

Minimum Wage Opinion Letter **08-01-03 - Deductions and Hours Worked**

August 1, 2003

I am writing in response to your request for this Office's written opinion regarding the Massachusetts Minimum Fair Wage Law and Regulations. Specifically, you have asked three questions regarding wage payments, deductions, and sleep time pay. I will address each question in turn. [\[1\]](#)

1. Can an employer use the reasonable cost of housing, utilities, and cable furnished to an employee for inclusion in the wage computation for minimum wage and overtime wages?

The Massachusetts Minimum Wage Regulations, 455 C.M.R. §2.00 et seq., state that "[n]o deduction, other than those required by law and those allowed for lodging and meals listed in 455 CMR 2.04(1)(a) and (b), shall be made from the basic minimum wage." 455 C.M.R. §2.04(1). Sub-sections 2.04(1)(a) and (b) set forth maximum amounts that may be deducted, and thereby be considered part of, the basic minimum wage. [\[2\]](#) The allowable deductions for lodging vary according to room occupancy.

2. Are employees entitled to be paid for four hours a night, at the minimum wage, for every night when they are on duty or on call to attend to emergencies?

Prior to April 25, 2003, the Massachusetts Minimum Wage Regulations, 455 C.M.R. §2.03(1)(b), required employers to pay the minimum wage for not less than four hours per night to employees who were on duty or on call at the worksite to attend to night time emergencies. Under the current regulations, "[I]f an employee resides on the employer's premises on a permanent basis or for extended periods of time, not all time spent on the premises is considered working time. The employer and the employee may make any reasonable agreement as to hours worked which takes into consideration all of the pertinent facts." 455 C.M.R. §2.03(3)(c).

Finally, you have asked whether payments made by a private hospital to your client in the form of "foster care payments," pursuant to an unspecified arrangement with your client's employer, could be credited towards the employer's minimum wage and overtime obligations. Without more information, I cannot respond to that question.

I hope this information has been helpful. Please note that this opinion is based solely on the information provided with your request and is limited to the questions you posed. The existence of other facts not contained in your request might require a different conclusion. 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 regional office is (617) 624-6700.

[\[2\]](#) In this instance, state law varies from federal law which permits employers, under certain conditions, to credit meals and lodging towards the payment of minimum wage and overtime. See 29 C.F.R. §531. Where state law does not contravene federal requirements, no federal law or interpretations thereunder should be taken to override state law. 29 C.F.R. §531.26.

= Names have been Omitted