



Department of Human Resources
311 West Saratoga Street
Baltimore MD 21201

FIA ACTION TRANSMITTAL

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

FROM: KEVIN MAHON, EXECUTIVE DIRECTOR, FIA

**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

The U. S. Department of Labor has released information regarding the application of the minimum wage provision of the Fair Labor Standards Act (FLSA) on TANF work activities. The FLSA minimum wage provisions will apply to welfare recipients who are considered employees, rather than trainees.

This Action Transmittal will provide criteria to determine whether an individual meets the definition of an employee or trainee under the Fair Labor Standards Act. Local departments are encouraged to use the criteria outlined in this transmittal to ensure that their work internships are bona fide training activities according to the federal definition.

NEW POLICY

The Fair Labor Standards Act provisions apply to recipients whose placement meets the definition of employment, rather than training. The key factor in determining the definition of the placement is whether the placement results in greater benefit to the individual or the employer. If the employer receives greater benefit from the placement than the customer, the activity is considered employment and the FLSA minimum wage provisions apply.

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Work activity placements that meet the definition of training exist when the individual receives greater benefit than the employer. Bona fide training and internship placements are not subject to the Fair Labor Standards Act (FLSA). According to the Wage and Hour Division of the U. S. Department of Labor, a trainee is not an employee if the following factors are met:

1. **The training, even though it includes actual operations 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 trainee.**
3. **The trainee does not displace regular employees, but works under close observation.**
4. **The employer that provides the training derives no immediate advantage from the activities of the trainee, and on occasion his operations may actually be impeded.**
5. **The trainees are not necessarily entitled to a job at the completion of the training.**
6. **The employer and the trainees understand that the trainees are not entitled to wages for the time spent in training.**

As a result of each local department's autonomy in the design of their employability development strategies, a variety of traineeship and internship program models have been created. Each local department must make certain that their traineeships and internships meet the federal definition of training rather than employment. If they do not and can be considered employment, FLSA coverage may also trigger a number of other federal and state employment related laws. From discussion of this issue with other states and national organizations, we are also requiring that local departments limit the length of their traineeship and internship programs, meeting the above criteria, to **90 days or less.**

NOTE:

Application of FLSA does not mean that the employer must pay the minimum wage. Any TCA and Food Stamp benefits that the individual receives will count toward the minimum wage requirement in a mandatory work activity. In most instances the amount of the combined benefits will be sufficient to meet or exceed the minimum wage the customer would have received from the employer.

EXAMPLE

A single parent family. Total household size of 3 people. The parent is engaged in a placement (meeting employment definition) 20 hours per week.

Monthly Wage @ \$5.15 per hour
\$442.90

Combined TCA (\$377) & FS (\$315)
\$692.00

Placement activities that provide internships and job training for our customers that do not constitute employment eliminate the need for calculation and tracking of FLSA minimum wage compensation.

SOME OFTEN ASKED QUESTIONS AND ANSWERS:

1. **Q: If the internship meets the above criteria and FLSA does not apply, do any other labor related laws, e.g. Social Security payments (FICA), Unemployment Insurance, apply:**

A: No

2. **Q: If the internship does not meet the above criteria and FLSA does apply, do any other labor related laws, e.g. Social Security payments (FICA), Unemployment Insurance, apply:**

A: Perhaps. This is a very unclear part of the guidance from the U.S. Department of Labor on this issue. The Office of the Attorney General is researching this issue

3. **Q: May local departments develop and operate programs that do not meet the above criteria?**

A: Yes, they may. However, they must also, at a minimum, develop a system of calculation and record keeping to insure that proper documentation is kept to meet FLSA requirements regarding hours worked and benefits issued. They must also be prepared to address the possibility that other labor related laws may apply to their program. Please call the contact below for technical assistance.

3. **Q: What about the issues of other workplace protections, such as displacement of employees and liability protections for our partners?**

A: These will be the subjects of separate Action Transmittals which are under review.

ACTION REQUIRED

Local departments must review their work activity programs to ensure that internships and training activities meet the federally defined guidelines for bona fide training programs.

ACTION DUE

November 1, 1997

INQUIRIES

Please direct questions to Patricia Jeffers at (410) 767-7143.

cc: FIA Management Staff
Constituent Services
Help Desk

DHR Executive Staff
CTF