting is not directly related to your job; and you do not perform any productive work during such attendance. If these four criteria are met, your employer does not need to compensate you for your attendance at the meeting.

In this case, your employer states these meetings are optional. But based on your description, the meetings are not truly optional because your failure to attend is affecting your performance evaluations and compensation. Once an optional meeting affects your job, it is not voluntary and under the FLSA should be compensated.

Therefore, the meetings should be considered mandatory under the FLSA and you and your co-workers should be compensated for your time in attending the meetings. Under these facts, the employer may be in violation of the FLSA for not compensating the employees who attended these optional meetings.

— Compiled by Georgann Yara