



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DEPARTMENT OF LABOR STANDARDS

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GOVERNOR

TIMOTHY P. MURRAY
LT. GOVERNOR

JOANNE F. GOLDSTEIN
SECRETARY

HEATHER E. ROWE
DIRECTOR

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Elizabeth C. Cronin
Director of Government Relations and Special Counsel
ADS Ventures, Inc.
85 Devonshire Street, 7th Floor
Boston, MA 02109
(617) 236-5830

MW 2011-02-5.9.11

Re: Request for Opinion Letter Regarding Educational Internship Program

Dear Ms. Cronin:

I write in response to your request for the written opinion of the Department of Labor Standards ("DLS") regarding the application of the Massachusetts Minimum Fair Wage Law, G.L. c. 151, § 1 et seq., and its implementing regulations, 455 C.M.R. 2.00, to the Year Up, Inc. ("Year Up") internship program.¹

Factual Background

Year Up is a 501(c)(3) educational and youth workforce development organization that serves young adults, primarily from low-income communities, who typically have not progressed beyond high school. Founded in 2000 in Boston, Year Up is currently operating in seven states around the country. Year Up is designed as an alternative pathway for "disconnected" youth to enter livable-wage careers and postsecondary education. Its mission is to "close the Opportunity Divide by providing urban young adults with the skills, experience, and support that will empower them to reach their potential through professional careers and higher education."

Year Up is an 11-month, integrated 2-phase educational program comprised of a Learning and Development phase and an Internship phase, where students expand upon their classroom learning by exposure to professional work environments at the offices of corporate partners. Students are selected competitively on the basis of an application for admission, interviews, and learning assessments. As part of the application for admission, students complete a learning assessment where their basic computer, writing, and communication skills are evaluated. Students are also asked to write an essay about their previous learning experiences,

¹This letter addresses only the question of the application of the Massachusetts Minimum Fair Wage Law to Year Up's program. Employers are also subject to the federal minimum wage and hour law, found in the Fair Labor Standards Act ("FLSA"), and regulations promulgated thereunder.

reasons for further study, and personal and career goals. Corporate partners have no input on the admissions process or upon the applications of prospective students. Corporate partners do not interview or assess the capabilities of any Year Up student. Interns are assigned by Year Up and partners have no opportunity to select which interns they host.

The first five (5) months of the program, called the Learning and Development Phase (“L&D”), is an intensive session consisting of thirty-two (32) hours of college-level instruction per week. During L&D, students come to Year Up and learn in a classroom setting from instructors employed by Year Up. Year Up invests in classroom learning at no cost to students, and during L&D students receive: An educational stipend of \$153/week and up to fifteen (15) college credits through a dual enrollment agreement with Cambridge College.

During the L&D phase, Year Up students learn technical skills that they will have the opportunity to apply in practical settings during their internships. Several weeks into the program, students narrow their focus by choosing to pursue an Information Technology (“IT”) or Financial Operations (“FinOps”) track of study. The IT track teaches students the skills they need for entry level information technology positions. The classes are taught by instructors employed by Year Up but carry college credit due to an agreement with Cambridge College. On the FinOps track, students learn the skills they need for entry level finance positions. These students learn the fundamentals of investment management (including the history of the financial services industry, key participants in the industry, bond and equity management, trade lifecycle processes, asset servicing functions, types of risk, regulators and significant regulations, and global market practices). The classes are similarly taught by Year Up instructors but carry college credit due to an agreement with Cambridge College.

The second six (6) months of the program consists of hands-on, vocational training where students apply and further develop the technical and professional skills they learned during L&D through internships with corporate partners. Students spend up to 36 hours per week at their internship sites, and an additional two (2) class hours per week in Year Up classrooms for development and support. Students receive three (3) additional college credits from Cambridge College for completing their internships, for a total of up to 18 credits over the course of the entire program.

Corporate partners assign supervisors to train and mentor interns, and, in addition, interns receive technical training from other IT and financial professionals, often by shadowing them and asking questions. Interns at all sites have at least one supervisor who devotes time toward their professional development, although many have additional supervisors. Interns leave their internships after a half-day on most Wednesdays to attend Internship Management classes at Year Up. At these classes, all interns reunite to plan for their post-Year Up futures, participate in workshops, and continue their classroom training.

