U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

September 5, 2002

FLSA2002-8

Dear ***Name****,*

This is in response to your letter requesting an opinion on the application of the Fair Labor Standards Act (FLSA) to a summer job training program for local youths sponsored by your client, a nonprofit organization. You request that our opinion address enterprise and individual coverage application, domestic service employment application and trainee application under the FLSA with respect to the participants of the program.

You indicate that program participants will include youths from public housing and other low-income area in ***Name**** Youths 16 and 17 years of age will act as supervising mentors to 11 through 15 years olds. Supervising mentors will be treated as employees, will be paid $6.50 an hour, and will work 16 hours per week for approximately 8 weeks during June, July and August. Mentees will spend program time as interns in workshops and will perform entry-level administrative or clerical tasks for local businesses, as well as cleaning, painting, removing trash, and performing like chores to help their elderly and disabled neighbors. They will participate in the program 12 hours per week for approximately 6 weeks during June and July, and will be given vouchers with a $5.00 face value that can be used at various local businesses.

The FLSA is the Federal minimum wage and overtime law. This Act applies to all employees in certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person, and the enterprise has an annual dollar volume of sales made or business done of not less than $500,000 exclusive of excise taxes at the retail level which are separately stated. Enterprise coverage applies to activities performed for a business purpose and does not extend to religious, educational, or eleemosynary activities of private organizations operated on a non-profit business, provided that such organizations are not operated in conjunction with the institutions named in section 3 (r) and 3(s) of the Act.

The FLSA also applies to employees individually engaged in interstate commerce or in the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production. Such coverage would extend to any employee who regularly and recurrently uses the telephone, telegraph, or mails for interstate communications, or who prepares, handles, or in any manner works on material of any type that is sent across state lines.

Your letter does not contain sufficient information for us to specifically determine if the program mentees would be covered by the FLSA either on an enterprise or an individual basis. However, if the mentees are placed in a covered enterprise and are suffered or permitted to work in such enterprise, or if they individually engage in interstate commerce or in the production of goods for interstate commerce or in any closely-related process or occupation directly essential to such production, the FLSA would be applicable. The mentees would be subject to the monetary provisions of the Act.

Also, it is important to note that should any of the mentees be determined to be employees under the FLSA, their employment would be subject to the child labor requirements of the FLSA. The FLSA establishes a minimum age for nonagricultural employment of 16, but minors 14 and 15 years of age may be employed in certain non-hazardous jobs for limited periods of time. Enclosed is a copy of Child Labor Bulletin 101 which details the child labor requirements for nonagricultural employment. The fact that the federal child labor provisions may not apply should not discourage your client from voluntarily complying with their provisions. The child labor provisions are designed to serve as a platform from which young workers can explore, not entirely free from risk, the world of work. They provide common sense guidelines regarding the assignment of age-appropriate activities. They take into consideration the inherent risks associated with certain occupations as well as the diminutive size, relative inexperience, and lack of concentration that young workers bring to the workplace.

Domestic service employment was brought under the coverage of the FLSA by virtue of the FLSA Amendments of 1974. The term "domestic service employment" as defined in Regulations, 29 CFR Part 552.3, refers to services of a household nature performed by an employee in or about a private home of the person by whom he or she is employed. In this instance, since the elderly and disabled homeowners are not employing the mentees to perform the cleaning, painting & trash removal services in and around their homes, it is our opinion that the performance of such services would not constitute "domestic service employment" within the meaning of the regulations.

With regard to trainees under the FLSA, the Supreme Court has held that the words "to suffer or permit to work", as used in the Act to define "employ", do not make all persons employees who, without any express or implied compensation agreement may work for their own advantage on the premises of another. Whether trainees or students are employees of an employer under the FLSA will depend upon all the circumstances surrounding their activities on the premises of the employer. If all of the following criteria apply, the trainees or students are not employees within the meaning of the Act:

(1) the training, even though it includes actual operation of the facilities of the ***Name**** 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 observation;
(4) the employer that provides the training derives no immediate advantage 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 trainees are students understand that the trainees or students are not entitled to wages for the time spent in the training.

A determination of whether or not an employment relationship exists under the FLSA must be based on all the facts in a particular case. You state that mentees receive training (clerical and community improvement skills) similar to that which is given in a vocational school, and which will provide them with skills in preparation for the job market. Mentees will not displace regular employees, will not necessarily be entitled to a job after the training is completed, and understand that they will not be paid for the time spent in the training program. However, there is not enough information in your inquiry regarding the actual training with respect to the administrative/clerical duties performed by the mentees or the amount of supervision provided to them when performing such training duties. In this regard, we are unable to ascertain whether productive work performed by the mentees would be offset by the burden to the employers (local businesses) from the training and supervision provided. Therefore, we are unable to make a definite determination as to whether the mentees are employees pursuant to the provisions of the FLSA. If, in fact, the summer job training program is predominately for the benefit of the youth participants, we would not assert an employment relationship.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed therein.

We trust the above information is responsive to your inquiry.

Sincerely,

Tammy D. McCutchen
Administrator

*Note: * The actual name(s) was removed to preserve privacy.*