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Often, employers question whether they should be paying employees for time spent related to completing certain wellness activities such as:

- attending an in-person health education class and lecture (e.g., nutrition or diabetes management);
- taking an employer-facilitated gym class or using the employer-provided gym;
- participating in telephonic health coaching and online health education classes through an outside vendor facilitated by the employer;
- participating in Weight Watchers;
- voluntarily engaging in a fitness activity (e.g., going to personal gym, exercising outdoors, participating in a Fitbit challenge);
- getting a biometric screening; and
- attending a benefit fair.

The answer is not specifically addressed by the Fair Labor Standards Act (“FLSA”) and seems particularly unclear when the employer uses incentives such as premium discounts to encourage participation in the wellness program.

Under the FLSA, time is compensable when employees perform duties predominantly for the benefit of the employer. Time is not compensable for “off-duty” periods when the employee:

- is completely relieved from duty; and
- has a long enough amount of time that enables him or her to use the time effectively for his or her own purposes.

On August 28, 2018, the Department of Labor (“DOL”) concluded in an information letter that when the employer does not require attendance, even when attendance results in reduced medical plan contributions, participation in the wellness activities is “voluntary.” Assuming there is no direct financial benefit to the employer, attendance predominantly benefits the employee. Therefore, under these circumstances, the DOL stated that the time spent by the employees related to wellness activities does not have to be paid.