In addition to the college credits earned during L&D, all Year Up students earn three (3) college credits from Cambridge College for successfully completing their internships. Year Up has dedicated employees whose mission is to provide students with high support throughout the program. These individuals include the Director of Admissions, Community Partners & Student Services; Student Services Manager; and a social worker. These employees are paid by Year Up to help students apply for assistance programs; provide counseling and support.

Year Up also connects each student with both an advisor and mentor. Advisors are drawn from Year Up’s paid faculty and staff. Each advisor has approximately 3-5 advisees, and communicates with each advisee once per week. Advisors work with the on-site social workers

employed by Year Up to address any issues raised during these communications. Each student is also paired with one mentor, drawn from volunteers in the general Boston business community who have at least 2 years of professional experience.

Analysis

The Massachusetts Minimum Fair Wage Law requires that employers pay at least the statutorily determined minimum wage rate to persons employed in an “occupation” as defined by G.L. c. 151, §2. See G.L. c. 151, § 1.

Section 2 defines “occupation” as:

[A]n industry trade or business or branch thereof or class of work therein, whether operated for profit or otherwise, and any other class of work in which persons are gainfully employed, but shall not include professional service, agricultural or farm work, work by persons being rehabilitated or trained under rehabilitation or training programs in charitable, educational or religious institutions or work by members of religious orders. Occupation shall also not include outside sales work regularly performed by outside salesmen . . . who do not make daily reports or visits to the office or plant of their employer.

Accordingly, if persons are not employed in an “occupation” within the meaning of the statute, employers are not required to pay such workers the minimum wage. The statute excludes only five categories of workers from the definition of occupation: (1) professional workers, (2) agricultural or farm workers²; (3) persons being rehabilitated or trained under rehabilitation or training programs in charitable, educational or religious institutions; (4) members of religious orders and (5) outside sales workers. Persons employed in these industries or those being “rehabilitated or trained” in charitable, educational or religious institutions are not subject to c. 151, § 1.

The statute does not define the term “charitable institution.” However, DLS considers any entity registered with the Attorney General’s Public Charities Division pursuant to 940 CMR §2.00 to be a “charitable institution” for purposes of the Minimum Wage Law.³ Year Up is registered with the Public Charities Division. Therefore, the remaining question is whether Year Up qualifies as a “training program” within the meaning of the 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 DLS to give the term a reasonable interpretation. To determine whether a program in an educational or charitable institution qualifies as a “training program” within the meaning of the statute, DLS adopted a six-factor federal test used by the U.S. Department of Labor (“US DOL”) in analyzing whether individuals who participate in training programs may do so without compensation under the Fair Labor Standards Act (“FLSA”). See *Goodrow v. Lane Bryant*, 432 Mass. 165, 170 (2000) [DLS looks to, but is not bound by, interpretations under the FLSA.]⁴ See, e.g. *DOS Minimum Wage*

² A separate wage requirement for agricultural and farm work is set forth in c. 151, § 2A. Chapter 151, § 7 also permits DLS to establish different minimum wage rates for certain categories of workers such as “tipped” employees.

³ See DOS Minimum Wage Opinion Letter MW-2002-013.

⁴ The federal test considered 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

Opinion Letter MW-2003-002 (high school program); DOS Minimum Wage Opinion Letter MW-2002-005 (vocational school program); and DOS Minimum Wage Opinion Letter MW-2001-17 (Northeastern University Coop Program).

The US DOL has recently issued guidance refining the test. See US DOL Fact Sheet #71, issued April 2010. Going forward, DLS will employ the refined test in its analyses of internship and/or training programs under the Minimum Fair Wage Law. Following is DOS' analysis of the Year Up program in light of these criteria:

(1) The internship, even though it includes actual operation of the employer's facilities, is similar to that which would be given in an educational environment

Year Up internships are designed to allow students to put into practice and "learn through doing" skills initially taught during L&D. This includes both the hard skills of IT or FinOps and the soft skills of professional behavior. The internships include hands-on training, assisting in building laptops and desktop computers; rotating through various functional teams to troubleshoot technical issues and understand general practice area needs; assisting with trade reconciliations; and learning how to identify trade discrepancies. The internship's educational component is also demonstrated by the provision by Year Up of student support and supervision, the Wednesday afternoon Internship Management Class, and, significantly, the receipt of academic credit from Cambridge College. Accordingly, the internship program is similar to that which would be given in an educational environment

