

FLSA-606

April 5, 1976

This is in further response to your request for guidance with respect to the employment status under the Fair Labor Standards Act of patients engaged in work activities as a result of their being "compulsive workers."

We understand the term "compulsive worker" to mean an individual whose mental condition causes the individual to perform work, generally of a simple, repetitive nature, even when instructed not to work.

As you may be aware, the Court in Souder v. Brennan said that economic reality is the test of employment, and "So long as the institution derives any consequential economic benefit from the patient's work the economic reality test would indicate an employment relationship exists . . ." In each case, however, the total facts of the situation will determine whether a patient is an employee.

A "compulsive worker" will not be considered to be an employee provided all of the following conditions are met:

1. The records contain reasonably current documentation by a qualified psychiatrist substantiating that the patient is a "compulsive worker" and that the patient is being or has been treated for this condition.
2. The work activity performed by the patient is not assigned and is not required of the patient.
3. The activity is simple and repetitive in nature, such as sweeping or dusting, and is confined to a small area.
4. The activity does not involve the use of equipment, such as a mop and pail or a vacuum cleaner.

The performance of activities which normally would not be considered simple when performed by a patient, the performance of a simple activity over a large area, or the performance of a simple activity in more than one area would be considered as not meeting the above conditions.

Of course, for any assigned work activities the patient is required to be paid in accordance with the provisions of the Fair Labor Standards Act.

Sincerely,

Ronald J. James
Administrator