

## Minimum Wage Opinion Letter 01-26-09

Re: Reporting Pay

I am writing in response to your request for this Office's written opinion regarding the applicability of the Massachusetts Minimum Fair Wage Law. Specifically, you have asked how 455 C.M.R. §2.03(1), the Reporting Pay requirement, [\[1\]](#) applies to a scenario in which an employer implements a Voluntary Time Off ("VTO") policy, wherein exempt employees who report to work may, "completely on a voluntary basis," choose not to work on that particular day when presented with the option by their employer, and then go home. You also state that in this scenario, the decision by the employee whether to work or not is to be made upon arrival at the workplace, and that the decision is "not at all instigated or mandated by the employer."

The Reporting Pay provision referenced above, also known as the "three hour rule," provides:

When an employee who is scheduled to work three or more hours reports for duty at the time set by the employer, and that employee is not provided with the expected hours of work, the employee shall be paid for at least three hours on such day at no less than the basic minimum wage. [This provision] shall not apply to organizations granted status as charitable organizations under the Internal Revenue Code.

455 C.M.R. §2.03(1). Therefore, if a covered employer schedules an employee for three or more hours, the employee arrives at the worksite on time, and the employer does not provide the expected hours, the employee must be paid for at least three hours at no less than the minimum wage (\$8.00 per hour). Of course, for any actual time worked, the employee must be paid his/her actual wage. "Exempt" employees under the overtime provisions of the law are not exempt from other provisions of the minimum fair wage law and regulations, including the reporting pay provisions.

As I understand the specific scenario which you have presented, because the employees are offered a choice, which is "not at all instigated or mandated by the employer(,)" of working consistent with their regular duties according to their expected hours of work, or choosing "completely on a voluntary basis," free from any express or implied pressure from the employer, not to work that day, the employees have been "provided with the expected hours of work" but have chosen to deny the offering. Therefore, according to these particular facts, the employer is not obligated to pay Reporting Pay pursuant to 455 C.M.R. §2.03(1).

I hope this information has been helpful. Please note that this opinion is based solely on the information provided with your request. The existence of other facts not contained in your request might require a different conclusion. If you have any further questions, please feel free to contact me.

Sincerely,  
C. Nicholas Arienti  
Deputy General Counsel

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[\[1\]](#) As you know, most employers are also subject to the federal minimum wage and hour law, found in the Fair Labor Standards Act (FLSA), and regulations promulgated thereunder. For information about applicable federal wage and hour laws, you should contact the U.S. Department of Labor.