

## Court says that a worker's employer-mandated counseling sessions are compensable time

The U.S. District Court for Northern Illinois recently ruled that the time an employee spent going to employer-mandated psychological counseling should be considered "hours worked".

### The Facts of the Case

Kari Sehie worked as a police dispatcher for the City of Aurora, Illinois. After taking a health-related leave of absence, her employer required her to pass a "fitness for duty" evaluation before returning to work. The physician who conducted the evaluation cleared her for work, but recommended that she attend weekly counseling sessions with a clinical psychologist for six months.

A representative from the city's human resources department then informed Sehie that she would have to go to counseling as recommended to keep her job. The HR representative allegedly told Sehie that she would be compensated for the time and cost of scheduling, traveling to, and attending the appointments.

Sehie attended the counseling sessions as required during non-working hours and worked 40 or more hours on regular duty. When the city failed to compensate Sehie for the time she spent going to counseling, she sued the city under the Fair Labor Standard Act (FLSA).

The city asked the district court to dismiss the case, arguing that a different FLSA regulation took precedence. That regulation states, "Time spent by an employee in waiting for and receiving medical attention on the premises or at the direction of the employer during the employee's normal working hours on days when he is working constitutes hours worked." In other words, the

city claimed that Sehie was not covered by the FLSA because Sehie did not go to counseling during normal working hours.

The court disagreed with the city, noting that that particular regulation "defines what *is* 'hours worked' not what *is not* 'hours worked'."

Instead, the court referenced three U.S. Department of Labor (DOL) administrative rulings on the subject. In one of those rulings, the DOL said, "[W]henver an employer imposes special requirements or conditions that an employee must meet before commencing productive work, the time spent in fulfilling such special conditions is regarded as indispensable to the performance of the principal duty the employee is hired to perform. Included in this category are required medical or psychiatric examinations. Time spent in taking such examinations is time during which the employee's freedom of movement is restricted for the purpose of serving the employer and time during which the employee is subject to the employer's direction and control. Therefore, such time spent must be counted as hours worked under the FLSA."

The court ruled that the time Sehie spent traveling to and participating in the employer-mandated counseling sessions was compensable working time. The court rejected the city's motion to dismiss the case, allowing Sehie's lawsuit to proceed.

For more information, contact CTSI at 303.861.0507.

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### County Technical Services, Inc.

1700 Broadway, Suite 1512  
Denver CO 80290

303.861.0507  
FAX: 303.861.2832

Technical Updates are available online at: [www.ctsi.org](http://www.ctsi.org)