

FLSA-583

July 10, 1975

This is in reply to your letter of May 3, 1975, concerning whether an inmate of a State prison would be covered by the Fair Labor Standards Act while working at an outside University.

The major provisions of the Act are briefly outlined in the enclosed Handy Reference Guide. The Act applies to all employees of schools and institutions of higher education. Thus, such employees, unless specifically exempt, must currently be paid a minimum wage of at least \$2.00 an hour and overtime compensation for all hours worked over 40 in a workweek. Those pay requirements in covered employment are statutory and cannot be waived by private agreement between the employer and employee.

In order for the Act to apply, there must be an employer-employee relationship. Generally, an inmate in a State prison who, while serving a sentence, is required to work by or does work for the prison or another element of the State government (such as a State university) is not an employee within the meaning of the Act.

Sincerely,

Warren D. Landis
Acting Administrator
Wage and Hour Division