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Re: Joint Request for Advisory Opinion Letter

Dear Attorneys Moran and Martin:

This letter responds to your May 16, 2025, request for a determination from the Department of Labor Standards ("DLS") regarding the applicability of the Commonwealth's minimum wage laws (G.L. c. 151, §§ 1-2) to certain work performed by adult participants in Teen Challenge of New England's ("TCNE") residential substance abuse treatment program.

G.L. c. 151, § 1 establishes a minimum wage of $15 per hour for any individual employed in an occupation in the Commonwealth. Generally, work performed "by persons being rehabilitated or trained under rehabilitation or training programs in charitable, educational, or religious institutions" is not subject to these minimum wage requirements because it is not included in G.L. c. 151, § 2's definition of "occupation."

DLS has adopted a totality of the circumstances approach in determining whether a work program in a charitable, educational, or religious institution qualifies as a "rehabilitation program" under G.L. c. 151, § 2. *See Applicability of Massachusetts' Minimum Fair Wage Law to Work Assignments Performed by Individuals Participating in Rehabilitation Programs*, MW-2025-03-014 (March 14, 2025), available here. In making a minimum wage determination in these types of situations, DLS considers the following factors:

1) The program participant's formal rehabilitation program or treatment plan, and the extent to which the related work assignments are tied to such program or plan;

2) If there is no formal rehabilitation program or treatment plan, the extent to which the work assignments or tasks provide program participants with the essential functions and benefits of rehabilitation programs;
3) The extent to which the program participant and the organization clearly understand that there is no expectation of compensation for the work performed;
4) The extent to which the program participant has an expectation of receiving in-kind benefits (for example, room and board) in exchange for the work assignments, and the value of such benefits;
5) The length of each work assignment, any minimum hours, quotas, or other requirements for each work assignment, and the extent to which the work assignment's duration is limited to the period in which the assignment provides the program participant with rehabilitative value;
6) The extent to which the program participant's work complements, rather than displaces, the work of paid employees while providing significant rehabilitative benefits to the program participant;
7) Who the work assignments primarily benefit and to what extent; and
8) The extent to which the work assignment is voluntary versus mandatory.

According to the information provided to DLS, TCNE is a residential substance abuse treatment program with a work component. TCNE participants have historically performed four types of work while enrolled in the program: (1) unskilled manual labor for outside clients of TCNE; (2) telephone fundraising for TCNE; (3) in-person fundraising for TCNE; and (4) internal vocational training programs. TCNE participants do not receive monetary compensation for any of these tasks, and participation in these work assignments is mandatory for participants. The parties have requested an opinion from DLS concerning whether the first three categories of work qualify for the exemption from the minimum wage contained in G.L. c. 151, § 2.

As an initial matter, TCNE asserts that all work performed by persons in "rehabilitation programs" in charitable institutions is exempt from the Commonwealth's minimum wage laws, regardless of whether this work is connected to the participant's rehabilitation process. G.L. c. 151, § 2 does not define the term "rehabilitation program," and in the absence of statutory guidance, it is left to DLS to give the term a reasonable interpretation. In utilizing the totality of the circumstances approach described above, DLS is applying the same type of test to "rehabilitation programs" under G.L. c. 151, § 2 that it has applied to "training programs" under the same statute. *See, e.g.*, MW 2011-02-5.9.11 (available here); MW 02-10-03 (available here). Adopting TCNE's interpretation would not only apply an entirely different method of evaluating "rehabilitation programs" versus "training programs" under the same statute, but it would also mean that any work that is done by participants in a so-called rehabilitation program would not be subject to the minimum wage, regardless of whether there is any benefit to the participant or any connection to the rehabilitative process.[1] Allowing such a broad exemption for any task regardless of its rehabilitative nature risks exploitation of a vulnerable population.

[1] It would also be contrary to the federal approach, which, like the Commonwealth's, looks at a variety of factors in determining whether individuals in similar situations should be considered employees and thus subject to minimum wage laws. *See, e.g.*, U.S. Dep't of Labor Fact Sheet #71 (available here).

DLS also determines, based on the totality of the circumstances, that the work participants perform for TCNE does not fall within the exemption contained in G.L. c. 151, § 2 because it is not part of a "rehabilitation program" within the meaning of that statute. DLS makes this determination after considering each of the factors outlined above.

Whether Factor One or Factor Two applies depends on whether the program in question has a formal individualized treatment plan or not. TCNE asserts that it does have a formal treatment plan, but offers very few specifics regarding this treatment plan other than that it is disclosed to residents. From the information provided to DLS, there is no indication that the work assignments are expressly tied to any participant's individual treatment plan or provide the essential functions of vocational rehabilitation; indeed, to the contrary, all program participants appear to be required to participate in at least one of the three types of work programs described above regardless of their individual treatment plans or rehabilitative needs. Factors One and Two thus point towards TCNE's work assignments as not being part of a "rehabilitation program" within the meaning of G.L. c. 151, § 2.

Factors Three and Four point in opposite directions. Factor Three lends credence towards TCNE's work assignments as being part of a rehabilitation program as it is undisputed that both TCNE and its program participants understand there is no expectation of monetary compensation for the work performed. Factor Four points the other way, however, as it is also undisputed that the program participants do have an expectation of receiving in-kind benefits (including room and board) and that these benefits are valuable.

Factor Five also suggests that the work assignments are not part of a rehabilitation program as contemplated by the statute as DLS has not been provided any evidence that the length of participants' work assignments is tied to whether these assignments are still providing rehabilitative value to the participant. Instead, the work assignments appear to continue as long as the work is still providing value to TCNE or its outside clients.

Factors Six, Seven, and Eight also weigh heavily against the idea that TCNE's work assignments are part of a rehabilitation program within the meaning of G.L. c. 151, § 2. First, the work the program participants do appears to directly displace the work of paid employees, either at the client or another contractor/vendor (Factor Six). For example, if TCNE program participants did not shovel snow for TCNE's clients, the client would either have to pay its own employees to do the work or hire a snow removal contractor. Second, the work performed by the program participants appears to benefit TCNE and its clients more than the program participants themselves (Factor Seven). This is most clearly evidenced by the fact that the work programs are geared not towards the participants' individual needs, but rather those of the clients or TCNE. If one of TCNE's clients needs landscaping work or snow shoveling done, the program participants do landscaping or snow shoveling, regardless of whether that task has any rehabilitative benefits for the participant. Likewise, if TCNE needs phone or in-person fundraising, the program participants do such fundraising, again regardless of the participant's individual needs.[2] Finally, the work assignments are mandatory, not voluntary (Factor Eight), further indicating that TCNE's work assignments are not part of a rehabilitation program within the meaning of G.L. c. 151, § 2.

Considering all the factors and limiting this decision to the specific facts before it, it is the determination of the Department of Labor Standards that the work programs described above do not fall within the exemption in G.L. c. 151, § 2. Accordingly, TCNE program participants must be paid at least minimum wage for the work they performed.

Please note that this determination is based on the facts as presented to DLS; if those facts are incorrect or change, DLS' determination could change as well.

Thank you in advance for your cooperation regarding this matter. If you have any additional questions or concerns, please do not hesitate to contact me.

Regards,

Michael Flanagan, Director
Department of Labor Standards

[2] This is also shown by TCNE's discontinuation of its external manual labor program after COVID. If this program's purpose was primarily vocational rehabilitation for the program participants, TCNE presumably would have found a way to restart the program post-COVID, even if it was no longer a profitable enterprise for TCNE. TCNE has not done so to date.