FLSA-697

November 19, 1981

This is in reply to your letter of October 22, 1981, in which you inquire whether institutions of higher education can require student participants in College Work-Study Programs to return all or any portion of wage earned to the institution if it has been determined that such students provided fraudulent income information. You also wish to know if the students may be required to refund wages earned through College Work-Study Programs if such students withdraw from the institutions.

We have considered this inquiry under the Fair Labor Standards Act (FLSA), which is the Federal law of most general application concerning wage and hours of work. This law requires that all covered and nonexempt employees be paid not less than $3.35 an hour for all hours worked and not less than one and one-half times the regular rate of pay for all hours worked over 40 in the workweek.

Employers may employ full-time students in agriculture, retail or service establishments, and institutions of higher education at sub-minimum wage rates (not less than 85% of the applicable minimum wage) if such employers meet certain requirements and are issued special certificates by the Wage-Hour Division. An employer may pay these subminimum rates as long as the employe's status remains that of full-time student.

Under the FLSA, an employee's wages cannot be considered to have been paid by the employer unless they are paid finally and unconditionally or "free and clear." The wage requirements of the FLSA will not be met if the employee "kicks-back" directly or indirectly to the employer or to another person for the employer's benefit all or part of the wages paid to the employee.

Any covered and nonexempt student who participates in a College Work-Study Program must be paid for each hour in which he or she performs work. Therefore, a violation of the Act would occur if any portion of the returned wages cuts into the applicable minimum wage or overtime compensation due the employee in any workweek.

It should be pointed out that this response applies where the students in question are considered covered and nonexempt employees under the FLSA and where the National League of Cities v. Usery, decision which held that the minimum wage and overtime provisions of the FLSA do not apply to employees of State and local governments engaged in traditional governmental services) is not applicable.

We trust this is responsive to your inquiry.

Sincerely,

William M. Otter
Administrator