NLWJC - Kagan
DPC - Box 061 - Folder-002

Welfare - FLSA etc [5]

Bruce/Diana/Cynthia –
FYI.
Elena

MEMORANDUM

TO: **AFL-CIO**

FROM: **Guy Molyneux and Geoffrey Garin**

DATE: **June 10, 1997**

SUBJECT: **Minimum Wage Coverage for Workfare Recipients**

Peter D. Hart Research Associates has just completed a national voter survey that includes two questions measuring support for extending minimum wage and other workplace legal protections to welfare recipients in workfare programs. The survey was conducted by telephone June 6 through 9 among a representative sample of 800 registered voters who participated in the 1996 elections. The margin of error on these results is +/-4%.

Strong voter support for minimum wage coverage. The survey results reveal that American voters strongly believe that minimum wage laws and other basic legal workplace protections should apply to those in state workfare programs. The survey question reads as follows:

> As you may know, Congress passed a law last year requiring able bodied welfare recipients to work in state workfare programs. Do you believe that the people who are required to work in these workfare programs should be covered by basic legal protections, including the minimum wage law, or do you believe that the states should not have to pay the minimum wage to welfare recipients in workfare programs?

Fully 69% agree that workfare participants should be covered, while just 25% believe that states should not have to pay participants the minimum wage.

We would note that workfare participants are clearly identified in this question wording (*twice*) as still being "welfare recipients," making the strong

favorable response that much more impressive (and meaningful). The breadth of support for minimum wage coverage is also striking, including two-thirds of those with incomes over $50,000 (67%), professionals (67%), and white voters (67%). Even college-educated men (71%) and Republican voters (62%) favor minimum wage coverage by large margins.

Wage impact argument for coverage is strong. Voters' initial support for coverage doubtless arises from a fundamental sense of fairness. Since other workers receive this protection, they reason, why shouldn't workfare participants in similar jobs? However, organized labor has another, less immediately obvious reason for believing that coverage is needed – namely, the corrosive effect that sub-minimum-wage workfare programs could have on the jobs and wages of low-wage workers *outside* of workfare programs. The survey tested the appeal of this argument for coverage against a powerful opposition case that focuses on the cost of coverage to taxpayers, and finds the wage impact argument prevails by a decisive two to one margin.

> Supporters of paying the minimum wage to people in workfare programs say that many employees who currently work at the minimum wage would lose their jobs if workfare participants could be forced to work for less, and also say that exempting one group of workers from minimum wage protections opens the door to undermining the minimum wage for others. (59% agree.)
>
> Opponents of paying the minimum wage to people in workfare programs say that the taxpayers would have to support higher welfare budgets if states are forced to pay the minimum wage, and also say that welfare recipients who want better pay should get off welfare and find a job on their own. (31% agree.)

WR - FLSA

They're chomping at the MINIMUM WAGE *again*

AMERICA HAS A WAGE FLOOR. It's the federal minimum wage, and it's one of our oldest and most fundamental protections for working families. It's there because Americans believe that all people who work are entitled to a reasonable wage. It's there to prevent employers from driving wages down by pitting one group of workers against another. And it's there to give millions of working poor a chance to support their families and contribute to their communities.

But some members of Congress are trying to weaken this basic protection—again. They're proposing to chomp away at our wage floor by creating different classes of workers—some who are entitled to the minimum wage and some who aren't. They want to exempt people required to work in state "workfare" programs from the minimum wage and other basic employment rights—civil rights, organizing rights, job safety, family and medical leave and protections against sexual harassment.

If they succeed, they will create a perverse incentive to fire workers who earn low wages and replace them with others who are paid even less.

They'll destroy any possibility that welfare reform can reduce dependency on welfare by leading people into real jobs with real wages.

They'll undermine the minimum wage we raised just last year—an increase Americans overwhelmingly supported—so that working poor families could rise from poverty through the dignity of work.

Can America afford to pay workfare participants the minimum wage? We can't afford not to. America can't stand more erosion of workers' living standards—especially for those in the lowest-wage jobs who are already hurting the most.

A. PHILIP RANDOLPH INSTITUTE
ACORN
AFL-CIO
AMERICAN ASSOCIATION OF UNIVERSITY WOMEN
AMERICANS FOR DEMOCRATIC ACTION
AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES
AMERICAN FRIENDS SERVICE COMMITTEE
BAZELON CENTER FOR MENTAL HEALTH LAW
BREAD FOR THE WORLD
BUILDING & CONSTRUCTION TRADES DEPARTMENT, AFL-CIO
BUSINESS & PROFESSIONAL WOMEN, USA
CAMPAIGN FOR AMERICA'S FUTURE
CATHOLIC CHARITIES USA
CENTER FOR COMMUNITY CHANGE
CENTER FOR WOMEN POLICY STUDIES
CHURCH WOMEN UNITED
COALITION OF LABOR UNION WOMEN
COALITION ON HUMAN NEEDS
COMMUNICATIONS WORKERS OF AMERICA
DISABILITY RIGHTS EDUCATION & DEFENSE FUND
1199 NATIONAL HEALTH & HUMAN SERVICE EMPLOYEES UNION
FOOD RESEARCH & ACTION CENTER
JEWISH LABOR COMMITTEE
LEADERSHIP CONFERENCE ON CIVIL RIGHTS
McAULEY INSTITUTE
MIGRANT LEGAL ACTION PROGRAM
NAACP
NATIONAL CENTER FOR THE EARLY CHILDHOOD WORK FORCE
NATIONAL COMMITTEE ON PAY EQUITY
NATIONAL COUNCIL OF JEWISH WOMEN
NATIONAL COUNCIL OF LA RAZA
NATIONAL COUNCIL OF SENIOR CITIZENS
NATIONAL EMPLOYMENT LAW PROJECT
NATIONAL INTERFAITH COMMITTEE FOR WORKER JUSTICE
NATIONAL JOBS WITH PEACE CAMPAIGN
NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY
NATIONAL ORGANIZATION OF WOMEN
NATIONAL URBAN LEAGUE
NATIONAL WOMEN'S LAW CENTER
NETWORK: A NATIONAL CATHOLIC SOCIAL JUSTICE LOBBY
9to5, NATIONAL ASSOCIATION OF WORKING WOMEN
NOW LEGAL DEFENSE & EDUCATION FUND
SERVICE EMPLOYEES INTERNATIONAL UNION
SIGMA PUBLIC EDUCATION & RESEARCH FOUNDATION
UNION OF AMERICAN HEBREW CONGREGATIONS
UNITARIAN UNIVERSALIST SERVICE COMMITTEE
UNITE, UNION OF NEEDLETRADES, INDUSTRIAL & TEXTILE EMPLOYEES
UNITED AUTO WORKERS
UNITED CHURCH OF CHRIST, OFFICE FOR CHURCH IN SOCIETY
UNITED FOOD & COMMERCIAL WORKERS
UNITED HEBREW TRADES DIVISION OF THE JEWISH LABOR COMMITTEE
WELFARE LAW CENTER
WIDER OPPORTUNITIES FOR WOMEN
WISCONSIN JOBS NOW COALITION
WOMEN WORK! THE NATIONAL NETWORK FOR WOMEN'S EMPLOYMENT
WOMEN EMPLOYED
WOMEN'S LEGAL DEFENSE FUND
WORKING TODAY

Stop the new attack on the minimum wage.

Call your representatives in Congress and tell them that American voters support the minimum wage—for all workers.

FOR MORE INFORMATION, CONTACT THE NATIONAL EMPLOYMENT LAW PROJECT, 55 JOHN STREET, 7TH FLOOR, NEW YORK, NY 10038. PHONE: 212-285-3025, EXT 105

TO: Editorial Page Editors and Writers

FROM: John J. Sweeney, AFL-CIO President
Judith Lichtman, Women's Legal Defense Fund
Sara Ríos, National Employment Law Project
Wade Henderson, Leadership Conference on Civil Rights

DATE: June 10, 1997

RE: Effort in Federal Budget Reconciliation Bill to Strip "Worker" Status From People Who Work in State "Workfare" Programs

Ever since the U.S. Labor Department ruled last month that current law entitles people who work in state "workfare" programs to the minimum wage and other basic employment protections, some Republican members of Congress have been seeking legislative action to overturn the decision. They have included in the Budget Reconciliation Bill a provision to exclude workfare participants from the Fair Labor Standards Act (FLSA) and protections against discrimination on the job.

If they succeed, they will severely damage the federal minimum wage standard--our oldest and most fundamental protection for working families--and the repercussions will be felt not only by an estimated one million workfare participants, but by all low-income workers.

We are writing to urge you to take an editorial position against excluding workfare participants from the minimum wage, and other basic protections, and we respectfully ask you to consider the following facts.

■ **This is a back-door attack on the federal minimum wage.** The FLSA was enacted 50 years ago for the purpose of establishing a wage floor so that one worker could not be used to undercut another. This wage floor gives the working poor a chance to care for their families, contribute to their communities and lift themselves out of poverty through the dignity of work.

Workfare exemptions will severely undermine the minimum wage, and workfare participants aren't the only ones affected. Forcing low-wage workers to compete with no-wage workers will degrade the entire lower end of the labor market. America can't stand any more downward pressure on workers' living standards--particularly on those in the lowest-wage jobs.

■ **Last year, Congress passed an increase in the minimum wage--with overwhelming public support--for a reason.** Americans believe that everyone who works is entitled to a reasonable wage. Rewarding work is one of our most fundamental values. Welfare reform cannot work if we tell recipients that they must become self-supporting, job-holding citizens--but that they will receive sub-minimum wages.

■ **Excluding workfare participants would create incentives for employers to lay off hard-working employees.** The welfare reform legislation passed last year was never meant to artificially subsidize employers so they can replace existing workers with "cheaper" workers who earn substandard wages and are not covered by the protections of basic American labor law. But that's exactly what will happen if workfare participants are excluded from the FLSA.

Across the country, workfare workers and other workers are sitting beside each other doing exactly the same work. How can we justify disparate pay formulas that create a perverse incentive to fire the ones who are entitled to the federal minimum wage?

■ **States can afford to pay workfare participants the minimum wage.** Most states have surplus welfare funds--as a result of reduced caseloads--and today every state except Mississippi can afford to pay the minimum wage for workfare without any changes in grant levels or new state funding. According to the National Association of State Budget Officers, "state ending balances for fiscal 1996 and fiscal 1997 are at the highest levels since 1980."

The minimum wage applies only to people working in workfare programs, not those in job training and vocational education programs. And states have been given a great deal of flexibility when it comes to meeting the requirements of welfare reform. Workfare is one of at least a dozen options available to them [and many of these options do not fall under FLSA].

