FLSA-148

September 23, 1982

This is in reply to your recent letter concerning the application of the Federal minimum wage law to certain volunteers who will be working for your company, *** Corporation of ***.

You state that the company provides skill training and behavior management to disabled persons who reside in 24-hour community care facilities. While the corporation is a profit corporation, these services are contracted by the State of *** on a nonprofit basis. The services are provided by a trained and paid staff. However, in order to maximize client learning potential, in addition to providing an opportunity for students to gain field experience, the company anticipates utilizing 20 to 30 student volunteers from State universities and colleges. These volunteers will be supervised by the professional staff and will be receiving credit from their respective colleges; in addition to receiving training from the company. At no time will these volunteers be providing services equivalent to those of the paid staff.

The Fair Labor Standards Act (FLSA) is the Federal minimum wage and overtime pay law of most general application,. An employee who is covered under this law must be paid in accordance with its minimum wage and overtime pay provisions, unless specifically exempt. Although your letter contains much detail, there is not enough information for us to make a definite determination concerning the application of the FLSA to the student volunteers you have in mind. However, the following should be of assistance to you.

The question of employment relationship arises frequently under the FLSA with respect to various training or work experience programs involving students at the high school or college level. With regard to trainees and student-trainees, the Supreme Court has held that the words "to suffer or permit to work" as set forth in section 3(g) of the FLSA which defines "employ" do not make all persons employees who, without any express or implied compensation agreement, may work for their own advantages on the premises of another.

While a determination of whether trainees or students are employees of an employer under the FLSA will depend upon all of the circumstances surrounding their activities on the premises of the employer in each particular case, there are general criteria which have been established for this purpose by the Supreme Court (Walling v. Portland Terminal Company, 331 U.S. 146). If all six of the following criteria apply, the trainees or students are not employees within the meaning of the FLSA:

(1) The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;

(2) The training is for the benefit of the trainees or students;

(3) The trainees or students do not displace regular employees, but work under their close supervision;

(4) The employer that provides the training derives no immediate advantages from the activities of the trainees or students, and on occasion his operations may actually be impeded;

(5) The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and,

(6) The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

There are certain work activities performed by students that are but an extension of their academic programs. In such instances, we have held that an employer-employee relationship does not exist for the purpose of the FLSA. For example, there are situations where students receive college credits applicable toward graduation when they volunteer to perform internships under a college program. Generally, the students keep a journal of their experiences, make presentations of their work and learning, present quarterly written reports of their progress in achieving the programs' objectives, and prepare a final written report, while engaged in the program. The agency sponsor evaluates their internship performance and advises the students on how to improve performance, or how well they are performing. The program involves the students in real life situations and provides the student with an educational experience unobtainable in a classroom setting. We do not believe such activities constitute "work" of the kind contemplated by section 3(g) of the Act and would not result in an employer-employee relationship between the students and the facility providing such instruction.

With regard to your question concerning workmen's compensation, we have been advised that you should get in touch with the State of *** Department of Industrial Relations, Division of Industrial Accidents, P.O. Box 603, *** for further assistance on this matter.

We hope the above information is of assistance to you. However, if you have any further questions concerning the application of the FLSA, it is suggested that you get in touch with our Area office at ***. That office is responsible for the administration of the FLSA in your area, and will be pleased to offer every possible assistance.

Sincerely,

James L. Valin
Assistant Administrator
Wage and Hour Division

William M. Otter
Administrator