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Angela Bradstreet
State Labor Commissioner
Division of Labor Standards Enforcement

August 29, 2007

Jeff Flint
CALSA
915 L Street, #C251
Sacramento, CA 95814

Re: Whether Pre-Employment State Mandated Security Officer Training Time Is
Compensable.

Dear Mr. Flint:

Your letter dated July 11, 2007, was referred to me by the Labor and Workforce Development Agency, for response. We appreciate your proactive approach in requesting guidance regarding the compensation issues raised in your letter.

As you pointed out, the Security Officer Training Law, effective July 1, 2004, made significant changes to the regulation of the security industry. The Department of Consumer Affairs has jurisdiction over the private security industry under the Private Security Services Act pursuant to B&P Code §§7580 *et seq.* (the Act) and is administered by the department's Bureau of Security and Investigative Services (BSIS). The training provisions raised the minimum mandatory training for security officers from 3 to 40 hours, and further, require 8 hours of refresher training every 12 months thereafter. (B&P Code §§7583-7583.6) Your questions are essentially whether private security companies who offer mandated security officer training prior to employment are required to compensate the trainees for time spent in the training program. For the reasons stated below, the opinion of the Labor Commissioner is that time in the pre-employment training program does not require wage compensation under the facts presented in your letter.

The provisions of the Business & Professions Code you referenced in your letter make a distinction between persons engaged in the operation of a private security *business* which must be *licensed* as a private patrol operator, and private security *guards* who must be *registered* as security guards and work for private patrol operators.¹ Although parts of your letter refer to

¹ Under regulations promulgated under the Private Security Services Act, a "licensee" means a private patrol operator" and a "guard or registrant" means a uniformed employee of a private patrol operator, an alarm agent of an

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individuals who are licensed, your description of the two training scenarios addresses individuals seeking to become security officers. Also, the statutory provisions you reference pertain to training for registration of security officers. Accordingly, this letter will focus on the required security officer training in order to be a *registered* security officer, and not the licensing of a private security operator (business).

A brief review of the mandatory training reveals that completion of the required training is a prerequisite to initiating work and continuing to work as a registered security officer in California. (See B&P Code §§7583.3 (a), 7583.6(a)) The number of hours required for application for registration is 8 hours of training in "power to arrest." (B&P Code §7583.8) Upon completion of the 8 hour training, the application for registration and criminal history clearances, a security guard registration card is issued. Every newly registered or employed security guard must then complete 16 hours of training (8 hours of mandatory courses) within 30 days from the day the registration card is issued or the day the guard begins employment. The remaining 16 hours of training (including 8 hours of mandatory courses) must be completed within the first 6 months from the day the registration card is issued or the day the guard begins employment.

An individual is required to be registered by the BSIS to work as a security guard. The curriculum for the required training is developed pursuant to departmental regulations (B&P Code §7583.6 (d)) and the required course of training "may be administered, tested, and certified by *any licensee* [private patrol operator], or by any organization or school approved by the department" (B&P Code §§7583.6(e), 7583.7(a); italics added for emphasis.) A course provider or private patrol operator must issue certificates to the guard for satisfactory completion of a required course and a private patrol operator may provide additional training programs and courses in addition to the required training. (B&P Code §7583.6(c); 16 CCR §643(b)) Further, a person may apply for registration whether or not he is employed at the time of application. (16 CCR §625.1(c)) The Director of the Department of Consumer Affairs is responsible for fixing the qualifications of licensees and security guards, establishing procedures for local authorities to file charges for failure to meet standards for registration, and for investigation of charges. (B&P Code §7581), issuing citations and assessing administrative fines for violations of provisions of the Act, and may deny, suspend, or revoke a license or registration (B&P Code §§ 7587 et seq.)

Against the backdrop of the specific requirements for regulating the private security services industry, the Division of Labor Standards Enforcement (DLSE) has jurisdiction over the enforcement of provisions of the Labor Code and Industrial Welfare Commission (IWC) Orders with respect to payment of wages to workers. IWC Minimum Wage Order (MW-2007) and Order 4-2001 regulating the wages, hours and working conditions in the Professional, Technical, Clerical, Mechanical and Similar Occupations apply to security guards. The Order defines "employ" to mean "to engage, suffer, or permit to work." However, the definition of "suffer or permit" to work was not intended to stamp all persons as employees who, for their own advantage, work without express or implied compensation agreement. (See O.L. 2000.05.17, citing *Walling v. Portland Terminal Company*, 330 U.S. 148, 152 (1947))²

alarm company operator, and any person employed or compensated by a private patrol operator, or any lawful business as a security guard, and in the course of such employment, carries a deadly weapon." (16 CCR § 625(a)-(b))
² The coverage of the IWC Orders extends only to employees. If the individual is not an "employee," there is no employment relationship with an employer and the wage orders do not apply. (O.L. 1988.10.27) An "employee" means "any person employed by an employer" and "employer" means "any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, and working conditions of any person." (IWC Order 4-2001, § 2(F) and (H))

Historically, DLSE has used an 11 prong test to evaluate certain training programs and determine whether individuals are exempt from minimum wage requirements as "trainees." (See, O.L. 1998.11.12 and O.L. 1998.11.12-1) Although the test provides a useful guideline for review of general training programs, it is not exclusive; and moreover, does not appropriately address such state-mandated training programs as here which are administered under a comprehensive statutory scheme with extensive oversight of program curriculum and compliance vested with a state agency.