■ **Fair pay for workfare is the key to making welfare reform work.** If the point of welfare reform is to reduce dependency on the welfare system, participants must have the chance to earn enough to care for their families--and the promise that if they work hard and play by the rules, they can improve their situation. [Anything less creates disincentives for welfare recipients to move into jobs.]

At the same time, insisting that workfare participants retain their right to the minimum wage will act as an incentive for states to pursue comprehensive reforms that will move them closer to the ultimate goal: to place welfare recipients in unsubsidized private sector jobs.

■ **This proposal puts working women at risk.** Almost all workfare workers are women with children, and the majority of minimum wage and low wage workers are also women. Women at the bottom of the pay scale are the most vulnerable to exploitation and abuse and those in workfare jobs are desperate to hold on to the only source of support their families have. Declaring that certain women should earn less than the minimum wage and be fair game for discrimination and sexual harassment jeopardizes the wages, dignity and safety of all working women.

■ **All working Americans are entitled to the same basic rights.** The ruling by the Labor Department only confirmed the obvious. When workfare is work, it must be rewarded as work, and the Fair Labor Standards Act should apply. It's fundamentally wrong to say that one group of citizens does not have the same rights and is not protected by the same laws as another.

Enclosed for your review are additional materials and information on this issue of critical importance to all working Americans. We thank you for consideration. If you have any questions or require further information, please call: Lauren Asher, WLDF, 202-986-2600; Maurice Emsellem, NELP, 212-285-3025, x106; Wade Henderson, LCCR, 202-466-3311 or David Saltz, AFL-CIO, 202-637-5318.

Polling Data:
Minimum Wage Coverage For Workfare Recipients

Peter D. Hart Research Associates conducted a national voter survey, June 6-9, that included questions on extending minimum wage and other workplace legal protections to welfare recipients in workfare programs. Key findings include:

- **Strong voter support for minimum wage coverage.** The survey results reveal that voters strongly believe that minimum wage laws and other basic legal protections should apply to those in sate workfare programs.

    - Fully 69 percent agree that workfare participants should be covered, while just 25 percent believe that states should not have to pay participants the minimum wage.

    - The breadth of support for minimum wage coverage is also striking, including two-thirds of those with incomes over $50,000 (67%), professionals (67%), and white voters (67%). Even college educated men (71%) and Republican voters (62%) favor minimum wage coverage by large margins.

- **Voters are concerned about wage impacts.** By a decisive two-to-one margin (59%-31%), voters agree that workfare participants should be covered by minimum wage and other basic workplace protections to prevent the corrosive effect that sub-minimum workfare protections could have on the jobs and wages of low-wage workers *outside* of workfare programs. These margins occur despite a powerful opposition case that focuses on the cost of coverage to taxpayers.

    59 percent agree with the statement that many current minimum-wage employees would lose their jobs if workfare participants could be forced to work for less; and that exempting one group of workers from minimum-wage protections opens the door to undermining the minimum wage for others.

    31 percent agree with the statement that taxpayers would have to support higher welfare budgets if states are forced to pay the minimum wage; and that welfare recipients who want better pay should get off welfare and find a job on their own.

Can States Afford to Pay the Minimum Wage to Welfare-to-Work Participants?

Some have argued that applying basic labor law protections to welfare-to-work recipients is too expensive. This argument is both false and misleading. First, the range of options available to the states and the current block grant levels combine to assure that every state can meet the laws' requirements. In fact, every state but Mississippi could afford to pay the minimum wage to all participants even if none of the education and training options, which because they are not work do not require the payment of wages, were used. Second, it is just plain wrong to argue that we can successfully encourage a transition from dependency to self-sufficiency if we do not afford program participants protections afforded to every other American worker.

STATES HAVE PROGRAM FLEXIBILITY AND BUDGET SURPLUSES

- States have 13 options for meeting work requirements, many of which are activities that would most likely NOT be covered by the FLSA coverage, such as job readiness training, or time in vocational-education, and fulfilling high school. Minimum wage standards will have no effect on the cost of these options and these programs will be more suited to the particular needs of many welfare recipients.

- Although federal requirements for hours-of-work increase over time, the range of options for meeting these work requirements also expand.

- States have significant flexibility about how to meet work requirements. They can limit the numbers of people in workfare without cutting off aid (e.g., by age of kids, opt-out of 2 month community service option, waiver from food stamp work requirement to relieve pressure of finding so many "slots").

- Some states are already very far along in meeting the initial work requirements (NY already relies heavily on vocational education; Illinois and Pennsylvania may already meet their first year work requirements without having to place more recipients).

WELFARE TO WORK CAN ONLY WORK WHEN WORK IS HONORED

- The most important goal of welfare-to-work policy -- placing former welfare recipients in unsubsidized, private sector jobs -- will be encouraged by increasing the standards required under other options. Employee protections are a positive incentive for states to pursue comprehensive reform.

- The whole point of welfare reform is reduced welfare dependency. The key to reduced dependency is living-wage work and skill development.

- Any Congressional action to reverse the Administration's position would run counter to every legislative effort to reform welfare by expanding work. Since the original Social Security Act, federal policy has acknowledged that pressure to enforce work must also include pressure to raise living standards through fair payment. Many federal programs (WPA, CWTP, CETA) required prevailing wage payments, not just minimum wage.

- If states cannot meet the competing demands of creating jobs, defending living standards, and protecting state budgets, the Department of Health and Human Services has the power to grant additional flexibility under "reasonable cause" exemptions.

BACKGROUND STATISTICS ON THE IMPACT OF MINIMUM WAGE REQUIREMENTS

- The new welfare law requires states to have 25 percent of their caseloads in work-related activities for 20 hours a week this year. Any estimates of the impact of minimum wage coverage must acknowledge that (1) not all work activities will be covered by the minimum wage, (2) not all welfare recipients have to be in work, and (3) not all recipients will be forced to work full time. These realities make detailed estimates difficult.

- The Center on Law and Social Policy has estimated that only one state (Mississippi) would be unable to conform with the welfare law's current work requirements without increasing benefit levels if food stamps are included in the calculation of earnings. This is already allowable under the Food Stamps Workfare program, a program which also includes minimum wage requirements.

- Minimum wage requirements could easily be met by employers involved in workfare programs. The median state grant of $383 means that in more than half of the states employers would only have to pay 70 cents an hour or less to meet FLSA requirements.

- State grants under the Temporary Assistance for Needy Families program (TANF) are set at 1994 levels, but caseloads have fallen. States receive funding for 5.0 million families, but current caseloads are only 4.1 million. The difference between funding and caseloads will make it easier for states to comply.

- The Urban Institute reports that even in 1994, before the welfare law passed, 23 percent of all adults receiving welfare were engaged in work activities or training that may be allowable under TANF work requirements.

WHAT THIS MEANS FOR EMPLOYEES

- Without FLSA coverage, workers sitting right next to each other doing exactly the same tasks will see that one is getting at least the minimum wage and the other is not. Acknowledging the employee status of workfare participants is key to promoting workplace acceptance.

- If the intent of welfare reform is to get welfare recipients into the real world of work, then they should experience the real world of work; if we want them to be able to support their own families off of welfare, they should be working at jobs that pay at least the minimum wage.

- Without FLSA coverage, employers will have incentives to fill positions with much cheaper welfare recipients rather than "regular" workers, degrading the entire lower end of the labor market in the process. In Mississippi, for example, a workfare worker working the required 20 hours a week would earn the equivalent of only $1.50 an hour for their grant.

WHAT THIS MEANS FOR EMPLOYERS

- Without FLSA coverage, employers could hire welfare recipients for free, even if their welfare grant divided by the hours worked were less than the minimum wage. With FLSA coverage, employers would have to at least chip in the extra on top of the grant subsidy to come up to the minimum wage (see estimate above).

- Employers will still enjoy heavily subsidized workers through workfare and tax breaks.

- When the public supported welfare reform, we don't believe they intended welfare reform to provide free labor for businesses.

- In some states, private businesses can get tax breaks on top of the subsidized labor so that they have heavy incentives to displace current workers or create short-term positions solely to take advantage of low-cost labor.

AFL-CIO Public Policy Department

j:\...\flsa2.txt

The Washington Post

AN INDEPENDENT NEWSPAPER

Wages of Welfare Reform

THE PRESIDENT was right to order that welfare recipients put to work under the terms of last year's welfare bill be paid the minimum wage. The objecting governors and other critics are likewise right when they say that his decision will throw the bill even further out of whack than it already was. What the president basically proved in doing the right thing on the wage was how great a mistake he made in caving in to election-year pressures, some of them of his own making, and signing the bill to begin with.

The problem with the welfare part of this legislation—as distinct from the gratuitous cuts that it also imposed in other programs for the poor—is the mismatch that exists between its commands and the resources it provides to carry them out. The basic command is that welfare recipients work, but that's not something that can be achieved by the snap of a finger or the waving of a wand or it would have happened long ago. A lot of welfare recipients aren't capable of holding down jobs without an enormous amount of support. Nor, in many cases, are there jobs enough in the private sector to accommodate them even if they could hold them down.

The cost to the states of putting to work as many recipients as the bill requires was already going to be greater over time than the fixed funding in the bill. The minimum wage decision will only add to the cost; hence the squawk from the governors. But it's not the decision that was wrong. Welfare recipients put to work are no less entitled to the protections of the wage and hour laws than other workers. To pay them less would also be to undercut the wages of other workers with whom they will now compete for low-paying jobs. That was a major part of the argument organized labor used in pushing for the order. Wages in that part of the economy are already too low to support a family, and income inequality in the country generally is too great.

The law requires that increasing percentages of welfare recipients work each year. States that fail to meet the targets risk loss of some of their federal funds. The number of hours a recipient must work to qualify also increases. Twenty hours a week will be enough at first, but eventually that will rise to 30. For now, the way the president's order is written, most states will be able to put recipients to work themselves, or pay private employers to do so, for about the amount of a monthly welfare check. But over time that will cease to be true; a welfare check that will pay for 20 hours at the minimum wage won't cover 30.

The state will have to come up with the difference. Or it will have to start lopping people off the rolls for other reasons. The bill gives states power to do that, too, and that's what welfare advocacy groups fear may happen in states whose low benefits won't cover all the hours the bill requires. Back to the mismatch: The bill requires more than it pays for. As with the other flaws in this misbegotten legislation, sooner or later this one needs to be fixed, or a lot of vulnerable people including children badly in need of help are going to end up harmed instead.

France Reaps Its Reward

FOR SOME time now, a debate has raged about the efficacy of linking trade and politics in relations with China. Some say you can use one to achieve results in the other; others argue that business is business and let's keep human rights out of it. An event in Beijing on Thursday should settle the matter: You can use trade to influence political relationships.

