

Opinion Letter
MW-2010-01-02.03.10

February 3, 2010

Re: Request for Information Regarding Massachusetts Minimum Fair Wage Law

Your letter to the Executive Office of Labor and Workforce Development, dated January 28, 2010, has been referred to me for response. In the letter, you request information on a number of wage and hour questions concerning the applicability of the Massachusetts Minimum Fair Wage Law, G.L. c. 151. Specifically, you have asked for answers to the following questions:

1. How many hours per week constitute a "full time" workweek?
2. Are employees, who work full or part time in a dental office, entitled to vacation or holiday pay?
3. May an employer require an employee to report for work (at a dental office) and then, upon cancelation of appointments, send the employee home?
4. When may an employee apply for unemployment?
5. Is a part time employee entitled to health insurance?

Response to Question One

The Massachusetts Minimum Fair Wage Law does not distinguish between full-time or part-time employment, and both types of employment are covered under the law. However, c. 151, §1A, provides for the payment of overtime compensation (time and one half the employee's regular rate of pay) for work in excess of forty (40) hours in a given workweek, subject to certain exemptions. [\[1\]](#) In the event that an office employee is required to work in excess of forty (40) hours in a given workweek, the employer is required to pay the employee overtime compensation as provided by the statute.

Response to Question Two

The Massachusetts Minimum Fair Wage Law does not require employers to pay employees extra for weekend or holiday work, or for vacations when an employee is not at work. However, the Massachusetts Blue Laws, G.L. c. 136, §§ 6, 13 and 16, require some retail employers to pay premium pay for work on Sundays and certain holidays. Accordingly the law does not require an employer to pay office workers extra compensation for holiday or weekend work (unless the holiday or weekend work will require the employee to work in excess of forty (40) hours during the workweek as provided in "Response to Question One", above).

Response to Question Three

Your third question may be answered, in part, by 455 C.M.R. §2.03(1), the Reporting Pay Requirement, [\[2\]](#) also known as the "three hour rule," which 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.

Pursuant to the Reporting Pay Requirement, if an employer schedules an employee for three or more hours, the employee arrives at the worksite, and the employer does not provide the expected hours, the

employee must be paid for at least three (3) hours at no less than the minimum wage (currently \$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.

Responses to Questions Four and Five

For information regarding unemployment benefits, please contact the Division of Unemployment Assistance at (617) 626-6800 or the website at www.mass.gov/dua. For information regarding health care benefits, please contact the Commonwealth Connector at (877) 623-6765 or the website at www.mahealthconnector.org.

I hope this information has been helpful. Please note that this advice is based 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,
Patricia A. DeAngelis
Legal Counsel, DOS

[1] For example, executives, professionals and some seasonal works are exempt from the overtime requirements of the law. Section 1A contains a full list of workers who are not required to be paid overtime compensation.

[2] Most employers are also subject to the federal minimum wage and hour laws as well as the Massachusetts law. For information about applicable federal wage and hour laws, you should contact the U.S. Department of Labor at (617) 624-6700.