Your letter indicates that security companies under your membership offer a regimented program which follows the curriculum established by BSIS pursuant to statutory requirements. Indeed, it is clear that the Security Officer Training Law specifically allows a licensed private security operator to provide required training as an alternative to an approved provider such as a vocational program.

The two described scenarios in your letter reveal several salient points. The state mandated classroom training provided by the private security operator for required registration as a security officer is at *no cost* to the participants and is conducted prior to any offer of employment. Only after an individual successfully completes the training under either of the two programs (24 hours or 40 hours) and meets the company's hiring requirements, an offer of employment may be extended to the individual. The scenarios appear to be consistent with the above stated provisions of the Act which expressly allow for security guard training and registration independent of employment with a private security operator.

The mandated security guard training requires that the first 24 hours of training under the required curriculum consist of classroom training on basic skills and practices in the industry covering mandated topics and includes lectures, written materials, and exercises. (16 CCR § 643(a) & Appendix) Additionally, in the first described scenario where the first 24 hours of training is provided at no cost, the training consists of generic industry training with the final 16 hours of training (which includes elective courses) conducted post-hire, and thus, such individuals are compensated by the operator. Under both scenarios, the 8 hour annual refresher course is compensated since it is conducted post-hire.

In the security guard training programs described in your letter, there appears to be no work performed directly or indirectly by the participants for the private security operators. The participants in the program participate in the described training programs which cover state mandated courses with assigned hours for each course. The participants' training is for their own advantage (and at no cost) in order to become state-qualified security guards. Participants must receive certificates of completion for the courses successfully completed which can be used in employments with other operators in the industry. The fact that employment *may* be offered after completion of the specific training provided by the private security operator does not itself transfer the relationship to an employee-employer relationship. And while there is a conceivable general benefit to the private security operator in that it may offer employment to individuals *upon successful completion of the training and otherwise meeting hiring requirements* based upon their exposure to such prospective employees, there is no unfair economic benefit derived from work *during* the period of training the individuals.

It is also appropriate for DLSE to consider provisions of the Private Security Services Act. Under the Act's definitional provisions, the Legislature provided that the "employee-employer" relationship means "a relationship in which an individual works for another, the individual's name appears on the payroll records of the employer, and the employee is under the direction and control of the employer." (B&P Code §7580.10) "Employer" means "a person who employs an individual for wages or salary, lists the individual on the employer's payroll records, and withholds all legally required deductions and contributions." (B&P Code §7580.8) "Employee" means "an individual who works for an employer, is listed on the employer's payroll records, and is under the employer's direction and control." (B&P Code §7580.9) While not singularly determinative for purposes of enforcing wage payment requirements under the Labor Code and IWC Orders, these definitions govern the Act which reflects a declared objective to regulate the private security industry and defining the employment relationship under the Act and should be considered in determining the existence of an employment relationship. Under these definitions, the mandatory training programs do not appear to qualify as an employee-employment relationship because there is no work performed for the private security operator, no wages or salary is received, and the individuals are not listed in the employer's payroll.

Based upon the above, there appears to be no employment relationship established between the individual and the private security operator for which wage compensation is required to be made by the private security operator with respect to the two described programs.

It follows from the above analysis, however, that a different result may ensue if there are either assignments to work for, or individuals are otherwise allowed to work on behalf of, the training private security operator since, then, the individual would be engaged, suffered, or permitted to work by the operator. This caveat is critical since the Act provides that the balance of 32 hours of required training (after the 8 hour "power to arrest" course and issuance of registration by BSIS) *may* be completed within a scheduled period not exceeding 6 months after registration *or* the day the guard begins employment. Since it is conceivable that an individual may qualify for registration after the initial 8 hours of required training and *could* be assigned to perform work for the operator *during* the balance of the training period which benefits the operator's business, such activity would change the individual's status to an employee of the operator. Thus, if there is assigned regular or special work performed by the individual *for the private security operator* aside from the classroom program during the period of such training, compensation would be required under the IWC Order.