Unfortunately, the example at hand involves China's using trade to get its way, not the other way around. A month ago, France helped make sure that the United Nations Human Rights Commission wouldn't even discuss China's dismal human rights, China notes France has made a wise decision," President Jiang Zemin said, according to a spokesman. Of course, there's no need for Americans to get too high and mighty about such French behavior. This country, too, has made its opportunistic deals.

Nevertheless we were reading about Mr. Chirac's salute to China—which "will be one of the top nations of the world," and which "must be one of our main partners"—at the same time we happened to be reading about Wei Jingsheng. Mr. Wei is a brave dissident, one of thousands in Chinese jails for peacefully expressing views unacceptable

NEWARK STAR LEDGER SUNDAY MAY 25, 1997

Paid in full

There's a strange double standard applied to people on welfare. They are considered second-class citizens, even when it comes to work.

The effort to force people off welfare through a host of reforms has gained momentum, and recipients are being given time limits and other requirements aimed at getting them trained and working.

But some people want more. They think that welfare recipients who go to work shouldn't be paid the minimum wage.

That doesn't make sense, and the White House knows it. It agreed that most of the recipients being placed in work programs should be covered by the minimum wage law.

That didn't sit well with governors of both parties or the authors of the welfare reform law, who said the move would vastly increase the cost of running work programs and leave most states unable to enroll the required number of recipients. They'd rather pay them less than what is already a low wage.

Previous welfare laws explicitly outlined when minimum wage laws applied, but the new legislation does not. That left the door open to interpretation.

Labor leaders insisted that workfare recipients are covered by the Fair Labor Standards Act, which requires the minimum wage in most cases, and after months of study, the White House agreed.

Public employee unions have opposed workfare programs in part because of concerns about worker displacement. The fear was that local governments would be less likely to hire union members to sweep streets if workfare participants could be forced to do the same work at much lower rates.

Paying the minimum wage to workfare participants should not be an issue. If the goal is to get them into the workforce and keep them there, it makes sense that they should not be paid second-class wages. Those who believe that the minimum wage somehow subverts welfare reform ought to reassess their position.

At a time when the safety net is threatened, it is particularly foolish to eliminate a class of nonworking poor only to create a class of serfs.

Newsday
EDITORIALS
"Where there is no vision, the people perish."

RAYMOND A. JANSEN
Publisher, President and C.E.O.

ANTHONY MARRO, Editor
ROBERT P. BRANDT, Managing Editor
CHARLOTTE H. HALL, Managing Editor
HOWARD SCHNEIDER, Managing Editor

JAMES M. KLURFELD, Editor of the Editorial Pages
CAROL B. RICHARDS, Deputy Editor of the Editorial Pages

Workfare Wages

Paying minimum wage makes sense; welfare clients already get that much in grants.

During the supercharged debate over welfare reform, the politicians said time and again that the point was to end dependency and instill in recipients respect for the value of work. Now the White House has agreed with the U.S. Labor Department that welfare beneficiaries in work programs are performing a service in exchange for income — so by definition, they are covered by the Fair Labor Standards Act and must be paid the minimum wage. That is as it should be.

The governors who lobbied so hard for welfare revision boasted that they could move welfare recipients into private-sector jobs. To the extent they succeed, a debate over paying minimum wage is moot: Private employers must pay it. Besides, those in education and training programs would be exempted.

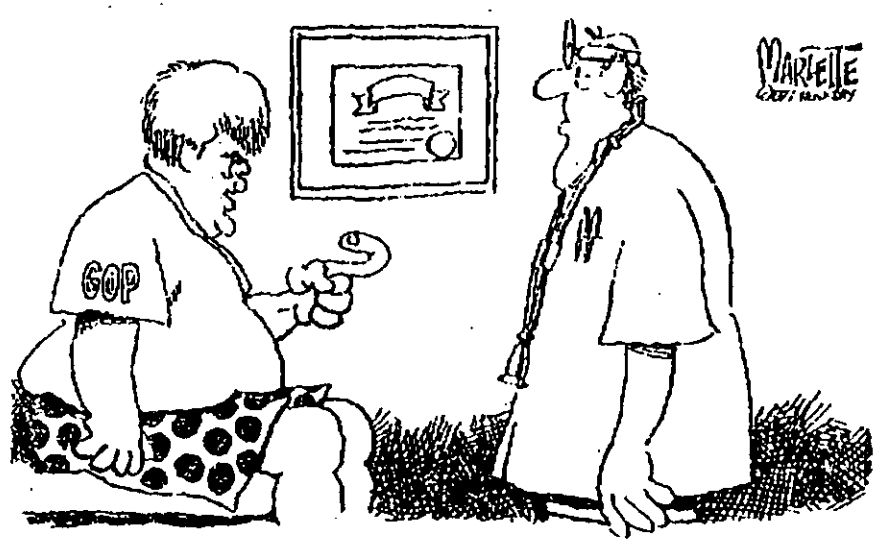
The controversy arises over what to do about recipients who are working for local or state governments, performing tasks like cleaning parks or providing clerical help.

The governors and others who complain about costs have a weak case: The minimum wage is itself so low that in all the states but Mississippi, welfare benefits plus food stamps already equal or exceed what the minimum wage would pay a welfare worker for the required 20-hour week. Costs will rise over time as more hours of work are required, and after the minimum wage rises to $5.15 in October. Even then, however, a 30-hour-a-week welfare worker would be paid $8,034 a year — $4,000 less than the poverty level for a family of three.

The issue does get more complicated when other ramifications are explored. The Treasury Department, for example, is researching whether there are implications for payment of Social Security and unemployment taxes. None of these intricacies was thought through in the political rush to enact welfare revision last year. Now they must be.

Paying the minimum wage is the right thing to do economically and philosophically. There already is enough downward pressure on wages among those on the lowest rungs without creating a new pool of subminimum workers to pull wage rates down further. And besides, if government wants welfare recipients to start thinking and acting like workers, it must treat them as workers, too.

MARLETTE'S VIEW



"IT HAPPENS EVERY TIME I POINT AT THE DEMOCRATS!"

Vallone's NYPD Audit Board Deserves Support

Who's going to watch the officers who watch the officers? In 1994, the Mollen commission board all his own — composed solely of his appointees — and he head Vallone in point about Vallone's new proposal, they haven't yet cut loose with the heavy duty lambast

Today's debate: WELFARE REFORM

Rush to workfare costs jobs of working poor

OUR VIEW **Welfare laws need to be fine-tuned; they're hurting those most vulnerable to job loss.**

Schools in Baltimore are bringing in welfare recipients to do janitorial work at $1.50 an hour, less than one-third the minimum wage, rather than renew contracts with agencies that supplied custodians at $6 an hour. The new workers continue to receive federally financed welfare benefits, at no cost to the schools.

It's a sweet deal for the money-short schools and useful work experience for people who soon must get off welfare. But what about those janitors who were displaced? How many are unemployed and candidates for the welfare rolls?

As Washington and the states push welfare recipients to work, they've created a way for employers, public and private, to replace regular employees with cheaper labor. The losers are folks who had stayed off welfare with low-income work. They're vulnerable to reduced hours, disappearing jobs and lesser wages and benefits.

A Jersey City, N.J., hospital is cutting full-time aides while hiring people on welfare as "volunteers" to do the same work.

In Nassau County, N.Y., a custodian laid off in 1992 and ultimately forced onto welfare returned to the same job last year — but as a welfare "trainee" at lower pay, no benefits and no vacation.

No one has yet quantified the problem. But the vulnerable population is large: 38 million working poor who at $7.50 an hour or less often have no health insurance. And even with the economy thriving, most states are short of the low-wage, low-skill jobs that the working poor hold and welfare recipients need. Yet welfare reform requires that by the turn of the century, nearly 50% of all adults getting welfare assistance — 4 million people — must spend at least 30 hours a week in some sort of work.

The law bars employers from firing existing workers to hire welfare recipients whose compensation is subsidized by the state. But its intent can be defeated by reducing hours, wages or benefits for existing workers or terminating outside contracts; workfare recipients can then fill vacancies.

Backers of the 1996 welfare reform minimize the problem. They fear a backlash could reverse momentum running their way. On the other side, unions trumpet scare stories, not research. But anecdotal evidence is accumulating. In addition to subtle and overt job displacement, employers from Salt Lake City to Richmond, Va., report the flow of welfare recipients into the workforce is helping keep pay rates down.

And when the inevitable economic slowdown arrives, with shrinkage in low-income jobs, the situation is likely to resemble a nasty game of musical chairs with far more players than wage-paying seats.

Welfare reform was long overdue. But the 1996 law, driven by simplistic budget-cutting politics, did little to spur the job growth needed to deal with underlying poverty and lack of opportunity. President Clinton wants to spend $3 billion for job-training grants and tax breaks to employers who hire welfare recipients. First, some spadework is needed. Moving welfare recipients to work is a fine objective. But throwing the working poor out on the street is an unacceptable price.

Reform that risks throwing the working poor out of work and onto the welfare rolls is not worthy of the name.

The job gap

State studies document the challenge of placing welfare recipients in jobs:

California: More than 1 million people have to be moved into a job market where 2 million people not on welfare are already looking for work and another half-million part-timers want more work. State's economy is growing by only 300,000 jobs a year.

New York: 1.2 million potential job seekers, including adults on welfare, for 242,000 job openings.

Maryland: Of 44,000 new jobs created in 1994, more than 38,000 were high technology or professional work requiring college degree or better. Yet work must be found for 79,000 welfare recipients.

Minnesota: Ratio of job seekers to job openings is 2.7-1; for jobs with a "livable wage," 6-1.

The Philadelphia Inquirer

ROBERT J. HALL, *Publisher and Chairman*
MAXWELL E.P. KING, *Editor and Executive Vice President*
GENE FOREMAN, *Deputy Editor and Vice President*
ROBERT J. ROSENTHAL, *Executive Editor*
WILLIAM J. WARD, *Managing Editor*
PHILLIP DIXON, *Associate Managing Editor*
SANDRA L. WOOD, *Associate Managing Editor*
RONALD PATEL, *Sunday Editor*
JANE R. EISNER, *Editor of the Editorial Page*
CHRIS SATULLO, *Deputy Editorial Page Editor*
ACEL MOORE, *Associate Editor*

EDITORIALS

Money for hire

Use Pa.'s surplus to create public-service jobs.

Mayor Rendell commiserated Monday with other mayors over the burdens of the new welfare law. He urged a federal jobs program for the millions nationwide who will be forced off the rolls.

Mr. Rendell is right. It was irresponsible of Congress to pass, and President Clinton to sign, a welfare plan that did little to create jobs for folks who'll lose their benefits.

Some states aren't in good shape to bankroll a jobs program.

In New Jersey, for example, Gov. Whitman already is resorting to budget gimmickry to close a deficit and to fund the state pension system. But in Pennsylvania, which expects a surplus of more than $300 million when the budget year ends June 30, a jobs initiative is doable.

