



Department of Human Resources
311 West Saratoga Street
Baltimore MD 21201

Family Investment Administration
ACTION TRANSMITTAL

Control Number: #05-08
Obsoletes AT # 98-18

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**TO: DIRECTORS, LOCAL DEPARTMENTS OF SOCIAL SERVICES
DEPUTY/ASSISTANT DIRECTORS FOR FAMILY INVESTMENT
FAMILY INVESTMENT SUPERVISORS AND ELIGIBILITY STAFF**

FROM: KEVIN M. MCGUIRE, EXECUTIVE DIRECTOR

RE: FAIR LABOR STANDARDS ACT (FLSA) AND WORK ACTIVITY GUIDELINES

PROGRAM AFFECTED: TEMPORARY CASH ASSISTANCE (TCA) PROGRAM

ORIGINATING OFFICE: OFFICE OF POLICY AND RESEARCH

SUMMARY:

Action Transmittal (AT) 98-18, issued November 5, 1997, provided criteria needed to determine whether an individual meets the definition of an employee or trainee under the Fair Labor Standards Act (FLSA). We are providing a reminder of the provisions of that law. Local departments are encouraged to use the criteria outlined in this updated transmittal and in the Work and Education section of the TCA manual to clarify which programs are considered training and which are considered employment. In addition, activities considered to be employment are not subject to the ninety (90) day time limit as are trainee and internship programs.

POLICY

Local department Work Activities Coordinators should review each of their programs to determine whether the program is employment or training and ensure the program meets the requirements associated with each. The key in determining whether a placement meets the definition of employment, rather than training, is who benefits the most from the placement. When the employer benefits more than the customer, the activity is considered employment and FLSA minimum wage provisions apply. Conversely, when the customer benefits more, the placement is considered to be training. FLSA provisions do not apply and placement in such activities are limited to a period of ninety days or less.

Bona fide trainee and internship placements are not subject to FLSA. A trainee or intern is not considered an employee if all the following factors are met:

1. The training offered is similar to that provided in a vocational school, although training may include operations of the employer's facility.
2. Training is for the benefit of the trainee or intern.
3. The trainee or intern does not displace regular employees, and works under close observation.
4. The trainee or intern's activities provide no immediate advantage to the employer and may actually hinder operations.
5. Trainees or interns are not necessarily entitled to a job upon completion of the trainee or internship assignment.
6. Both the employer and the trainee or intern understand that the trainee or intern is not entitled to wages for the time spent as a trainee or intern.
7. The length of time a trainee or intern can stay in any particular assignment is limited to a period of ninety (90) days or less.

Trainee or internship programs that meet the above conditions are considered to be training activities. They are limited to 90 days but are not subject to federal Fair Labor Standards Act (FLSA) requirements. All other placements that do not meet the federal definition of training are considered employment and FLSA minimum wage standards apply (See Attachment A).

Work experience (WEX) is also an activity where the participant receives knowledge and skills in an actual work setting. The employer however, receives more of a benefit because he receives the customer's labor. Since the employer receives more benefit, the participant is considered to be working and federal Fair Labor Standards Act (FLSA) requirements apply. The monthly combined TCA and FS grant for the household must equal or exceed the monthly federal minimum wage. (See Attachment B). While such work placements are not time limited, DHR suggests a review of these assignments every six months to ensure the participant is making satisfactory progress towards self-sufficiency.

Local department autonomy in designing employability strategies have created activities variously described as trainee or internship programs. Each local department must ensure that their trainee and/or internship programs meet the federal definition of training. If such activities meet this definition then local departments must limit the length of these programs to a duration of ninety 90 days or less. At the end of the ninety 90-day period, the trainee or intern must be reassigned if the placement is to continue as training. This subsequent assignment may include another position at the same employer.

Example: Mary Green is a trainee at a local hospital in the medical records department. Her ninety 90-day assignment is now ending. Both Mary and her case

manager believe that while it has been a beneficial placement she still requires additional training. The hospital has another trainee position in one of the clinics. Mary could be referred to this second placement in the hospital because it is not the same job and offers additional training in a different department. (Conversely, extending Mary's assignment in the medical records department past 90 days would be considered employment and FLSA rules would then apply).

