

Minimum Wage Opinion Letter **02-20-02** - Students in Certain Vocational Training Programs

February 20, 2002

I am writing in response to your request for this Office's written opinion regarding the applicability of the Massachusetts Minimum Fair Wage Law, M.G.L. c. 151, to students participating in your school's vocational training programs. ^[1] As I understand it, *** is a private, for-profit residential school for children with emotional or behavioral problems. You have asked about two specific programs in which students participate.

Vocational Training Program in Culinary Arts/Food Service

Six students in this program work in the school's main Food Service Kitchen. Through the program, the students learn cooking, baking, food safety, personal hygiene, and how to maintain a kitchen and use various kitchen equipment. The food produced is provided to the students and faculty at no cost. The students are 16 years of age or older and usually work no more than 15 hours per week. Two students work in the morning from 9:00 a.m. - 11:30 a.m.; and two different students work in the afternoon from 12:30 p.m. - 2:00 p.m. The students alternate days they work. The work is part of each student's Individual Education Plan (IEP). A full-time instructor is with the students throughout their shifts and this instructor follows an established curriculum. The students are paid a small stipend based on their hours worked. The money received equates to a wage of \$3.00 per hour.

Sunday/Tuesday/Thursday "on-campus" job

Four students in this program have an "on-campus" job in the main Food Service Kitchen. The stated purpose of the program is to provide students with both the opportunity to obtain skills they need for the workplace and to learn the expectations of a scheduled work environment. You described the program as a "stepping stone" for students prior to placement in a job out in the community. A student is placed in the program and his/her progress in adapting to a work environment is evaluated monthly by a clinician, teachers, and supervisors. The students perform such tasks as dishwashing, pot washing, sweeping and mopping the floor, and removing trash. The work is performed under the supervision of a staff person. These students are all 15 years of age or older and work about three hours per week, during after-school hours, in one and one-half hour blocks of time. The students are paid a small stipend for their participation in the program.

The Massachusetts Minimum Fair Wage Law applies to persons employed in an "occupation" as defined in M.G.L. c. 151, §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). Both of the programs you have described would seem to fall within this exclusion. The nature of the tasks described in the "on-campus" job are perhaps less obviously part of a "training program;" however, it appears that the structure of this program is genuinely designed to ready the student for the workplace. Evaluation of their ability to navigate a work environment seems an integral part of vocational training for this particular student population. ^[2] Therefore, it is this Office's opinion that "work" in both of these programs is not work in an "occupation" covered by the state minimum wage law.

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 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] Should the U.S. Department of Labor Wage & Hour Division determine that work in either program constitutes an employment relationship for purposes of the federal wage and hour laws, you should also consult that Office regarding any applicable federal child labor laws. 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 student's use of kitchen equipment.

= Names have been omitted