A coalition of labor unions, community groups and religious organizations has come together to support a $135 million jobs plan by State Sen. Vincent J. Hughes (D., Phila.).

In Republican-dominated Harrisburg, this Democratic plan is going nowhere fast. But it could spur debate and prepare the ground for a bipartisan jobs bill.

Sen. Hughes' bill would create 10,000 full-time jobs statewide, ranging from boarding up abandoned homes to cleaning up parks. The workers would get $6 an hour, or the "prevailing wage," if that's higher.

The pay would be set substantially above the minimum wage — $4.75 an hour — partly to calm concerns that such a jobs program would push down the wages of other low-paid workers. That's no small issue — given the widening gap between low-income and high-earning Americans.

Still, there are compelling arguments for putting these public-service jobs at or close to the minimum wage. Such jobs are a first step out of dependency for people who can't find work in the private sector. Why should government, acting as the employer of last resort, pay more than private companies offer their least-skilled employees?

This level of pay would give ex-welfare recipients an incentive to strive toward better jobs, in turn opening up slots for other low-skilled people. Also, since money for a jobs program isn't unlimited, keeping pay low allows more jobs to be created.

"Most workers in the inner city are ready, willing, able and anxious to hold a steady job," wrote sociologist William Julius Wilson last year. Yes. And government must do more to help prove him right.

What They're Saying . . .

"As employers, Lutheran Services in America organizations face the same issues that every non-profit and corporate employer in America does by having to work within a budget and provide services to its clientele. But, we also believe that workfare recipients preform important work that should be valued fairly and covered by the Fair Labor Standards Act. We in Lutheran Services America challenge other employers to join us to be involved and become responsible in the opportunities we give workers."

-- Rev. Faye R. Codding
Lutheran Services in America,
employer at nursing homes and child care centers

"The National Association of Service and Conservation Corps' 120 member corps across the country historically have employed welfare recipients to perform work for the benefit of their communities. Traditionally, Youth Corps have paid at least the minimum wage to everyone who has worked for them, regardless of their status as recipients of public benefits. We applaud the Clinton Administration for reaffirming this policy for all employers."

-- Kathleen Selz, President
National Association of Service and Conservation Corps

"If our commitment to help those struggling to escape poverty is real, then we must be vigilant in ensuring that the protections so critical to the success of other workers are also available to welfare recipients. The Leadership Conference believes that we must stand firm in our commitment to uphold basic employment protections for all individuals, particularly those most vulnerable. Ensuring that low-income individuals are protected against sub-minimum wages, inhumane working conditions, exploitation, and discrimination is only one piece of a larger, more fundamental struggle to help low-income families chart an escape path from poverty to financial independence."

-- Wade Henderson, Executive Director
Leadership Conference on Civil Rights

"Research indicates that the TANF [Temporary Assistance for Needy Families or 'Workfare'] program must include worker protections if we expect women to move from welfare to self-sufficiency. Simply providing jobs for welfare mothers will not enable them and their families to get out of poverty."

-- Institute for Women's Policy Research

What They're Saying . . .

"I applaud the President in his decision to apply labor standards, most notably the minimum wage, to welfare recipients required to return to the job market. Welfare recipients put to work are entitled to the same benefits as any other worker. To pay them less than a minimum wage is unconscionable."

-- Sharon Sayles Belton
Mayor of Minneapolis

"I have introduced legislation which would require that welfare recipients in work assignments in California have the same rights as other workers on job sites, including, first and foremost the right to receive at least the minimum wage. I strongly believe this is the best policy for California and for the nation. The Clinton Administration is to be congratulated for concluding that the Fair Labor Standards Act protects welfare recipients."

-- Antonio Villaraigosa
Majority Leader
California State Assembly

"While Workfare may be helpful in introducing some welfare recipients to the demands of the workplace, without job rights participants could all too easily be exploited. Treating Workfare participants differently from other employees would send the wrong message. It tells them and their potential employers they should not be viewed as members of the workforce. In contrast, treating Workfare participants as employees, with the rights and protections due employees, will help integrate them into the workforce and motivate them to develop and advance on the job."

-- Illinois State Representatives
Carol Ronen, Constance Howard,
Larry McKeon, Louis Lang,
Michael Smith, Kevin McCarthy,
Rosemary Mulligan, Michael Giglio,
Angelo "Skip" Saviano, Janice Schakowsky,
Larry Woolard, Steve Davis,
Arthur Turner, Mike Bost,
Lou Jones, Shirley Jones,
Miguel Santiago and Charles Morrow

GROUPS SUPPORTING FAIR LABOR STANDARDS ACT COVERAGE FOR WORKFARE PARTICIPANTS

A. Philip Randolph Institute
ACORN
Americans for Democratic Action
American Friends Service Committee
American Jewish Congress
Black Women's Agenda, Inc.
Bread for the World
Business and Professional Women/USA
Catholic Charities USA
Center for Community Change
Center for Law and Social Policy
Center for Women's Policy Studies
Center on Budget and Policy Priorities
Chicago Commons Employment and Training Center
Chicago Jobs Council
Child Care Action Campaign
Church Women United
Clearinghouse on Women's Issues
Coalition on Human Needs
Commission for Women's Equity
Day Care Action Council of Illinois
Disability Rights Education and Defense Fund, Inc.
Feminist Majority
Hadassah
Illinois Hunger Coalition
INET for Women
Korean Immigrant Workers Advocates
Labor Project for Working Families
Leadership Conference on Civil Rights
League of Women Voters of Illinois
Lutheran Services in America
Mexican American Legal Defense and Education Fund, Inc.
Mid America Institute on Poverty
Migrant Legal Action Program
NAACP Legal Defense and Education Fund, Inc.
NAACP, Washington Bureau
National Association of Social Workers
9 to 5, National Association of Working Women
National Center for the Early Childhood Workforce
National Committee on Pay Equity
National Council of Jewish Women
National Council of Negro Women, Inc.

National Employment Law Project
National Hispana Leadership Institute
National Law Center for Homelessness
National Organization for Women
National Women's Conference
National Women's Law Center
NETWORK: A National Catholic Social Justice Lobby
New Girl Times
NOW Legal Defense and Education Fund
Poverty Law Project
Public Education and Policy Project
The Welfare Law Center
United Church of Christ, Office for Church in Society
Wider Opportunities for Women
Women Employed Institute
Women Work! The National Network for Women's Employment
Women's Legal Defense Fund

Leadership Conference on Civil Rights

1629 "K" St., NW, Suite 1010
Washington, D.C. 20006
Phone: 202/466-3311
Fax: 202/466-3435
TTY: 202/785-3859

May 15, 1997

President William J. Clinton
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Re: Welfare Reform and Civil Rights Enforcement

Dear President Clinton:

On behalf of the 180 national organizations that comprise the Leadership Conference on Civil Rights, the nation's oldest and most broadly-based civil rights coalition, we write to request your assistance in making the civil rights and economic security of low-income individuals and families a higher national priority, as states implement the recently-enacted **Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).**

The Leadership Conference believes that real welfare reform must remain true to fundamental principles of equality, fairness, and social justice while increasing the chances for all families in need to become economically independent. The changes required by the PRWORA create new challenges -- and new risks -- to upholding these fundamental principles.

New Threats of Discrimination Targeted at Low-Income Families

The PRWORA creates perverse new incentives for states to deny assistance to needy families and act in discriminatory ways, thus, erecting new hazards for individuals who already face discrimination: persons of color, women, people with disabilities, and older people. For example:

- **With the elimination of the individual entitlement to welfare benefits and services and the lack of clear rules, crucial decisions about who gets benefits, who gets services, and who gets penalized, may be made in arbitrary and discriminatory ways.** For example, as a result of the new legislation states now have wide latitude to use different rules in different geographic areas. As a result, communities with a high concentration of racial or ethnic minorities such as cities may receive lower benefits, fewer services, or be subject to harsher rules and penalties.

- **The harsh new restrictions aimed at legal immigrants will likely worsen discriminatory practices that many ethnic minorities already face.** Individuals who are eligible to participate in a particular welfare program could be shut out simply because they have an accent and are assumed not to be citizens. While the Department of Justice will be issuing guidance on verification of status procedures to providers that distribute federal public benefits, there will be no procedure to monitor the providers and likely no consequence to a provider that discriminates. Others may lose benefits because they are unfamiliar with new welfare program rules and cannot obtain materials in their native language. Still others are already being shunned by employers, or unfairly selected out to produce identification documents, simply because they "look foreign."

- **Early reports suggest that pressure on states to place recipients in jobs and meet strict new work participation requirements may push women, especially women of color, into low wage, stereotyped "women" and "minority" jobs with little training and few prospects for future employment.** States attempting to raise their work participation rates also may "cream" job seekers, i.e., focus more attention on individuals perceived as "more desirable" or the closest to being job-ready, and offer less desirable assignments to minorities, people with disabilities, older workers, pregnant women, immigrants and others who too often lose out on job opportunities, because of discriminatory stereotypes about their abilities.

- **Early reports also suggest that rigid new work participation requirements may discourage states and employers from assessing and accommodating the needs of individuals with disabilities.** A recent study by the Urban Institute found that 16-20 percent of women receiving AFDC (under the old welfare law) reported one or more disabilities that limited their ability to work. But some individuals with disabilities may be unable to comply with the new law's work requirements because their disability has never been identified, assessed, or reasonably accommodated. Moreover, specific provisions in the new law may have discriminatory effects on individuals with disabilities: the twelve month time limit on participation in vocational education, for example, may unfairly impact individuals with learning disabilities who need to enroll in specialized programs of a longer duration.

- **Increased sexual harassment is a foreseeable problem.** Women are the majority of adult welfare recipients. Given the documented instances of sexual harassment in our society, it is reasonable to assume that some of these women may become victims of harassment in the workplace because they are particularly vulnerable -- i.e. they risk losing vital benefits if they cannot keep their jobs.

- **Children may be penalized unfairly by welfare reform simply because of the circumstances of their birth; i.e. because their parents were unmarried, or young, or immigrants.** As a result, the new law will take benefits away from children who otherwise would receive them under the old AFDC program and who now desperately need them.

Recommendations

Welfare reform should not mean a loss of civil rights protection. Moreover, devolution of power to the states cannot and must not mean the abandonment of the federal government's responsibility to provide basic civil rights protections for low-income individuals and families. The new welfare law does not modify the many civil rights laws that protect against discrimination, nor does it alter the federal government's continuing obligation to enforce such laws. In this changed environment, the role of your Administration will be critical. We urge the Administration to:

1. **Vigorously enforce the laws prohibiting discrimination in federally funded programs, including those specifically listed in the legislation and Title IX of the Education Amendments of 1972, as part of welfare implementation.** As the recent U.S. Commission on Civil Rights report, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs* (June 1996) concluded, there has been a history of under enforcement of Title VI, especially in the context of block grant programs. Given the heightened potential for discriminatory practices under the PRWORA, the federal government must develop new strategies to detect and challenge discrimination, and better coordinate its enforcement efforts.

