

Orientation program may not have to be paid

Generally, you must pay employees for the time they spend in training. But that's not always the case for initial orientation programs—if the attendees aren't yet employees and don't have a guarantee that they will have a job at the end of the orientation. In that case, the orientation program functions as part of the application process, which does not have to be paid under the Fair Labor Standards Act.

Recent case: Scott attended an orientation program for a job as a truck driver. He later sued, alleging that he should have been paid at least minimum wage for the time spent in the program.

The court disagreed, concluding Scott had not yet become an employee and therefore wasn't entitled to pay.

The orientation program was designed as part of the job application process, albeit a lengthy one. Drivers attended the three-day orientation with no expectation of being paid other than travel and lodging expenses. Drivers were not guaranteed work upon completion of the program.

On the first day, applicants completed driving and skills tests. During the second and third days, applicants completed tax and administrative paperwork in a classroom setting. The company also assured itself that applicants understood and would comply with its safety policies and regulatory standards if hired. The orientation was the company's method for ascertaining its drivers' training and abilities, and not all participants were hired upon the orientation's completion. (*Nance et al., v. May Trucking*, 9th Cir., 2017)

Final note: Before concluding that your orientation program is part of the application process rather than a post-employment training session, determine whether all attendees will become employees or whether there is no guarantee. Consult your attorney to ensure the program fits FLSA rules. Otherwise, you could owe back pay to trainees, going back at least two years.