As previously indicated, the training programs described by you consist of only classroom training in required courses by an authorized provider (private security operator). Based upon your representation that an offer of employment may be made after successful completion of the training program and after meeting company hiring requirements, it is reasonable to assume that no promise of future employment for enrollment is made at the inception of the programs which might provide a sufficient inducement to enroll or otherwise create an enforceable expectation (promise) of employment. Further, the mandated program requirements do not provide for a clinical program component such as an outside post assignment (e.g., to a client of the operator) which might call for a different analysis for purposes of wage compensation under state wage and hour law. (E.g., O.L. 2000.05.07 [employment status of culinary externs under economic realities test requires factual analysis of work performed]; O.L. 1993.01.07 [vocational trainees in program requiring on-site "hands on" experience with businesses])

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Jeff Flint
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In summary, based upon our review of the relevant provisions of the Private Security Services Act, including the state-mandated security guard training requirements for qualification to work as a security guard in California, the two security training programs described in your letter, and the current law regarding payment of wages required under the Labor Code and IWC Orders, upon the facts described by you, the programs do not require payment of wages for pre-employment, mandatory training provided by private security operators.

This opinion is, of course, based only upon the representations in your letter regarding the general training programs which you stated are "typically set up two different ways" as described. Any specific training programs implemented by a private security operator which may vary from your descriptions are not covered in this opinion, and a blanket approval of any training program without regard to variations as a result of implementation is not intended. Also, the question of whether any particular individual is under an employment relationship with a specific operator will depend on the particular facts relating to his or her actual participation in the training program.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the questions presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Division of Labor Standards Enforcement.

I sincerely hope the above is both responsive to your inquiry and will assist your membership in successfully and lawfully conducting private security operations that provide mandated security guard training for security guards in this important industry and which comply with California wage and hour laws.

Sincerely,



ANGELA BRADSTREET
Labor Commissioner and Chief
Division of Labor Standards Enforcement

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July 11, 2007

RECEIVED
JUL 13 2007
State of California
Labor & Workforce Development Agency

Ms. Victoria Bradshaw
Secretary
Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

Re: Whether certain state-mandated Security Officer training time should be considered compensable

Dear Secretary Bradshaw:

The California contract security industry has seen a number of changes over the last few years. California has the most stringent security officer criminal background and training requirements in the nation. All individuals who apply for a security officer license issued by the State of California must first undergo a mandatory criminal background check conducted by the Department of Consumer Affairs' Bureau of Security and Investigative Services (BSIS). The background includes a criminal search through the criminal databases of California Department of Justice and the Federal Bureau of Investigation.

Perhaps the biggest and most far-reaching change for the contract security industry has been the passage of California Business and Professions Code Sections 7583-7583.6 ("BP 7583") the "Security Officer Training Law". The Security Officer Training Law, which was passed in 2002 and took effect on July 1, 2004, raised the minimum mandatory initial training for security officers in California from three to forty hours. Additionally, it requires an 8-hour refresher course every 12 months after completion of the 40-hour course (see Special Notice attached). California's Security Officer Training Law far exceeds the training and criminal background checks required by other states.

The purpose of this letter is to request that the Labor and Workforce Development Agency provide guidance as to a wage-hour issue involving this training.

Under BP 7583-7583.6 California security guards are required to obtain and maintain a security guard license as a prerequisite to working as a security guard. One of the requirements in obtaining a security guard license is the successful completion of training regarding security services. BP 7583 describes the training security guards are required to successfully complete as a condition of receiving a security guard license.

Members of our association are security guard companies who offer to security guard applicants the training described in BP 7583. The training is offered as a regimented program which follows the curriculum established by the California BSIS, the state agency which regulates the security industry. Security companies' training programs are typically set up two different ways, as follows:

1. The Companies provide, free of charge, the first twenty-four hours of training in a classroom environment to individuals seeking to become security officers. These twenty-four hours are generic security industry training and individuals are not compensated for their time. After successful completion of the twenty-four hours an offer of employment may be extended to the individual if the individual meets the company's hiring requirements. At that time the companies continue the training with the remaining sixteen hours of elective training. ~~The final sixteen hours are compensated as they are conducted post hire and in some cases is company specific.~~ All forty hours comply with the BSIS approved curriculum. The eight hour annual refresher course is compensated as it is conducted post hire and in some cases is also company specific.
2. ~~The Companies provide, free of charge, all forty hours of generic security industry training in a classroom environment which comply with the BSIS approved curriculum to individuals seeking to become security officers. After successful completion of forty hours training, an offer of employment may be extended to the individual if the individual meets the company's hiring requirements. The eight hour annual refresher course is compensated as it is conducted post hire and in some cases is company specific.~~

The license issued to an individual who successfully completes the training is the property of the individual, not the security company. The curriculum offered by security companies is the same as that which is offered by vocational training facilities.

My members believe that as to prospective employees the time spent in state-mandated training is not compensable time, and security companies are not legally obligated to pay prospective employees for such pre-employment training time. We are requesting your advice on this interpretation, and request that you confirm that time spent during the pre-employment, non-company, state-mandated training for an individually-owned state license, is not considered compensable time.

Thank you for taking the time to consider this request. If you have any questions that may assist in responding, please do not hesitate to contact me.

Respectfully Submitted,



Jeff Flint
CALSA

Cc: Kelly Jensen, Sloat, Higgins, Jensen & Associates

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