2. **As states submit, amend and expand their state plans, the federal government should require specific information about the "objective criteria" states will use to determine eligibility; how they will assure "fair and equitable treatment;" and how they will provide welfare recipients an opportunity to be heard as required by the PRWORA.** The Department of Health and Human Services does not have the authority to disapprove state plans, but it does have the responsibility to determine whether the plans are complete. Requiring states, as they submit their plans in future years, to articulate the standards and procedures they intend to follow is critical to prevent arbitrary and discriminatory decision-

making at both the level of individual benefit determinations as well as the level of state-wide implementation. For example, if the state plan proposed differences in treatment for predominantly minority urban areas and predominantly white suburban areas, potential violations of Title VI could be identified and deterred.

3. **Vigorously enforce other civil rights and labor laws on behalf of welfare recipients, including Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act, the Occupational Safety and Health Act, the Fair Labor Standards Act, the Americans With Disabilities Act and Section 504 of the Rehabilitation Act, the Immigration Reform and Control Act, and the Family and Medical Leave Act.** Welfare recipients, whose families' access to subsistence benefits hinges on their ability to get and keep jobs, will be easy and vulnerable targets for discrimination. They are entitled to the same protections against discrimination, unsafe working conditions, and exploitive pay as other workers. And enforcing the law on their behalf protects all workers, by reducing the incentive to replace current employees with cheaper and more exploitable labor.

4. **Ensure that states comply with the requirements of the PRWORA to maintain assistance to single recipients who cannot obtain child care for a child under six years old, and maintain Medicaid coverage for eligible families.** The Administration should ensure that states comply with the law's provision protecting families with children under six from being penalized if lack of child care prevents them from accepting a work assignment by requiring states to conduct case reviews of a sample drawn from families that have been sanctioned.

5. **Work to repeal the provisions of the PRWORA that severely limit the eligibility of legal immigrants and refugees for a wide variety of federal benefit programs, and to address the inadequacies of the naturalization process.** The provisions of the PRWORA related to legal immigrants are blatantly discriminatory in that they treat foreign-born individuals differently than those who are born in the United States, denying them benefits until they have become naturalized citizens regardless of whether they work and pay taxes to the United States government. These provisions have a particularly discriminatory impact on elderly and disabled immigrants, many of whom are unable to fulfill the English language and civics requirements for naturalization or to take a meaningful oath of allegiance and therefore will remain permanently ineligible for Supplemental Security Income and Food Stamps.

We also urge efforts to allow legal immigrants to continue to receive assistance while they are in the naturalization process, to waive the English language and civics requirements for an expanded class of elderly immigrants, and to allow individuals who are too disabled to naturalize to continue to receive federal benefits.

In addition to challenging discriminatory practices at the state level, we urge the Administration to work diligently at the federal level to remedy the harshest effects of the new law. The Administration has begun some of this work, but there is more to do. For example, we support proposals in the Administration's budget to mitigate the new law's hardships for the most vulnerable legal immigrants, people with disabilities and children. But the far-reaching impact of the new law -- almost all noncitizens are no longer eligible for SSI and Food Stamp benefits, and new immigrants will be barred from federal means-tested benefit programs for five years -- will require the Administration to take more steps to restore the status of legal immigrants as full and equal members of American society.

We strongly urge the Administration to take advantage of any flexibility permitted under the new law to minimize its negative consequences. For example, the PRWORA targeted the SSI Childhood Disability program for cuts, and required the Social Security Administration to develop a new definition of childhood disability. Unfortunately, the Social Security Administration failed to take advantage of the statute's flexibility, and has issued unnecessarily harsh interim final regulations. If these regulations are not changed, they are likely to disqualify at least 135,000 children with significant impairments, and to fall especially heavily on children with mental retardation or mental health problems.

Restricting children's eligibility for the SSI Childhood Disability Program will also restrict their eligibility for Medicaid. Most children who qualify for SSI are automatically eligible for Medicaid; thus, children who fail to meet the new restrictive definitions for SSI eligibility lose this automatic coverage. Some will qualify for Medicaid on other grounds; others, however, will not. We commend the Administration for proposing to continue Medicaid coverage for children currently receiving SSI, who are disqualified under the new rules defining childhood disability. However, this proposal only helps current recipients. It will not ensure Medicaid coverage for children who would have qualified for SSI, and thus Medicaid, under the former rules, but cannot meet the stringent new standards.

New Barriers to Economic Security Facing Low-Income Families

Ensuring that low-income individuals are protected from discrimination is only one piece of a larger, more fundamental struggle to help low-income families chart an escape path from poverty to financial independence. The new law ignores many of the specific barriers -- such as the lack of

livable wage jobs, transportation, health care, child care, domestic violence counseling, and limited access to quality education and job training programs -- that make it difficult for low-income individuals to move permanently from welfare to work. Many welfare recipients, for example, are being forced to drop out of school and take "dead-end" jobs even though completing their education may be the only way they can get jobs to support themselves and their families.

The welfare to work initiatives included in the budget may mean more funding to help individuals get jobs, but it is unclear what these initiatives will be and how much funding will be available. Even the original budget proposal -- $3.6 billion allocated over five years -- is not enough to meet the needs of all of those who must find work. **We urge you to pursue meaningful and much-needed reforms, and seek additional funds to: (1) create new jobs that pay decent wages; (2) expand access to education and job training so that welfare recipients can be better prepared for the workplace; and (3) provide necessary support services, such as child care, health care, domestic violence counseling, and transportation costs, that welfare recipients need to go to work.** Without such reforms, welfare recipients will be pitted against, or simply displace, other low-wage workers as they vie for an inadequate supply of jobs and compete for ever-dwindling support services.

This Administration has distinguished itself by standing firm in its commitment to uphold basic civil rights protections for all individuals. We urge you to make the promise of our civil rights laws a reality for all individuals, particularly those most vulnerable, by making civil rights enforcement a top priority as the new welfare law is implemented. And, we urge you to go even further, by working to restore equal treatment for immigrants to this country, a safety net for children and adults with disabilities, and assistance to poor families struggling to achieve financial independence.

Sincerely,

Dr. Dorothy I. Height
Chairperson
Leadership Conference on Civil Rights

Wade Henderson
Executive Director
Leadership Conference on Civil Rights

Horace Deets
Executive Director
American Association of Retired Persons

Jackie DeFazio
President
American Association of University Women

Marian Wright Edelman
Founder & President
Children's Defense Fund

Marcia Greenberger
Co-President
National Women's Law Center

Antonia Hernandez
Executive Director
Mexican American Legal Defense & Educational Fund

Judith L. Lichtman
President
Women's Legal Defense Fund

Paul Marchand
Director
The Arc of the United States

Gerald McEntee
International President
American Federation of State, County & Municipal Employees

Kweisi Mfume
President & CEO
National Association for the Advancement of Colored People

Karen Narasaki
Executive Director
National Asian Pacific American Legal Consortium

Hugh Price
President
National Urban League

Rabbi David Saperstein
Executive Director
Religious Action Center
Union of American Hebrew Congregations

Andrew L. Stern
President
Service Employees International Union

Patrisha Wright
Executive Director
Disability Rights Education and Defense Fund

Stephen P. Yokich
President
International Union, United Automobile Workers of America

Raul Yzaguirre
President
National Council of La Raza

WOMEN
EMPLOYED
INSTITUTE

22 WEST MONROE STREET, SUITE 1400 • CHICAGO, ILLINOIS 60603
VOICE 312.782.3902 • FAX 312.782 5249

April 25, 1997

President William J. Clinton
The White House
1600 Pennsylvania Ave.
Washington, DC 20500

Dear President Clinton:

On behalf of hundreds of thousands of women in poverty who will be required to meet the work requirements of Temporary Assistance for Needy Families (TANF) under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, we urge you to support employment protections for participants of "Workfare" and other work-related programs.

Most Workfare programs, which states can create to meet their TANF work requirements, require TANF recipients to work in exchange for their benefits. Unfortunately, TANF does not mention the full range of employment and anti-discrimination laws that can protect Workfare participants from unlawful conduct. Current workers who do not receive TANF are already protected by such employment laws as the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act, the Family and Medical Leave Act and the Occupational Safety and Health Act. Denying Workfare participants similar protections sends the intolerable message that employers need not worry about treating Workfare participants fairly or with dignity and would allow Workfare employers to benefit from the labor of Workfare participants who are trying to support their families.

In a typical Workfare arrangement, employers will get TANF recipients to work for 20 hours per week and perform any work that the employer assigns. The employer will direct the participant's work, supervise the participant, and monitor the participant's progress, but will not be required to pay the participant's wages, provide skill training or commit to hiring the participant permanently. In most cases, the employer's extensive authority to direct and control the participant's work will satisfy the legal tests, such as the "economic realities" test that courts have used to determine whether a worker is covered by a particular employment law.

If employment protections are denied to Workfare participants, then this "make work" program, which is not creating jobs, is punishing recipients. In the absence of basic employment protections, Workfare participants are treated as prisoners who may have to endure discrimination or working in unsafe and hazardous environments or risk being sanctioned and losing their TANF benefits if they do not work under these conditions.

In light of TANF's strict work participation requirements and our economy's lack of a sufficient number of entry-level jobs, we must create programs and policies that help women find livable wage jobs that can support women and their families. Unfortunately, many Workfare programs will not advance these goals. Workfare forces participants to work in any job without regard to whether they need additional education, pre-employment or vocational skills training, or whether that job will lead to permanent, unsubsidized employment before their time limited cash assistance expires. But, if states decide to implement Workfare programs, basic employment protections must be extended to program participants.

As you stated in your proclamation for Women's History Month, women are almost an equal share of the labor force, yet gender barriers still exist that must be broken down. Do not allow Workfare to increase the barriers that women on welfare face as they work to become self-sufficient. We count on you to insure that Workfare workers are covered by the same employment protections that our country ensures for the rest of our workforce.

Sincerely,

American Friends Service Committee
American Jewish Congress Commission for Women's Equity
Black Women's Agenda, Inc.
Center for Women Policy Studies
Chicago Commons Employment and Training Center
Chicago Jobs Council
Child Care Action Campaign
Clearinghouse on Women's Issues
Church Women United
Day Care Action Council of Illinois
Hadassah
Illinois Hunger Coalition
INET for Women
League of Women Voters of Chicago
League of Women Voters of Illinois
Mid America Institute on Poverty
National Association of Social Workers
National Center for the Early Childhood Workforce
National Council of Negro Women, Inc.
National Organization for Women
National Women's Conference

KIDS PEPP

PUBLIC EDUCATION AND POLICY PROJECT

122 S. MICHIGAN AVE.
SUITE 2050
CHICAGO, IL 60603
312-922-3863
FAX: 312-922-3337

A JOINT PROJECT OF FAMILY FOCUS AND THE OUNCE OF PREVENTION FUND

PAUL METZGER
CHAIRMAN
THE OUNCE OF PREVENTION FUND

IRVING B. HARRIS
CHAIRMAN EMERITUS
THE OUNCE OF PREVENTION FUND

BERNICE WEISSBOURD
PRESIDENT
FAMILY FOCUS, INC.

