

## Minimum Wage Opinion Letter **05-09-02** - **Applicability of M.G.L. c. 151 to Certain Job Skills Training Program**

May 9, 2002

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 \*\*\*, a training program run by \*\*\*. [1]

As I understand it, \*\*\* is a private, non-profit corporation. \*\*\* is a 10-month training program run by \*\*\* designed to 1.) provide out-of-school young adults with job readiness and job skills training, GED preparation, and leadership training; and 2.) to expand the supply of affordable housing by building and rehabilitating housing for low-income and homeless persons. Funding for \*\*\* comes from the U.S. Departments of Education and Housing and Urban Development, grant and local funds, and private cash and in-kind donations.

During each week of the program, half of the students work on a supervised construction site, while the other half remains in the classroom for GED preparation or other training. The construction component of the program is provided through collaborations with private partners such as KeySpan and MassElectric. [2] These entities provide on-site training for the students as well as materials for the projects. The students are closely supervised in their work, and do not displace regular employees.

\*\*\* student participants earn a weekly stipend, with an opportunity to earn bonuses by exceeding certain personal goals. The weekly stipend is a set amount and is not based on hours worked. Finally, students are required to complete 50 hours of community service on non-program time. While the program is designed to ready students for employment, there is no promise of a job after the program ends.

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). The statute does not define the term "charitable institution;" however, the Attorney General's Public Charities Division requires all entities that are charities under Massachusetts law to register with the Division. 940 C.M.R. §§2.01-2.02. DOS will consider any entity required to register with the Public Charities Division a "charitable institution" within the meaning of the Minimum Wage Law. I understand that \*\*\* is such a registered charity. Therefore, the remaining relevant question is whether \*\*\* qualifies as a "training program" such that persons participating in \*\*\* would fall outside of an "occupation" covered under the Minimum Wage Law.

Like the term "charitable institution," 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 organization is a "training program" within the meaning of the statute, DOS will employ factors used by the U.S. Department of Labor to determine whether an employee is a "trainee" and therefore not an "employee" covered by Fair Labor Standards Act (FLSA). [3] See e.g. U.S. Department of Labor, Wage and Hour Opinion Letter, January 30, 2001. 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 criteria is dispositive; DOS will look to the totality of the circumstances to evaluate a particular training program.

Applying these criteria to \*\*\*, it would appear that the program qualifies as a training program within the meaning of the statute based on the aforementioned facts. Therefore, \*\*\* students are not covered by M.G.L. c. 151, the Massachusetts Minimum Fair Wage Law. [4] 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

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[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] It is my understanding that \*\*\* students work on private projects, such as renovations to private homes, and do not work on public projects. In the latter case, \*\*\* could not pay less than the applicable prevailing wage as determined by the Division of Occupational Safety (DOS) pursuant to M.G.L. c. 149, §§26-27D, which includes journeymen and apprentices registered with the Division of Apprentice Training.

[3] To determine whether a program in an educational institution is a "training program" within the meaning of the statute, DOS has looked to 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.

[4] As these trainees are not covered by the law, it is not necessary to consider your question of whether a waiver may be granted.

= Names have been omitted