12/26/01 - Deductions from Wages for Uniform Maintenance

Opinion Letter
MW-2000-006
October 13, 2000

This letter is intended as a response to your request for an interpretation of a provision of the Commonwealth's Minimum Wage Regulations, 455 C.M.R. 2.00, pertaining to minimum daily hours. Specifically, section 2.03 (1)(a) of the regulations requires that "[a]n employee who by request or permission of the employer reports for duty on any date at the time set by the employer, regardless of whether actual work is assigned, shall be paid for at least three hours on such day at no less than the basic minimum wage." As I understand it, your agency, Community Enterprises, assists individuals who have suffered traumatic brain injuries to find and keep private sector jobs. Some of your clients, due to their handicaps can work for only two hours a day. Read literally, section 2.03(1)(a) appears to require that every employee who appears for work at the date and time required by his employer be paid for three hours a day at the minimum wage. Such a rule disadvantages employees like your client who would prefer to work a two-hour a day schedule, yet cannot offer prospective employers the advantage of being paid two, rather than three, hours at the minimum wage for every day worked.

Regardless of the language of the regulatory provisions, their interpretation is always limited by the scope of the enabling legislation authorizing their promulgation. Despite the literal meaning of this provision of the Minimum Wage regulation, it must be interpreted within the limits of the authority granted to the Director of the Department of Labor and Workforce Development in M.G.L. ch. 23, sec. 1, the enabling legislation for the Department. Nothing in that law authorizes the Director to interfere with employer-employee agreements to establish regularly scheduled part time work arrangements of less than three hours a day compensated on an hour for hour basis.

Therefore, the Division of Occupational Safety, which drafts and administers the Minimum Wage Regulation, does not interpret this provision to prevent employers and employees from reaching an agreement that an employees' regular daily hours will consist of fewer than three hours, compensated at the minimum wage on an hour-for-hour basis. Rather it interprets this provision as one applying to employees whose regularly-scheduled hours of work are curtailed by their employers due to lack of work. Employees who are regularly scheduled to work three hours or more and who arrive at their duty stations at the time appointed by their employer only to find that their employer has so little work for them to perform that he requires less than three hours of their labor cannot be paid for less than three hours at the minimum wage, simply because the employer has insufficient work for them to perform. Thus, employees whose regularly-scheduled work day is, for example, five hours a day are guaranteed at least three hours of pay at the minimum wage on every work day when they arrive at work at the time requested by their employer, regardless of whether the employer has sufficient work for them to do. By comparison, employees who, like your client, wish to work for less than three hours a day on on a regular basis can reach an agreement with their employers to do so, with the understanding that the employer will pay for only the hours worked. Thus an employer who reached an agreement with your client that he could work for two hours a day on a regular basis would not need to pay your client for more than two hours a day at the minimum wage.

Very truly yours,
Linda Hamel
General Counsel

= Names have been Omitted