

Minimum Wage Opinion Letter **09-24-07 - Seasonal Business Overtime Waiver**

September 24, 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, M.G.L. c. 151. [1] Specifically, you have asked whether a summer amusement park, which is already exempt from the state overtime law pursuant to M.G.L. c. 151, §1A(20), may also operate a winter holiday attraction without jeopardizing its exempt status.

*** operates a seasonal amusement park in Agawam, Massachusetts for approximately 140 days per year, primarily in the summer months. *** amusement park operations fall within the state overtime exemption for "an amusement park containing a permanent aggregation of amusement devices, games, shows, and other attractions operated during a period or accumulated periods not in excess of one hundred and fifty days in any one year." M.G.L. c. 151, §1A(20). As I understand it, *** is now considering operating a "Holiday-Themed Light Display/Santa's Workshop" during the month of December, in addition to its summer amusement park activities. This holiday attraction would include no amusement park rides, as the rides and other park attractions are shut down for the season as of November 1st of each year. You have asked if this winter attraction could be considered a seasonal business operation under a different overtime exemption, M.G.L. c. 151, §1A(9), without affecting ***' status as an exempt amusement park under M.G.L. c. 151, §1A(20).

The seasonal business overtime exemption, M.G.L. c. 151, §1(9), exempts from state overtime requirements any person employed "in a business or specified operation of a business which is carried on during a period or accumulated periods not in excess of one hundred and twenty days in any year, and determined by the commissioner to be seasonal in nature." The exemption clearly contemplates the possibility of multiple operations within a business, some of which may be "specified operations" of a seasonal nature. In addition, state overtime law does not prohibit a single business from having portions of its operations or workforce subject to different, applicable overtime exemptions. Therefore, *** may apply for a seasonal business overtime waiver for its winter holiday attraction without affecting the exempt status of its summer amusement park operations under M.G.L. c. 151, §1A(20). Applications for this waiver may be found on the DOS website: www.mass.gov/dos.

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.

***=Names have been Omitted