(2) The training is for the benefit of the intern

As a 501(c)(3) nonprofit, Year Up does not reap any financial benefit from its operation of the program. Rather, as represented to DLS, Year Up's core purpose is to connect its students to opportunity. The internship is part of the model designed to that end. Upon graduating from Year Up, interns gain up to 18 college credits and the experience, connections, enhanced resumes, and references they need to find careers or continue their postsecondary educations. Year Up continues to provide students with additional college and career readiness resources during the internship, including but not limited to advisors, business mentors, guest speakers, social workers, career counselors, mock interviews with volunteer professionals and assistance with financial aid applications.

(3) The interns do not displace regular employees, but works under close supervision of existing staff

Year Up interns require a high degree of supervision and training as they begin and progress through their internships. As described to DLS, each intern is assigned at least one individual supervisor, and sometimes as many as three. The total time commitment that supervisors or managers take on varies among sites, but generally falls into the range of 30 minutes to 3 hours each day. This is apart from the indirect training and mentoring that interns

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 necessarily 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. See U.S. DOL opinion letters dated January 30, 2001, 2001 WL 1558755 and October 19, 2004, FLSA2004-16.

receive from employees working in the type of position for which the intern is training. An important part of training involves interns shadowing regular employees. Accordingly, Year Up interns do not displace regular employees.

(4) The employer derives no immediate advantage from the activities of the interns, and on occasion the employer's operations may even be impeded

Year Up believes that the primary motivations for corporate partners' participation in the internship program include being a good corporate citizen, investing in youth workforce development, building a relationship with a successful workforce development program so that graduates of the Year Up program may be considered for future staffing needs, and inspiring or training employees and managers. Year Up concedes that partners may also receive incidental benefits from the tasks interns perform, especially towards the end of the internships when interns have had the greatest opportunity to practice their skills. However, there are countervailing immediate impediments associated with hosting interns, including (1) supervision costs and (2) sponsorship costs, which outweigh any potential short-term benefit received.

In addition, the corporate partners are asked to financially sponsor interns in addition to training them. This sponsorship averages over \$21,000 per intern, and is used to support both (1) the direct costs of the extensive L&D training students receive, and (2) the fees paid to Cambridge College for college credits under the dual-enrollment agreement. Without these contributions, the L&D training and the college credits would not be possible. The agreement to sponsor interns is a burden and economic impediment affecting the operations of corporate partners, the costs of which accrue for the benefit of students.

(5) The interns are not necessarily entitled to a job at the conclusion of the training period

Each Year Up student signs an Internship Contract which states: "I understand my internship is a training experience and that I will not be entitled to a position at the corporation where I train." In addition, the Sponsor Agreement that Year Up uses to confirm partner expectations states that "interns are not necessarily entitled to a job . . . at the conclusion of the training period."

Because Year Up strives to move students into livable-wage careers, it does not discourage corporate partners from hiring interns upon completion of the program. A minority of interns have in fact historically been hired by corporate partners, though the hiring percentage has varied by partner. For the last three cohorts, 34%, 30%, and 35% of all interns have been hired at the conclusion of the program by their internship hosts.

(6) The employer and the interns understand that the interns are not entitled to wages for the time spent in the internship

The Internship Contract that each intern signs provides as follows: "I understand that I will be placed at a corporation for an unpaid internship as part of my educational experience at Year Up." In addition, the Sponsor Agreement states that "trainees are not entitled to wages for time spent in training," and "[Company] shall have no obligation to pay any amounts to Year Up or others . . . except [the specified sponsorship fees]."

Because Year Up is a charitable institution whose program satisfies the six-factor test, as interpreted by the DLS to evaluate training or internship programs, the interns enrolled in the

Year Up program are not engaged in an "occupation" within the meaning of c. 151, §2 and are therefore exempted from coverage under the Minimum Fair Wage Law.

Sincerely,



Patricia A. DeAngelis
Acting General Counsel

cc: Heather E. Rowe, Director, DLS
Maydad Cohen, Chief of Staff, EOLWD
Jeffrey Webb, Division Chief, Office of the Attorney General, Fair Labor Division