

Opinion Letter **07-09-07 - Reporting Pay Provision "Three Hour Rule"**

July 9, 2007

I am writing in response to your request, on behalf of your client ***, for this Office's written opinion regarding the applicability of the Massachusetts Minimum Fair Wage Law. Specifically, you have asked how 455 C.M.R. §2.03(1), the Reporting Pay requirement, applies to employees scheduled to work less than three hours. [1]

The Reporting Pay provision, also known as the "three hour rule," 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.

455 C.M.R. §2.03(1). Therefore, if a for-profit employer schedules an employee for three or more hours, the employee arrives at the worksite on time, and the employer does not provide the expected hours, the employee must be paid for at least three hours at no less than the minimum wage (\$7.50 per hour). Of course, for any actual time worked, the employee must be paid his/her actual wage. For example, if an employee is told that a meeting will take four hours, and the employee is sent home after two hours, the employee must be paid for two hours at his/her regular rate of pay, and at least minimum wage for the third hour. [2]

Alternatively, if an employee is, in good faith, scheduled for less than three hours, the employer may pay the employee for only the hours worked. For example, if an employee is scheduled for a two-hour meeting and she/he works these two hours, the "three hour rule" is inapplicable, and the employer may pay the employee for only the hours worked.

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

Sincerely,
Lisa C. Price
Deputy General Counsel

[1] As you know, most 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.

[2] Of course, if the meeting causes a non-exempt employee's hours to exceed 40 hours in the workweek, the employee must be paid time and one-half pay for all hours actually worked in excess of 40 hours.

***=Names have been Omitted