

## FLSA-303

December 1, 1975

This is in response to your letter of November 3, 1975, concerning the application of the Fair Labor Standards Act to various tasks performed by emotionally disturbed adolescents at residential treatment centers operated by the \*\*\* in South Dakota .

All employees of a private institution for the residential care of emotionally disturbed persons are covered by the FLSA if more than 50 percent of its residents have been admitted by a qualified physician, psychiatrist, or psychologist. For purposes of the 50 percent test, the term "admitted" includes evaluations of mental or emotional disturbance by a qualified physician, psychiatrist, or psychologist either subsequent to admission to the institution or preceding admission and being the cause for referral. The minimum wage for employees of covered institutions at present is \$2.00 an hour with scheduled increases to \$2.20 an hour January 1, 1976, and \$2.30 an hour January 1, 1977.

Determination of whether a resident engaged in work activities in a covered residential care facility is an employee under the Act depends largely on whether the work performed by a resident is of any consequential economic benefit to the facility. In general, the Wage and Hour Division holds that there is consequential economic benefit to the institution if the tasks or work in question would be performed by someone else if it were not done by the resident.

Residents performing personal housekeeping chores in their own immediate living area are not considered to be employees. In this connection, sharing or rotating cleaning tasks among residents in a room housing 4 or less and cleaning of a common bathroom not used by others would be considered personal housekeeping chores and not result in an employment relationship. However, the cleaning of common hallways, recreation rooms and other such areas, even on a rotating basis, would make the residents employees.

The matter of whether residents of facilities operated in a "family-type" setting are employees within the meaning of the Act is under consideration. If the facilities of the \*\*\* are of the this type, they must send to my attention a description of the operations of their residential facilities, including the length of time the residents ordinarily remain at the facility, and we will be in further touch when this matter is resolved.

To prevent the curtailment of opportunities for employment, handicapped residents with impaired earning capacity, who are deemed to be employees, may be paid less than the minimum wage under conditions set forth in the enclosed Regulations (29 CFR Part 529). In this connection, emotionally disturbed residents would qualify for special lower minimum wage rates only if their condition stemmed from a mental deficiency or injury which has restricted their productivity below that of a nonhandicapped person.

Sincerely,

Donald M. Essig  
Assistant to Administrator  
Wage and Hour Division

Administrator

Enclosures