

Minimum Wage Opinion Letter **01-11-02 - Applicability of M.G.L. c. 151, 1A to State Employees**

January 11, 2002

I am writing in response to your request for this Office's written opinion regarding the applicability of M.G.L. c. 151, §1A, to employees of the Massachusetts Department of \*\*\*. Specifically, you have asked three questions: 1) does M.G.L. c. 151, §1A, or M.G.L. c. 149, §30B, govern overtime for state employees; 2) what is the statute of limitations on an overtime claim of a state employee; and 3) would \*\*\* be liable for attorney's fees and triple damages under M.G.L. c. 149, §150 (or any other statute) if a plaintiff prevailed on any part of an overtime claim against \*\*\*?

In response to your first question, M.G.L. c. 149, §30B, not M.G.L. c. 151, §1A, governs overtime pay for state employees. Section 1A of M.G.L. c. 151, the Massachusetts Minimum Fair Wage Law, governs the payment of overtime compensation to employees in an "occupation" as defined by M.G.L. c. 151, §2. Section 1A does not specifically include public employees, and neither does Section 2 in its definition of "occupation." Generally, the government is not subject to suit without its consent. See e.g. Grenier v. Town of Hubbardston, 7 Mass. App. Ct. 911, rescript (1979). In Grenier, the Massachusetts Appeals Court considered a minimum wage claim brought against the town by fire department employees. The Court held that the town did not owe the workers back wages because the "case falls within the rule that statutes regulating persons and occupations engaged in trade and industry are ordinarily construed not to apply to the Commonwealth or its political subdivisions unless the Legislature has expressly or by clear implication so provided." Id. at 911.

We note one instance where the Massachusetts Supreme Judicial Court held otherwise in a case brought under the Massachusetts Equal Pay Act (MEPA). See Jancey v. School Comm. of Everett, 421 Mass. 482 (1995), aff'd on reh'g, 427 Mass. 603 (1998). In Jancey, the SJC considered the question of whether the statutory definitions of "employee," "employer," and "employment" could be applied to a public school cafeteria worker despite the lack of any specific reference to claims brought in the public sector. The Court in that case stated that it would "not read into [the statutory definitions] an implied exclusion of public employment. If the Legislature had intended to exclude public employment, it could have done so by express language." Id. at 173. In any event, the instant case is distinguishable in that there is evidence of legislative intent to exclude state employees from coverage under M.G.L. c. 151, §1A. By enacting M.G.L. c. 149, §30B, the Legislature evidenced its clear intent to treat state employees differently, including within §30B different standards for when overtime compensation must be paid and what occupations are excluded. Therefore, as stated earlier, M.G.L. c. 149, §30B, not M.G.L. c. 151, §1A, governs overtime pay for state employees.

With regard to your questions two and three, M.G.L. c. 149, §150, does not appear to permit private suit for a violation of M.G.L. c. 149, §30B. It is unclear how M.G.L. c. 149, §30B should be enforced, or what the applicable statute of limitations is for such an action.

I hope this information has been helpful. If I can be of any further assistance, please feel free to contact me.

Sincerely,  
Lisa C. Price  
Legal Counsel