

Minimum Wage Opinion Letter **02-10-03 - Applicability of M.G.L. c. 151 to Vocational Program**

February 10, 2003

I am writing in response to your request for this Office's written opinion regarding the applicability of M.G.L. c. 151, the Massachusetts Minimum Fair Wage Law, to the Community Based Vocational Training Program (the "Program") at *** High School. Specifically, you would like to know if students participating in the Program are considered employees subject to M.G.L. c. 151, the Massachusetts Minimum Fair Wage Law. [\[1\]](#)

The Massachusetts Minimum Fair Wage Law applies to persons employed in an "occupation" as defined in M.G.L. c. 151, s. 2. Section 2 defines an "occupation" to be "an industry trade or business or branch thereof or class of work therein . . . but shall not include . . . work by persons being . . . trained under . . . training programs in charitable, educational or religious institutions" (emphasis added). The term "training program" is not defined in the statute. In the absence of statutory guidance, it is left to this Office to give the term a reasonable interpretation. As this Office has done in other cases, we look to federal wage and hour law for guidance. Therefore, to determine whether a program in a charitable, educational, or religious organization is a "training program" within the meaning of the statute, DOS employs factors used by the U.S. Department of Labor to determine whether an employee is a "trainee" and therefore not an "employee" covered by the Fair Labor Standards Act (FLSA). See e.g. U.S. Department of Labor, Wage and Hour Opinion Letter, January 30, 2001. See also DOS Minimum Wage [Opinion Letter, May 9, 2002](#). These criteria include whether the training:

1. is similar to that which would be given in a vocational school,
2. is for the benefit of the trainees,
3. does not displace regular employees, and trainees work under close supervision,
4. provides the employer with no immediate advantage from the activities of the trainees, and on occasion his/her operations may actually be impeded
5. does not necessary lead to a job to which the trainee is entitled, and
6. is based on a mutual understanding between the employer and trainee that the trainee is not entitled to wages for the time spent in training.

No single criterion is dispositive; DOS will look to the totality of the circumstances to evaluate a particular training program. [\[2\]](#) In addition, for training programs in educational institutions, DOS will consider such factors as whether the training is an integral part of the educational curriculum and whether the student receives academic credit for participation in the program. See DOS Minimum Wage [Opinion Letter, November 19, 2001](#).

As I understand it, the Program enrolls six students with developmental disabilities including Down Syndrome, Cerebral Palsy, and Williams Syndrome. The students are placed at vocational training sites such as ***, ***, *** and other local establishments for two days a week, up to four hours a day, for a maximum of 40 hours at any given activity. The students do not displace existing employees. The students are accompanied at all times by a job coach who supervises a student's activities and acts as the student's mentor. The stated purpose of the Program is to help students obtain skills needed for the workplace and to learn the expectations of a scheduled work environment. Participation in the Program is part of each student's Individual Education Plan (I.E.P.) and each student receives 2.5 to 5 academic credits, depending on the time spent in the Program. The school, employers, and students understand that no wages will be paid and there is no expectation of paid employment at the end of the training period.

Based on the information provided, it would appear that the Program qualifies as a training program within the meaning of the statute. Therefore, Program participants are not in "occupations" covered by M.G.L. c. 151, the Massachusetts Minimum Fair Wage Law. [\[3\]](#) 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.

I hope this information has been helpful. If you have any further questions, please feel free to contact me.

Sincerely,
Lisa C. Price
Legal Counsel

[1] Please note that 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. The telephone number for the Boston Office is (617) 624-6700.

[2] The U.S Department of Labor has also published more detailed guidelines as to what constitutes an "employment relationship" under the Fair Labor Standards Act for students and workers enrolled in individualized community-based rehabilitation programs. These guidelines are available at the U.S. Department of Labor website: <http://www.dol.gov/whd/flsa/>.

[3] You may wish to contact the Office of the Attorney General about the applicability of the Massachusetts child labor laws, and the Massachusetts Department of Education and the Department of Public Health regarding any applicable regulations, particularly in regards to supervision of the students' use of kitchen equipment.

= Names have been omitted