



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

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MW-2018-1-23-18

To Interested Parties:

On July 1, 2017, two amendments to chapter 151 of the Commonwealth's General Laws ended the authority and the need for the Department of Labor Standards (DLS) to issue minimum wage waivers for seasonal camp counselors. Prior to July 2017, and pursuant to 454 CMR 27.06(2) the "Director" of DLS could, in accordance with M.G.L. c. 151, § 7, issue to any seasonal camp a waiver permitting payment of less than the minimum wage to seasonal camp counselors or counselor trainees for such period of time as shall be fixed by the Director and stated in the waiver..."

The Director's former authority to issue these waivers was found in the second paragraph of section 7, which until July 1, 2017 read as follows,

"The commissioner shall not establish minimum fair wage rates below \$1.85 per hour, except for learners and apprentices, except for seasonal camp counselors and counselor trainees, and except for ushers, ticket sellers and ticket takers whose minimum fair wage rates shall not be below \$1.25, and except for janitors and caretakers of residential property..."[Emphasis added]

Under the July 1, 2017 amendment, reference to "camp counselors and counselor trainees" was deleted,

"The commissioner shall not establish minimum fair wage rates below \$1.85 per hour, except for learners, apprentices and ushers, ticket sellers and ticket takers whose minimum fair wage rates shall not be below \$1.25, and except for janitors and caretakers of residential property..."

The legislative directive as set forth in the amended statute is clear, "The commissioner *shall not* establish minimum fair wage rates... *except for*..." specifically listed professions, and "camp counselors and trainees" were taken off that list.

The minimum wage law forbids an “employer to employ any person in an occupation in this commonwealth at an oppressive and unreasonable wage”, which is generally understood to be a wage that is less than the \$11 per hour basic minimum wage. This statutory prohibition is limited by the definition of “occupation” (found at M.G.L. c. 151, s. 2), which as of July 1, 2017 was also amended to explicitly exclude “*work by seasonal camp counselors and counselor trainees*”. Therefore, since July 1<sup>st</sup> it is no longer illegal for an employer to employ a “seasonal camp counselor” at a rate below the basic minimum wage as such counselors are not engaged in an “occupation” as now redefined.

The Massachusetts Overtime Law is also not applicable to “seasonal camp counselors and counselor trainees” as that statute contains similar language - “Except as otherwise provided in this section, no employer in the commonwealth shall employ any of his employees in an **occupation**, as defined in section two, for a work week longer than forty hours, unless such employee receives compensation for his employment in excess of forty hours at a rate not less than one and one half times the regular rate at which he is employed. [Emphasis added]”

Since seasonal counselors and counselor trainees are not engaged in an “occupation”, as defined in M.G.L. c. 151, s. 2, the overtime statute is inapplicable to them for the same reason as was the minimum wage statute.

The new minimum wage and overtime exclusion created by the July 1, 2017 amendments to M.G.L. c. 151, sec.s 2 & 7 only relate to the “seasonal camp counselors and counselor trainees”. Thus, if any seasonal camp - that does not otherwise qualify for exempt status pursuant to M.G.L. c. 151, s.1A (18) - wants to exempt its employees who work as dish washers, kitchen workers, maintenance workers, life guards or in other jobs that do not entail the direct supervision of campers, then it must still apply for an overtime waiver. The exemption for “seasonal business open less than 120 days per year” under M.G.L. c. 151, s. 1A(9) is dependent on the receipt of a determination from the Director of DLS that the business is in fact “*seasonal in nature*”. DLS only makes “seasonal determinations” in connection with granting overtime waivers for seasonal businesses. The receipt of an Overtime Waiver for Seasonal Business signed by the Director of this department is confirmation that the Director has determined the recipient’s business to be seasonal in nature.

The opinion letter issued by this department on January 7, 2015 entitled MW-2015-01-01.07.15 is hereby rescinded.

Sincerely,

A handwritten signature in cursive script, reading "William D. McKinney".

William D. McKinney, Director