

Minimum Wage Opinion Letter **07-19-02 - Applicability of M.G.L. c. 151 to Live-in Home Health Aide**

July 19, 2002

I am writing in response to your request for this Office's written opinion regarding the applicability of Massachusetts minimum wage and overtime laws to live-in home health aides. [1] Specifically, you have asked about a live-in aide who assists an 89-year old client who has a history of high blood pressure and falls, congestive heart failure, arthritis, and is hard of hearing. This aide assists this client with bathing, preparing meals, monitoring medication, assisting with physical therapy, accompanying the client to doctor's appointments, and assuring her safety on stairs.

The Massachusetts Minimum Fair Wage Law, M.G.L. c. 151, §1, establishes the state minimum wage for employees in an "occupation" as defined by M.G.L. c. 151, §2. While Section 2 excludes certain employees such as professionals (which would likely include registered nurses) from the definition of "occupation," the home health aide described above would be a covered employee. Therefore, the aide must be paid at least the statutory minimum wage of \$6.75 per hour. [2]

In regards to your question concerning overtime, M.G.L. c. 151, §1A, provides for the payment of overtime compensation (time and one-half the employee's regular rate of pay) for work in excess of 40 hours in a given workweek in an "occupation" as defined by M.G.L. c. 151, §2. Section 1A includes a number of exemptions; however, none of them would apply to a home health aide working in a private residence. Therefore, the aide must be paid time and one-half for any hours worked in excess of 40 hours in a given work week. [3]

Given the applicability of the state minimum wage and overtime statutes, the aide's employer would also be subject to any applicable minimum wage regulations found in 455 C.M.R. §§2.01-2.04.

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

[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] Federal law includes an exemption from minimum wage and overtime for domestic service employees who provide "companionship services" for the aged or infirm, which may or may not apply to this situation. See 29 U.S.C. §213(a)(15). As stated earlier, you should contact the U.S. Department of Labor for questions regarding the applicability of federal law. However, regardless of the applicability of 29 U.S.C. §213(a)(15), state law would still require payment of the state minimum wage.

[3] Federal law includes an exemption from overtime for live-in domestic service employees. See 29 U.S.C. §213(b)(21). Regardless of the possible applicability of 29 U.S.C. §213(b)(21), state law would still require payment of overtime compensation in the above-described situation.

= Names have been Omitted