April 24, 1997

President William J. Clinton
White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear President Clinton:

We would like to take this opportunity to highlight our concerns regarding employment protections for low-income heads of household who will likely be required to participate in "workfare" programs in order to receive cash benefits under the Temporary Assistance for Needy Families (TANF) block grant. We are asking that you support extending employment protections to welfare recipients participating in workfare.

The Kids Public Education and Policy Project was established in 1987 as a joint effort of the Ounce of Prevention Fund and Family Focus, Inc. to advocate for state and federal policies benefiting children and families.

According to provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, states have the ability to use workfare programs in order to meet the work participation requirements outlined in the legislation. Our concern is that only employers, and not workfare participants, will benefit unless the employment supports under the Fair Labor Standards Act (FLSA), Title VII of the Civil Rights Act of 1964 and the Occupational Safety and Health Administration (OSHA) are extended to this vulnerable population. Put directly, employers should not benefit at the expense of low-income parents who are trying to support their families.

The provisions of the new welfare legislation permit employers to use workfare participants for up to 20 hours per week without any compensation, including wages, skill training or promises of eventually hiring workfare employees. The employer's role under the workfare arrangement clearly meets the "economic realities" test which has been used by the courts to define whether or not a worker is an employee for FLSA coverage. This test factors in the employer's employment authority and control over the workfare participant and maintenance of participant employment records.

Under the old guidelines for the JOBS program, workers were covered under Title VII, OSHA and FLSA's minimum wage protection, mandating that the hours a recipient worked could not exceed her grant divided by the minimum wage. If these same protections are not extended to workfare participants, then this "make work" program—which does nothing to create jobs—will punish welfare recipients in two ways. First, it will force participants to work instead of allowing

them to receive the education, job readiness and job search they require in order to move towards self-sufficiency before losing eligibility for time-limited cash assistance. Second, without basic employment protections, workfare participants will face the possibility of discrimination or working in unsafe environments in order to avoid being sanctioned or losing cash benefits entirely.

The combination of TANF's work requirements and the lack of entry-level jobs puts welfare recipients in a difficult position. Because we are charging welfare recipients with the serious task of finding family-supporting employment, we have a responsibility to eliminate programs and policies which pose barriers. The responsible implementation of work-oriented welfare reform requires nothing less.

Again, we urge you not to allow workfare programs to become the next major stumbling block for families who are moving towards self-sufficiency. Please support extending employment protections to welfare recipients participating in workfare.

We look to you to provide the leadership necessary to ensure that welfare recipients enter the world of work with the same employment protections granted to the rest of the workforce.

Sincerely,

Nancy Shier

Nancy Shier, Director

For more information:
Maurice Emsellem
National Employment Law Project
(212) 285-3025, ext. 106

WORKFARE PRESS CONTACTS

May 1, 1997

WORKER ACCOUNTS

- General Issues

Kathy Wilkinson (attached press clipping)
Wheeling, West Virginia
(304) 242-7773

Kathy Wilkinson is a single mother with two daughters, ages nine and eleven, from Wheeling, West Virginia. She works two part-time minimum wage jobs at West Virginia Northern Community College – as a lab assistant and a math tutor. She has an Associate's degree and is currently working toward a Bachelor's Degree in Education. Ms. Wilkinson was actively involved in last year's successful campaign to raise the federal minimum wage. In recognition of her work, she was honored at the minimum wage bill signing ceremony and introduced the President. Ms. Wilkinson is now campaigning for the rights of workfare workers for protection under basic employment laws.

Brenda Stewart (attached affidavit)
Brooklyn, New York
(718) 789-6565

Brenda Stewart, who has two children has been receiving Aid to Families with Dependent Children and Food Stamps since was laid off in 1992 from her job of two years with a community-based organization. Since 1994, Ms. Stewart has been assigned to the New York City workfare program doing extensive clerical work (filing, answering phones, and processing mail) for the Department of Social Services, which are duties equivalent to City employee title "Office Aide III". In return for $561 a month in benefits, she has worked from 20 to as much as 35 hours a week. She was recommended for a full-time position by her supervisors, which she did not receive, and was instead assigned to train the newly-hired worker.

- Health & Safety

Ralph Tricoche (testimony attached)
Queens, New York
contact: Karen Yau, National Employment Law Project
(212) 285-3025, ext. 109

Ralph Tricoche is a recipient of Home Relief in New York City. Since August 1996, he has been assigned to the Department of Parks and Recreation workfare program for 46 hours every two weeks in return for monthly Home Relief and Food Stamps totaling $296 a month. In the Parks Department, workfare workers now out number regular paid employees by 3 to 1. Among other responsibilities, Mr. Tricoche has raked leaves, removed garbage and swept the grounds. In fulfilling these duties, he has handled contaminated needles, soiled diapers, cloths and underwear, vomit, faces and Kotex. He has trimmed trees and rode on the back of a garbage truck to pick up garbage. He has used a chain-cutter to cut chains in order to replace old garbage cans. He has performed these responsibilities without any training on his health and safety rights.

Mr. Luis Pagan (attached workers' compensation complaint)
Bronx, New York
contact: Karen Yau, National Employment Law Project
(212) 285-3025, ext. 109

Mr. Pagan is a recipient of Home Relief in New York City. In 1995, he was assigned to a workfare placement in the Department of Parks and Recreation. He was seriously injured on April 16, 1996, working in a parks garage. Over his objection, Mr. Pagan was told to go with a truck driver to deliver garbage to a recycling plant. He was told to unjam the garbage container which was stuck with a tree. Mr. Pagan recalled that when he turned the handle of the container, the handle flew against his mouth "like a bullet". His teeth were knocked out of his mouth and he was rendered almost unconscious and taken to the emergency room. Since assigned to workfare, Mr. Pagan has never received any right-to-know health and safety training or any training in the operation of mechanical equipment. Despite his injury, he has been reassigned to workfare in the parks, and he continues to work without required health and safety training.

- Discrimination

For examples of disability discrimination in the operation of New York City's workfare program, contact: Cathleen Clements, Brooklyn Legal Services (Corp. B), (718) 237-5500.

- Wage & Hour

For information on an Ohio court case (Marilyn M.) involving a workfare participant who worked 740 hours extra without "compensation" due to an error in the calculation of her hours, contact: Gary Smith, Southeastern Ohio Legal Services (330) 364-7769.

EMPLOYER ACCOUNTS

- Non-Profit Employers

  Fay Codding
  Lutheran Services in America, Washington, D.C.
  (202) 626-7935

  Lutheran Services in American (formerly the Association of Lutheran Social Ministry Organizations) is a national organization with local affiliates that operate social service programs for the poor. Lutheran Services in America is a signatory to the Fair Work Campaign, which is a code of conduct for employers of workfare participants guaranteeing basic worker protections, including the minimum wage, and promoting maximum access to job training and job placement.

- Private-Sector Workfare

  Jerry Helmick, United Food & Commercial Workers, Kansas City, Missouri, (816) 842-4086
  Tim Barchak, Service Employees International Union, Local 91, Kansas City, Missouri, (816) 931-9100

  The Tyson Chicken plant in Sedalia, Missouri, a rural area of Missouri, has developed a program with the local Department of Social Services, which is also being promoted in state legislation, to refer welfare recipients to the plant for minimum wage jobs processing chicken parts. If the recipients do not accept the placements, in what are often hazardous jobs, they are automatically sanctioned from their benefits.

  Geri Reilly, New York Assembly Labor Committee, Albany, New York, (518) 455-4311 (see attached correspondence)

  In August 1996, the calandar-making company, "At-A-Glance" began employing workfare workers referred by a local community-based organization for work regularly performed by the union workforce. As the regular workforce was laid-off in December 1996, the workfare workers stayed on the job until the program was eventually terminated.

NATIONAL ORGANIZATIONS

- Civil Rights Groups

  Wade Henderson
  Leadership Conference on Civil Rights
  Washington, D.C.
  (202) 466-3311

  Catherine Powell
  NAACP Legal Defense & Education Fund
  New York, New York
  (212) 219-1900

- Women's Groups

  Ellen Bravo
  9 to 5, National Association of Working Women
  Milwaukee, Wisconsin
  (414) 274-0928

  Jocelyn Frye
  Women's Legal Defense Fund
  Washington, D.C.
  (202) 986-2600

  Martha Davis
  NOW Legal Defense & Education Fund
  New York, New York
  (212) 925-6635

  Melissa Josephs
  Women Employed Institute
  Chicago, Illinois
  (312) 782-3902

- Fair Work Campaign

  Maurice Emsellem
  Fair Work Campaign
  c\o National Employment Law Project
  New York, New York
  (212) 285-3025, ext. 106

- Labor Unions

  Marc Baldwin
  AFL-CIO, Policy Dept.
  Washington, D.C.
  (202) 637-5202

  Marie Monrad
  AFSCME, Policy Dept.
  Washington, D.C.
  (202) 429-1155

  Carol Golubock
  SEIU, Legal Dept.
  Washington, D.C.
  (202) 898-3454

- Low-Wage & Immigrant Worker Organizations

  Roy Hong
  Korean Immigrant Workers Advocates
  Los Angeles, California
  (213) 738-9050

  Maurice Emsellem
  National Employment Law Project
  New York, New York
  (212) 285-3025, ext. 106

- Welfare Advocacy Groups

Henry Freedman
The Welfare Law Center
New York, New York
(212) 633-6967

Steve Savner
Center for Law & Social Policy
Washington, D.C.
(202) 328-5118

Cindy Mann\Steve Berg
Center for Budget & Policy Priorities
Washington, D.C.
(202) 408-1080

- Workfare Organizing Groups

John Kest
ACORN
Brooklyn, New York
(718) 693-6700

Benjamin Dolchin
WEP Workers Together!
c\o Fifth Avenue Committee
(718) 857-2990, ext. 18

Before President Clinton signed legislation raising the minimum wage during a ceremony at the White House yesterday, he spoke with Kathy Wilkinson, a minimum-wage worker from Wheeling, W.Va. Her daughters, Lisa and Deborah, sat at right.

