

FLSA-400

December 15, 1978 (est.)

This is in reply to your letter of November 2, 1978, asking about the application of the minimum wage law to resident senior law students who will participate in a proposed intern program with private attorneys in your county. Unfortunately, because of the limited information contained in your letter we are unable to provide you with a definitive answer to your question. However, the following information should be helpful.

We have considered your comments under the provisions of the Fair Labor Standards Act which is the Federal law of most general application concerning wages and hours of work. The major provisions of this law are highlighted in the enclosed "Handy Reference Guide". Coverage under the law is briefly discussed on pages 2 and 3 of the Guide.

The Supreme Court has held that persons who, without any expressed or implied compensation agreement, may work for their own advantage on the premises of another are not necessarily employees. As explained on page 3 of the enclosed copy of WH Publication 1297, whether students are employees under the Act will depend upon all the circumstances surrounding their activities on the premises of the employer. If all the criteria listed are met, the students would not be considered employees within the meaning of the Act, and thus would not be subject to the statutory monetary provisions.

The position of the Department is that where educational or training programs are designed to provide students with professional experience in the furtherance of their education and training and are academically oriented for the benefit of the student, students will not be considered employees of the institutions to which they are assigned, provided that the criteria noted above are met. However, where an individual is serving in an after-graduation internship, an employment relationship would exist between the graduated intern and the employing institution.

If after reading the enclosed information you should have any further questions, you may wish to contact our Area Office located at 41 State Street M-106, Albany, New York 12207, telephone (518) 472-3596. The staff of that office will be pleased to assist you in any way possible.

With regard to your question concerning workers' compensation, such matters are regulated by state law. Therefore, we suggest you contact the New York Department of Labor, Workers' Compensation Board, Two World Trade Center, New York, New York 10047, telephone (212) 483-4141, for information on this question.

Finally, with regard to your question concerning social security withholding, such matters are handled by the Social Security Administration. Accordingly, we suggest that you contact the local office of that agency which will be listed in the telephone directory under United States Government, regarding this question.

Sincerely,

William G. Blackburn
Chief, Branch of Wage and
Hour Standards

Enclosures