

U. S. DEPARTMENT OF LABOR
E.S.A., WAGE and HOUR DIVISION
Fact Sheet, October 1997

**UNPAID SCHOOL WORK EXPERIENCE UNDER THE FAIR LABOR
STANDARDS ACT (FLSA)**

Section 3(s) (1) of the FLSA stipulates that all schools are covered by the FLSA provisions regardless of whether or not such school is public or private or operated for profit or not for profit. The Wage and Hour Division (Wage & Hour) administers and enforces FLSA with respect to private employment, including school employment.

Covered nonexempt workers, including students, are entitled to minimum wage of \$5.15 per hour beginning September 1, 1997. Students and/or their parents may not waive their right to wages. Employees under 20 years of age may be paid \$4.25 per hour during their first 90 consecutive days of employment with an employer. Certain student learners, full-time students, and workers with disabilities may be paid less than minimum wage under special certificates issued by the Department of Labor.

Where state law requires a higher minimum wage, the higher standard applies. Information on state labor law is available from local offices, which are listed in most telephone directories under State Government.

There are three circumstances in which a student **does not have to be paid**. These are "trainee", "volunteer", and "in-school placements".

1. TRAINEE

If **ALL SIX** of the following criteria apply, students (including individuals participating in school-to-work programs, internships, transition, vocational education, work experience, etc.) **ARE NOT EMPLOYEES** within the meaning of the ELSA:

- (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 (a curriculum is followed, the students are under continued and direct supervision by either representatives of the school or by employees of the business);
- (2) The training is for the benefit of the trainees or students, such placements are not made to meet the labor needs of the business;
- (3) The trainees or students do not displace regular employees, vacant positions have not been filled, employees have not been relieved of assigned duties, and the students are not performing services that, although not ordinarily performed by employees, clearly are of benefit to the business;
- (4) The employer that provides the training derives no advantage from the activities of the trainees or students, and on occasion his or her operations may actually be impeded;
- (5) The trainees or students are not necessarily entitled to a job at the conclusion of the training period.— (Once a student has become an employee, the student cannot be considered a trainee at that particular community-based placement unless •in a clearly distinguishable occupation); 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.

The Department has always considered work performed as part of an evaluations period or training program to be compensable. This is made clear in the FLSA definition of "employ" "to suffer or permit to work", which states that an employment relationship "does not depend upon the level of performance or whether the work is of some therapeutic benefit". This position conforms to various court decisions regarding the employment relationship under the ELSA.

It is important to understand that an employment relationship will exist unless **ALL OF THE ABOVE 6 CRITERIA** described in this guidance are met. Should an employment relationship be determined to exist, participating businesses (as well as the school) may be held responsible for full compliance with ELSA, including the minimum wage and child labor provisions. Also, Wage & Hour may supervise payment of back wages and/or Civil Money Penalties.

Business and school systems may at any time consider participants to be employees and may structure the program so that the participants are compensated in accordance with the requirements of the FLSA. Whenever an employment relationship is established, the business may make use of Federal sub-minimum certificates (such as the full-time students certificate of the special education/school work experience certificate) provided pursuant to Section 14 of the Act. See page 3, "sub-minimum wage provisions".

EXAMPLES OF UNPAID TRAINEES:

1. In a hospital, a student shadowing a nurse, following and observing but **not** helping.
2. In a supermarket, a student does simulated work such as ringing-up baskets of groceries (collected by other students or a teacher) making change, learns assorted transactions and returns groceries to the shelves. Nothing is sold to actual customers.
3. A student entering worthless data on a company computer which is not used to conduct business.

2. VOLUNTEER

Individuals may serve as unpaid volunteers for public service, religious or humanitarian objectives. For example, parents and/or students may choose to assist with school fund raisers, deliver meals to the homebound, visit patients in nursing homes, or solicit contributions.

Commercial businesses may not ever legally utilize unpaid volunteers. Typical authorized volunteer sites include established volunteer programs operated by charitable nonprofit organizations, governmental agencies, hospitals, and nursing homes.

Students may be considered to be "volunteers" within the meaning of the FLSA if the intent is clearly to donate their services for the public good. Schools cannot legally **REQUIRE students to** "volunteer" or perform unpaid public service as a way to gain vocational experience. Only the courts may require or commit persons to perform unpaid public service work as part of a correctional program, in lieu of serving prison time, or while on work release

Persons employed by a religious, charitable, governmental, or non-profit organization are not allowed to "volunteer" the same type of services (any activity directly related to their job) during the weeks they are employed.

