



WHD-OL-1995-0001

February 24, 1995

Name*

This is in response to your letter to Senator Hatfield concerning the application of the Fair Labor Standards Act (FLSA) to students participating in training programs such as those which will be sponsored under the School-To-Work Opportunities Act (STW). You are concerned that business participation in STW programs may be at risk due to the perception that provisions of the FLSA present barriers. Your letter and other inquiries demonstrate that there is considerable misunderstanding as to when a STW participant must be considered an employee under the FLSA.

The minimum wage provisions of the FLSA do not apply to students in training programs unless there is an employment relationship and the employer meets the coverage tests of the FLSA. Although these criteria do not differ based on the age of the employee or whether the employee is working under the auspices of a STW program, we believe that many of the STW training programs will not result in an employment relationship. If the program is carefully structured and provides a bona fide training experience, the FLSA should not be an impediment to the participation of employers in STW programs.

The Office of School-To-Work of the Departments of Labor and Education has advised us that a learning experience at an employer's work site that includes all of the following elements is consistent with a learning experience under the STW:

- (1) a planned program of job training and work experience for the student, appropriate to the student's abilities, which include training related to preemployment and employment skills to be mastered at progressively higher levels that are coordinated with learning in the school-based learning component and lead to the awarding of a skill certificate;
- (2) the learning experience encompasses a sequence of activities that build upon one another, increasing in complexity and promoting mastery of basic skills;
- (3) the learning experience has been structured to expose the student to all aspects of an industry and promotes the development of broad, transferable skills; and,
- (4) the learning experience provides for real or simulated tasks or assignments which push students to develop higher-order critical thinking and problem-solving skills.

A student enrolled in a STW learning experience would not be considered an employee within the meaning of the FLSA, if the following additional criteria were met:

- (1) the student receives on-going instruction at the employer's worksite and receives close on-site supervision throughout the learning experience, with the result that any productive work that the student would perform would be offset by the burden to the employer from the training and supervision provided;
- (2) the placement of the student at a worksite during the learning experience does not result in the displacement of any regular employee – i.e., the presence of the student at the worksite cannot result in an employee being laid off, cannot result in the employer not hiring an employee it would otherwise hire, and cannot result in an employee working fewer hours than he or she would otherwise work;
- (3) the student is not entitled to a job at the completion of the learning experience – but this does not mean that employers are to be discouraged from offering employment to students who successfully complete the training; and
- (4) the employer, student, and parent or guardian understand that the student is not entitled to wages or other compensation for the time spent in the learning experience – although the student may be paid a stipend for expenses such as books or tools.

If all of the foregoing criteria were met, an employer would not be required to pay wages to a student enrolled in a STW learning experience. If, however, some of the above criteria were not met, it is still possible that a STW participant would not be an employee under the FLSA; however, all of the facts and circumstances would have to be considered.

We assure you that the proper administration of STW programs is important to the Department of Labor. The Wage and Hour Division will assist the State offices administering STW programs in any issue which may arise under the FLSA, and will contact them in an attempt to resolve any matters which come to our attention involving the administration of STW programs in accordance with the requirements of the FLSA.

Sincerely,

Maria Echaveste
Administrator

*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).