Minimum Wage Opinion Letter **02-13-02 – Applicability of M.G.L. c. 151 to Town Employees**

February 13, 2002

Your letter to the Attorney General's Office regarding the applicability of the state minimum wage law to town employees has been forwarded to this Office. While the Attorney General's Office enforces the Massachusetts Minimum Fair Wage Law and Regulations, the Division of Occupational Safety is responsible for interpreting these laws.

The Massachusetts Minimum Fair Wage Law, M.G.L.. c. 151, §1, establishes the state minimum wage for employees in an "occupation" as defined by M.G.L.. c. 151, §2. Section 1 does not specifically include public employees, and neither does Section 2 in its definition of "occupation." In Grenier v. Town of Hubbardston, 7 Mass. App. Ct. 911, rescript (1979), 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. Generally, a municipality is not subject to suit without its consent. See e.g. Bain v. City of Springfield, 424 Mass. 758, 762-763 (1997).

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 municipal employees from coverage under M.G.L.. c. 151. By enacting M.G.L.. c. 41, §108A, the Legislature evidenced its clear intent to treat municipal employees differently, including within Section 108A the means to establish a municipal compensation plan establishing minimum and maximum wages. We note also that M.G.L.. c. 40, §21A gives municipalities the ability to establish hours, days, and weeks of work and leaves of absence including holiday, vacation and sick leave for all employees other than those appointed by the school committee. Overtime compensation for municipal employees is governed by M.G.L.. c. 149, §§33A-33C. Taken as a whole, these statutes evidence the Legislature's clear intent to establish different wage and hour rules for municipal employees and to exclude them from coverage under the state minimum wage laws which apply to private employers. [1]

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

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[1] Please note that public employers are subject to the federal minimum wage 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.

= Names have been omitted