EXAMPLES OF VOLUNTEERS:

1. A student is provided the opportunity to participate in several meaningful educational activities or programs (e.g., paid placement in a retail bookstore, self-help skills training, independent living skills, job seeking skills training, or volunteering at the city zoo). The student (where appropriate, a parent or guardian) **CHOOSES** to voluntarily participate at the city's established zoo volunteer program.
2. A student, along with their parents, decides it would be beneficial for them to donate some their spare time to helping others. The student signs-up for and participates in an elective course entitled "Volunteering In My Community".

3. IN-SCHOOL PLACEMENTS

Pursuant to the provisions of Section 14(d) of the FLSA, Wage & Hour will take no enforcement action with respect to minimum wages for students employed by any school in their school district in various school-related work programs, provided that such employment is in compliance with applicable Child Labor provisions.

(NOTE: This non-enforcement policy is not applicable to special education students performing subcontract work or sheltered workshop-type work on school premises.)

As part of their overall educational program, schools may permit or require students to engage in various school-related work programs, within their school district conducted primarily for the benefit of the students for periods of no more than an hour per day (or an equivalent amount of overall time). Also, the fact that a student may receive a minimal payment for participation in such activities would not necessarily create an employment relationship.

If such employment is NOT in compliance with applicable Child Labor Laws, the students so employed must be paid minimum wage and overtime for all hours worked in any workweek in which they were so employed. The school may also be subject to **Civil Money Penalties of up to \$10,000.** This position is adopted without prejudice to the rights of individuals to recover wages due through private actions afforded under Section 16(b) of the FLSA.

EXAMPLES OF IN-SCHOOL PLACEMENTS:

1. Students may help in school lunchrooms for periods of 30 minutes to an hour per day, do occasional classroom clean-up, perform minor clerical work in the school office or library, or engage in school activities connected with dramatics, student publications, sports, and the like.

SUB-MINIMUM WAGE PROVISIONS

The FLSA provides for the employment of certain individuals at wages below 5.15 per hour. **Full-time students** employed by certified retail/service firms, agriculture, or institutions of higher education may be paid \$4.38 per hour. Such employment is permitted only under certificates issued by Wage & Hour. For more information, please contact:

Gary Edwards, Section 14 Specialist

U. S. Department of Labor, Wage & Hour Division
525 5. Griffin Street, Suite 800
Dallas, TX 75202-5007
(214) 767-6895, x-242

Students with severe disabilities can be paid wages commensurate to their individual productivity under the Special Education School Work Experience Program Certificate. For more information please contact:

Joan Jazwinski, Section 14 Specialist for California
U. S. Department of Labor, Wage & Hour Division
230 5. Dearborn St., Room 562-A
Chicago, IL 60604-1591
(312) 353-7167z

CHILD LABOR

A student must be at least 16 years old to work in most non-farm jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor. Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs under the following conditions:

No more than- 3 hours on a school day or 18 hours in a school week;

No more than- 8 hours on a non-school day or 40 hours in a non-school week.

Also, work may not begin before 7 a.m. or end after 7 p.m., except June 1 through Labor Day, when evening hours are extended to 9 p.m. Different rules apply in agricultural employment.

Contact your local Wage & Hour District Office (listed below) and request Child Labor publication # WH-1330; which covers non-farm work permitted for minors below 18 years.

WORK EXPERIENCE AND CAREER EXPLORATION PROGRAM
(WECEP)

Sixteen is the minimum age for most non-farm work *performed during school hours*. However, under Regulations, Part 570.35a, youths 14 and 15 years old enrolled in an approved WECEP may be employed *during school hours*. To date, *within the Western Region*, the Idaho and California Departments of Education are approved for WECEP. Additional information is available from local Wage & Hour offices. Check your local telephone directory under U.S. Government, Dept. of Labor, Wage & Hour Division or call 1-800-688-9889.

This is one of a series of Fact Sheets highlighting U.S. Department of Labor programs. It is intended as a general description only and does not carry the force of legal opinion.

WAGE & HOUR DIVISION OFFICES WESTERN REGION

Los Angeles DO	818—240—5274	Sacramento	916—979—2040
Los Angeles FO	213—252—7914	Fresno	209—487—5317
Bakersfield	805—485—1122	Reno, NV	702—784—5200
Ontario	909—948—3594	San Francisco	415—744—5590
Oxnard	805—485—1121	San Jose	408—291—7730
Long Beach	562—980—3280	Oakland	510—637—2949
West Covina	626—966—0478	Palm Springs	760—416—8590
San Diego	619—557—5606	Santa Ana	714—836—2156
Phoenix	602—640—2990	Las Vegas	702—699—5581
Portland	503—326—3052	Tucson	520—670—4641
Eugene	541—465—6447	Boise	208—334—1029
Medford	503—776—4272	Honolulu	808—541—1361
Seattle	206—553—4482	Spokane	509—353—2793
Yakima	509—454—5769	Tacoma	253—593—6300
Anchorage	907—271—2867	Fairbanks	907—456—0525