Clinton Signs a Bill Raising Minimum Wage by 90 Cents

By RICHARD W. STEVENSON

WASHINGTON, Aug. 20 — Ending a political battle Democrats had played to their advantage for months, President Clinton signed legislation today raising the minimum wage by 90 cents an hour over the next year, saying the measure would give 10 million workers "a chance to raise stronger families and build better futures."

The increase will raise the minimum wage to $5.15 an hour, from $4.25, in two steps, the first being an increase of 50 cents an hour in paychecks effective Oct. 1, a month before Election Day.

Sounding a theme that will be central to his re-election campaign, Mr. Clinton said the increase was part of his Administration's record of improving conditions for working Americans.

"These 10 million Americans will become part of America's economic success story," Mr. Clinton declared at a ceremony on the South Lawn attended by labor leaders, Vice President Gore and a group of children of minimum-wage workers.

For a full-time worker earning the current minimum, the new law, when fully phased in with a 40-cents-an-hour increase on Sept. 1, 1997, will mean an annual raise of $1,600 before taxes, to $10,300.

Mr. Clinton used the occasion to credit his Administration with the creation of 10 million new jobs, a steep reduction in the Federal budget deficit and signs that a long period of wage stagnation is ending. The signing is the first of a series of events this week that he hopes will both burnish his Presidential image and emphasize his campaign message that he is the best protector of the economic interests of average Americans.

Mr. Clinton was also clearly seeking to give himself some political momentum in the days leading up to the Democratic National Convention in Chicago next week. He is scheduled to sign legislation on Wednesday to improve access to health insurance, and he will sign the bill overhauling the welfare system later in the week, probably on Thursday.

Sounding a theme for Election Day and seeking political momentum.

Although the minimum-wage increase was largely the work of Democrats in Congress, the legislation also contained many provisions demanded by Republicans to help small businesses. Several Republican legislators were present at the ceremony. Mr. Clinton did not once mention his Republican challenger, Bob Dole, who as Senate majority leader opposed raising the minimum wage.

But he alluded to his campaign's strident criticisms of Mr. Dole's plan to slash taxes as fiscally irresponsible and a threat to Medicare and other politically sensitive programs.

"A minimum-wage increase, portable health care, pension security, welfare-to-work opportunities — that's a plan that's putting America on the right track," Mr. Clinton said.

"Now we have to press forward," he said, "giving tax cuts for education and child rearing and child care, buying a first home, finishing that job of balancing the budget without violating our obligations to our parents and our children and the disabled and health care, to education and the environment and to our future."

The Dole campaign issued a statement calling the minimum-wage bill a "helpful, but small, step toward addressing the economic anxiety of American workers."

"Remember, a tax cut is a raise, and that is exactly what Bob Dole will give Americans," said Christina Martin, a spokeswoman for the Dole campaign. "Fair tax cuts, a balanced budget and spurred job growth will be the mainstays of a Dole Administration."

The minimum-wage legislation was among the most hotly debated bills of the current Congress, and one that for months seemed doomed by strong opposition from the Republican majority. Many Republicans argued that raising the minimum wage would destroy jobs by making it too expensive for employers, especially small-business owners, to keep on as many workers.

But the wage increase won overwhelming public support in opinion polls, and Republicans largely gave in after it was tied to a measure offsetting some of the costs to small business owners, partly through tax breaks valued at $21 billion over 10 years.

The breaks include more generous provisions for writing off the cost of investments. The measure also simplifies requirements for small-business pension programs. In addition, it contains an unrelated provision establishing a $5,000 tax credit for couples who adopt a child.

Kathy Wilkinson, a lab assistant and student from Wheeling, W.Va., who is a single parent of two daughters and earns the minimum wage, said at today's signing ceremony that the law would have a "phenomenal" effect on her life.

"It's going to be such a relief to be able to pay the gas and the electric all within one month because I've got that little bit extra in my paycheck," Ms. Wilkinson said. "And for my children, both of whom want to be in the school band, I can now afford to put some money away to get them the instruments."

AFFIDAVIT

STATE OF NEW YORK)
ss.
COUNTY OF NEW YORK)

BRENDA STEWART, being duly sworn, deposes and says:

1. I am 48 years old and live with my 2 sons, ages 19 and 16, at 934 Carroll Street, Brooklyn, New York 11225.

2. I submit this affidavit in support of plaintiffs' motion for class certification, preliminary injunctive relief, and a temporary restraining order.

3. My family receives Aid to Families with Dependent Children ("AFDC") and Food Stamps from respondent HAMMONS through Income Support ("IS") Center #67, under case number 2499916-1. I currently receive $289.00 semi-monthly AFDC and $272/month in food stamps.

4. Before May 1996, hy husband was on my budget. When he was on the budget, we were receiving $331.00 semi-monthly and $333/month in food stamps.

5. I have been receiving public assistance since 1992, when I was laid off from a job with Wildcat Services, a community organization, where I had been employed for 2 years.

6. In June, 1994, respondent HAMMONS sent me a notice of appointment directing me to report to the Office of Employment Services, located at 109 East 16th Street, New York, New York. I reported at the time and date scheduled. I had a brief discussion about my goals for future employment with a representative of respondent HAMMONS. The representative for respondent HAMMONS advised me I would have to participate in the Work Experience Program ("WEP") 20 hours a week (4 hours/day, 5 days/week). He told me to report to the Department of Social Services, Livingston IS Center (#72) at 98 Flatbush Avenue, Brooklyn, New York, 11217, where I would do clerical work. A copy of the Assignment Information Summary he gave me is attached hereto as Exhibit A.

7. No one ever advised me how my hours of WEP participation were calculated.

8. At the Livingston IS Center, Audrey Brow, the WEP supervisor, assigned me to an Undercare Group in the Income Support Center. The Undercare Assistant Office Manager assigned me to do clerical work. My responsibilities included compiling information for various reports, which involves tallying the number of cases processed each day by the caseworkers. I was also responsible for filing papers, answering the phone, and processing incoming and outgoing mail.

9. My work responsibilities as a WEP participant were equivalent to that of a City employee with the title "Office Aide III".

10. In 1995, the office manager changed my duties as a WEP participant. I was to compile information for various reports, but on behalf of many more caseworkers.

11. In August 1995 I heard from co-workers that there were job openings for clerks at IS Centers. I spoke to the office manager about my applying for one of these positions, and she told me my name had been submitted. I also read a memo to directors of IS Centers asking for lists of potential applicants. A copy of that memo is attached hereto as Exhibit B. I was not hired.

12. Instead, I trained the person who was hired for the clerk position in my office. She then took over the responsibility for compiling information for some of the reports I had been doing.

13. In January 1996 I received a letter from a representative of respondent HAMMONS, advising me my hours of WEP participation were increased to 70 hours every two weeks. A copy of that letter is attached hereto as Exhibit C. As a result, I then worked at the Livingston IS Center from 9 AM to 5 PM, 5 days a week, with one hour for lunch, for a total of 35 hours a week.

14. In the spring of 1996, I went to the ninth floor of 250 Church Street, the headquarters of the New York City Human Resources Administration ("HRA"), where I spoke with a Ms. Nelly Perez about the hiring procedure at HRA. She told me that the agency chose names submitted according to the priority that the ISC directors placed them in. She explained that the agency had not gotten to my name on the list and that I would have to wait. After that, I asked two staff members at the Livingston ISC to write letters of recommendation for me to speed along the hiring process. A copy of the two recommendation letters I received are attached hereto as Exhibit D. In June 1996, I received from the Director and Deputy Director of the Livingston ISC a Certificate of Appreciation for outstanding achievement. A copy of that certificate is attached hereto as Exhibit E.

15. Although my family's budget was reduced in May 1996 to reflect to removal of my husband from the budget, my work hours not reduced at that time. My WEP supervisor, Audrey Brown, told me I need to wait until my case was reclassified to reflect my husband's absence from the household to see if my hours would be reduced.

16. If the work I was performing at that time had been done by a paid City employee, it would have been compensated at a significantly higher rate. On information and belief, an Office Aide III would be paid no less than $8.50 an hour.

17. As I was working in essentially the same position for approximately two years, it seemed unlikely that my WEP assignment would lead to full-time employment with the City.

18. If my hours of WEP participation had been reduced I could have taken refresher courses in computers and sought employment in that field. I took several computer courses in the past and did very well in them, including being the salutatorian of my class at Crown Business Institute.

19. Since I was required to be at work from 9 AM to 5 PM, 5 days a week, it was extremely difficult for me to pursue other employment opportunities.

20. On or about August 12, 1996, I was told that my name had been removed from the WEP roster at the Livingston ISC. No one at the center or at OES was able to explain to me why my name had been removed. A supervisor at OES told me that I would get a letter from the BEGIN program, but he did not tell me what the letter would say and he did not know when I would get the letter.

21. In November 1996, I received a letter calling me in to the BEGIN program on November 25. I went to the November 25 appointment at the Willoughby BEGIN Center where I was reassigned to WEP, this time at the Department of Health. I was given a referral form for that assignment which informed me that I was to work 40 hours every two weeks. A copy of that referral form is attached hereto as Exhibit F. I was never told how the 40 hours was calculated, and no one I spoke to about my assignment mentioned what wage rate was used to determine the number of hours I was to work.

22. If I do not participate in the Health Department WEP assignment, I could be subjected to a sanction reducing my benefits. My grant is currently not enough to pay all of my bills. On the other hand, if I go to work to avoid a sanction, I would be working at least part of the time for the City for free.

23. I object to being assigned without being told what the Labor Department's determination of the prevailing wage rate is for this new assignment. Also, I am currently contesting my assignment through the administrative process on grounds unrelated to this suit.

24. No prior application has been made for the relief requested herein.

WHEREFORE, it is respectfully requested that the Court grant the relief sought herein.

Brenda Stewart
BRENDA STEWART

Sworn to before me this
18th day of December 1996.

Michelle Florence Green
Notary Public

MICHELLE FLORENCE GREEN
Commissioner of Deeds
City of New York 3-3559
Certificate Filed in New York County
Commission Expires October 1, 19[illegible]

Statement by
RALPH TRICOCHE
WEP Worker

Submitted to

The Council of the City of New York

Joint Hearing of the Committee on Parks, Recreation, Cultural Affairs and International Intergroup Relations and the Committee on General Welfare

December 12, 1996

"Oversight of the Parks Department Use of Work Experience Program (WEP) Workers"

Good afternoon, my name is Ralph Trioche. I live in Astoria, Queens and I was a participant in the Work H.R. Experience Program from August through November of 1996. My first WEP assignment was in Astoria Park in Queens. I was there for two weeks before I was transferred to my own site, Athens Square Park. Athens Square is a playground park in Queens. I was responsible for taking care of this park with one other WEP worker.

When I arrived at Astoria Park, I received no instruction or training to do my job. I was handed a rake and told to rake leaves. When I moved to Athens Park, I was dropped off by the supervisor and told to keep the park clean. The supervisor said, when he came by he wanted to see the park clean. I wasn't told I would be picking up feces or how to deal with bloody needles.