FLSA Minimum Wage Provision

The application of FLSA to work experience programs does **not** mean that the employer must pay a salary since the TCA and Food Stamp benefits a family receives counts towards the minimum wage requirement. In many instances, the combined monthly TCA and Food Stamp amount meets or exceeds the federal monthly minimum wage used in assigning actual work hours. Local departments must complete a minimum wage calculation for all customers assigned to Work Experience (See Attachment B).

The following examples use 30 hours per week activities to determine if FLSA standards are met. (Local departments are encouraged to develop work placements that are 40 hours per week to meet federal requirements anticipated in TANF reauthorization.) Regardless of the number of hours in the activity, the calculation must be completed to determine if the combined TCA and food stamp grant equals or exceed the federal Monthly Minimum Wage.

Example: A single parent with 2 children: The parent is engaged in a placement that meets the definition of employment at 30 hours per week. Monthly combined TCA (\$472.00) and Food Stamps (\$371.00) is \$843.00

Min Wage @ \$5.15 per hour X 30 hrs per week = \$154.50
Multiplied by 4.3 (average weeks per month) = \$664.35
(664.35 is the Federal Monthly Minimum Wage for this participant in this assignment)

When the combined TCA and FS benefit is less than the Federal Monthly Minimum Wage reduce the number of work hours and, if needed, supplement with other (non-employment) work activity hours.

Example: A single parent with one child. The parent is engaged in a placement that meets the definition of work. She is in the activity 30 hours per week. Her TCA grant is \$276.00 because she receives Social Security (survivor's benefit) of \$100. Food Stamps are \$259.00 per month. The monthly combined TCA and FS grant is \$535.00.

Min. Wage @\$5.15 per hours X 30 hours per week =\$154.50
\$154.00 X 4.3 weeks (average weeks per month) = \$664.35
(664.35 is the Federal Monthly Minimum Wage for this customer in this assignment)

Since the combined monthly TCA and food stamp grant in this example is less than the Federal Monthly Minimum Wage you need to reduce the number of assigned work hours. To calculate the correct work hours take the combined grant (535.00) divide that by the Federal Monthly Minimum Wage (5.15) and divide that product of that number by

4.3 (average weeks per month). The result is the maximum weekly hours of work. (Remember to round down the nearest whole number). Thus: $\$535.00/\$5.15 = \$103.88$
 $\$103.88/4.3 = 24.15$ (24 is the assigned work hours)
The customer must be assigned at least 6 hours per week in a non-work activity.

ACTION REQUIRED

Local Departments must review all work participation activities to ensure adherence to federal work or training requirements. Activities determined to be training are subject to a maximum of ninety days per assignment. All other activities are considered to be employment and are not subject to ninety day limitation. However, these work activities must meet by FLSA requirements.

In addition to reviewing each program for adherence to federal training or FLSA work requirements, local departments must review their Family Investment (FIP) Plans and ensure that it adequately addresses these issues and make revisions to their FIP Plan, if necessary.

INQUIRES

Please direct questions to Marilyn Lorenzo at (410) 767-7333 or Gretchen Simpson at 410-767-7937.

cc: FIA Management Staff
DHR Executive Staff
Constituent Services
Help Desk

Attachment A

Activity Review for Determination of Training or Employment Status

To be completed by the WORK ACTIVITIES COORDINATOR

Date of Review: _____

Activity Title: _____

WO MIS Activity Code _____

According to the Wage and Hour Division of the U.S. Department of Labor, a trainee or intern is not considered an employee, if all the following factors are met:

1. Training provided by the employer is similar to that offered in vocational schools.
Yes _____ No _____
2. Training benefits the trainee or intern more than the employer.
Yes _____ No _____
3. The trainee or intern does not displace any regular employee.
Yes _____ No _____
4. The trainee or intern is under close observation.
Yes _____ No _____
5. The trainee or intern's activities provide no immediate advantage to the employer and may on occasion impede the operation of the business.
Yes _____ No _____
6. The trainee or intern is not entitled to a job after training.
Yes _____ No _____
7. The employer, trainee or intern all understand that trainees or interns are not entitled to wages for any time spent in a trainee or internship activity.
Yes _____ No _____
8. The trainee or intership activity is limited to ninety days or less.
Yes _____ No _____

*If the response is **no** to any statement, the activity is considered employment.*

Employment: _____ (Fair Labor Standards Act provisions apply.)

Training: _____ (May only be for 90 days or less)

Signature of Reviewer: _____

