

08/11/03 - Minimum wage opinion letter - Volunteer Work

I am writing in response to your request for this Offices' written opinion regarding the applicability of the Massachusetts Minimum Fair Wage Law and Regulations to a volunteer program at the ***. [1]

As I understand it, *** is a private, non-profit social service agency that offers programs to assist low-income, working poor, and elderly residents in your county. Until June 30, 2003, *** had several volunteers working through the Elder Service Corps program funded by the Executive Office of Elder Affairs. These volunteers worked with clients in the food pantry, updated the food panty database, made pick-ups from the Western Massachusetts Food Bank, phoned elders to remind them to take medication, and helped answer phones and greet clients. These volunteers were paid a small stipend from the program. The Elder Service Corp program has now been eliminated and *** would like to continue the volunteer program using its own resources. However, due to limited funds, you would like to know if you can continue to consider these persons volunteers, and not employees subject to the state minimum wage law. *** would like to pay the volunteers a flat stipend, which would not be based on hours worked, for a maximum of 72 hours per month. No regular employees would be displaced; without the volunteers the services would be eliminated.

To determine volunteer status in a situation like the one you described, this Office has adopted guidelines employed by the U.S. Department of Labor to determine volunteer status under the Fair Labor Standards Act (FLSA). (See attached [DOS Opinion Letter, dated August 9, 2002.](#)) These guidelines include the following factors: 1) the nature of the entity receiving the services; 2) the receipt by the worker of any benefits, or expectation of any benefits, from their work; 3) whether the activity is less than a full-time occupation; 4) whether regular employees are displaced by the "volunteer," 5) whether the services are offered freely without pressure or coercion, and 6) whether the services are of the kind typically associated with volunteer work. See e.g. U.S. Department of Labor, Wage and Hour Opinion Letter, July 31, 2001. Based on the facts you have presented, it appears that these individuals may be considered bona fide volunteers, and are not employees subject to the state minimum wage law.

I hope this information has been helpful. 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. 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.

= Names have been Omitted