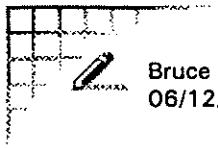
As the person responsible for the park, I did things like paint, clean bathrooms and pick up trash. People who used the park's bathrooms sometimes left feces on the floor, which I had to clean up. When I did painting, I had to scrape old paint off and I had no way of knowing what was in the paint chips that were flying into my nose and mouth. At no time was I issued protective gear to do these things. I was not provided a mask or rubber gloves to do any of these jobs. I believe, I was entitled to a uniform of some kind including pants, shirt and jacket. When I went to work, I had to wear my own clothes which were ruined by the work I did. I received no extra money from welfare to buy clothes to do my WEP job.

In doing my job, I picked up garbage and anything that people left in the park. I picked up bloody needles, pampers, kotex, dirty clothing, broken glass and feces. I received no training as to how to pick these things up and no protective equipment. The only personal protective equipment I ever received was the one pair of gloves. I never

learned about any hazardous material, biological or chemical, virus or bacteria that I may have been exposed to by coming into contact with blood or feces.

In doing my WEP job, I ran the same risk as the Sanitation worker who recently died doing his daily routine when a jug of acid that was left out for curbside pick up, exploded in his face. If I had been hurt doing the same type of daily routine, picking up some unknown hazardous material that had been left in the park, my story never would have made it in the paper. And I wouldn't have even received a decent burial.

I had no chance of getting a real job with the Parks Department. I did the same job that city workers used to do, except I did it for slave wages. The WEP program is about exploitation. It's about indentured servitude with no chance for advancement or independence for obtaining a real job.



Bruce N. Reed
06/12/97 05:37:41 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc: Elena Kagan/OPD/EOP
Subject: Re: Draft Minimum wage letter from Bruce and Gene

That draft isn't bad, but it is conspicuously short. I think you should add a few graphs about the Administration's strong commitment to work requirements, and to moving people from welfare to work, especially into private sector jobs so they can be truly independent. We are confident that states that are serious about welfare reform will be able to meet and exceed the work rates in the bill, particularly if they emphasize private sector jobs where of course the minimum wage has always been a given. You might also add a few lines about our success (record caseload drop etc), our good relationship in working with Congress to implement the law, and our conscious effort not to reopen the welfare bill.

Thanks for helping me take my medicine.

WR-FLSA

Cynthia A. Rice 06/11/97 01:01:36 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP

cc:

Subject: Emily update on governors and FLSA

Emily thinks she's persuaded NGA not to send up a letter on FLSA which would undercut us -- in part, since they're doing so well so far, they don't see as much of a need for it.

WR-FCRA

Emily Bromberg
06/11/97 04:34:20 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP, Diana Fortuna/OPD/EOP

cc:
Subject: flsa

no nga executive committee conference call to discuss flsa scheduled. don't think one will be in the near future. chiles has been convinced to hold his fire until such time that it is needed on the hill (and now does not seem to be the time, since he's getting what he wants in committee) .

WR - FL MA

Diana Fortuna
06/11/97 11:51:53 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Cynthia A. Rice/OPD/EOP
Subject: Min wage

Cynthia and I met with Mark Greenberg yesterday to quietly get his advice on potential ways out of the minimum wage/workfare box, if that becomes necessary.

His best idea was to return to an idea floated during debate on the law -- let states count people toward the work requirements if they leave the welfare rolls for a private sector job, for a limited number of months. The obvious arguments against this are: It is just another way to loosen the work requirements; and this idea was an alternative to the caseload reduction credit that was ultimately enacted, so this would allow double dipping by states.

Mark's response to this was that this is a better way to loosen work requirements than other ways, because it creates an incentive, relative to current law, for states to stress private sector jobs over workfare. (Also, it is rhetorically better than approaches like counting job search or education -- we are saying give states credit for private sector jobs.)

He also argues that states with low benefits like Mississippi are at a disadvantage relative to state with high benefits and generous income disregards, like Michigan, and this would help redress that -- i.e., many people that Michigan puts to work are able to remain on the welfare rolls because of these more generous policies, and still count toward the work participation requirements, while someone who works just a few hours in Mississippi has income too high to keep their benefits, and therefore Mississippi can't count them as a success.

He also argued that the double count problem was not all that significant, because the caseload reduction credit is lagged a year, but Cynthia and I weren't so sure his logic was good here. Maybe we could do this and shave back on the caseload reduction credit? Not sure if that works.

We are checking to see if this was in our 94 and 96 bills.

WR -FLSA

Cynthia A. Rice 06/10/97 07:34:27 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP

cc:

Subject: Moynihan staff on FLSA

Doug Steiger from Moynihan's staff has sent me a few notes in the last two days about his talks with Committee Democrats on FLSA. Here they are, in the order in which I received them:

[Yesterday he wrote:]

> At some point this week, we should have a chat about FLSA. I think my boss is (believe it or not) with the Administration on this issue, although I still need to confirm this. If the Majority follows Ways and Means on this issue, my first thought is to try to strike the state option to include other benefits and concede the "not employees" and TANF+food stamps calculation. (I don't have a lot of confidence I can get all the Dems to that position, let along going any further but we haven't really talked it through yet.) But I wouldn't be surprised if you all want a pure motion to strike.

[I urged the pure strike option. He replied:]

> You're right, and I'd prefer to do what the House folks did. I just don't know if the troops are willing to follow. I suspect, but have no evidence, that the vote total gets one or two better with a partial strike. But I'll know better within a day or two (I hope).

[And today he said:]

> I think we won't be able to hold Graham on FLSA. Causes too much trouble for Florida and, well, he used to be a governor you know. As for others, I'm spending more time explaining the issue to staff than getting a response as to where their bosses are at. I'm sure you had that experience with a few issues last year.

WR-FLPA

Cynthia A. Rice 06/10/97 07:26:56 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP

cc:
Subject: Draft Education and the Workforce letter for Mark up

Bruce had a contentious discussion with Josh Gotbaum tonight about this language. Bottom line--Gotbaum refused to budge, said it would look strange to take out the sentence that was in the Archer letter, Bruce said we were pissed that was snuck into the Archer letter to begin with and that there's disputing among the agencies as to whether it's true that "welfare recipients will be deprived of the protection of laws addressing employment discrimination, child labor, overtime, and family and medical leave."

With reluctance on Bruce's part, they agreed to leave the sentence in but wipe the slate clean for the next go-around.

w&m0610.9 ---------- Forwarded by Cynthia A. Rice/OPD/EOP on 06/10/97 07:21 PM ----------

Barry White
06/10/97 06:24:51 PM

Record Type: Record

To: Jill M. Blickstein/OMB/EOP

cc: See the distribution list at the bottom of this message
Subject: Draft Education and the Workforce letter for Mark up

Attached is a draft of the letter for the mark up scheduled for 10:00 am Wednesday.

The two pieces of text at issue with DPC staff are bolded.

Let us know if we can be of any further help.

Message Copied To:

WR-FL 8A

Diana Fortuna
06/10/97 04:40:32 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Bruce N. Reed/OPD/EOP, Cynthia A. Rice/OPD/EOP
Subject: Screw-up on Archer SAP

We just learned that a very bad sentence on minimum wage that was not in the Shaw letter was added to the Archer SAP at the last minute:

"In addition, under this proposal, working welfare recipients will be deprived of the protection of laws addressing employment discrimination, unsafe workplaces,child labor, overtime, and family and medical leave."

We had clearly told OMB what we wanted it to say -- the first draft of the Shaw letter had language like the above, and we complained. Then both the Shaw letter and earlier drafts of the Archer letter reflected our wishes. According to Barry White, though, this was added at the last minute, he thinks between Jack Lew and Martha Foley. I guess this means we have to insist on seeing these one last time before they go out the door. You guys would have to make this point to Jack Lew for it to really stick.

Barry is asking Jack Lew his opinion on whether this sentence should be dropped from all future versions. I assume we would want it dropped, despite the awkwardness of having it appear and then disappear?

WR - FLSA

NOTE: Graphic treatment of headline features the words "MINIMUM WAGE" treated kind of like a floor or foundation of a house, with the edges nibbled around it (as if termites were eating away at it.)

They're chomping at the MINIMUM WAGE again.

America has a wage floor. It's the federal minimum wage, and it's one of our oldest and most fundamental protections for working families. It's there because work has value, and people who work are entitled to a reasonable wage. It's there to prevent employers from driving wages down by pitting one group of workers against another. It's there to give millions of working poor a chance to support their families and contribute to their communities.

But some members of Congress are swarming after it—again. They're proposing to chomp away at our wage floor by creating different classes of workers--some who are entitled to the minimum wage and some who aren't. Through a slew of exemptions and restrictions, they want to overturn a Labor Department ruling that people working in state "workfare" programs are covered by the Fair Labor Standards Act—just like everybody else.

If they succeed, they will create a perverse incentive to fire workers who earn at least the minimum wage and replace them with others who aren't entitled to basic labor protections.

They'll undermine any possibility that welfare reform can reduce dependency on welfare by leading people into real jobs with real wages.

They'll hack away at the minimum wage we raised just last year--an action Americans overwhelmingly supported--so that working poor families could rise from poverty through the dignity of work.

They'll degrade the value of work--and that hurts everyone who works for a living.

Once we start excluding workers from the minimum wage, where does it end?

Can America afford to pay workfare participants the minimum wage? The answer is yes. Every state except Mississippi can do it without new funding. More to the point, what America can't stand is more erosion of workers' living standards--especially of those in the lowest-wage jobs who have already lost the most ground.

Stop the backdoor attack on the minimum wage.

Call your representatives in Congress and tell them that America has a wage floor for a reason. Don't destroy it.

(List sponsors)
AFL-CIO, etc.

+ FICA //
emphasize this → + flexib on wk reg.

HHS guidance -
on comb regs
numerators/denominators
etc.

WR-FLSA

Cynthia A. Rice 06/09/97 04:00:21 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP

cc:

Subject: FYI: Note on FLSA from Moynihan's staff

---------- Forwarded by Cynthia A. Rice/OPD/EOP on 06/09/97 03:59 PM ----------

Doug_Steiger @ finance-min.senate.gov
06/09/97 07:54:00 AM

Record Type: Record

To: Cynthia A. Rice

cc:

Subject: FLSA

At some point this week, we should have a chat about FLSA. I think my boss is (believe it or not) with the Administration on this issue, although I still need to confirm this. If the Majority follows Ways and Means on this issue, my first thought is to try to strike the state option to include other benefits and concede the "not employees" and TANF+food stamps calculation. (I don't have a lot of confidence I can get all the Dems to that position, let along going any further but we haven't really talked it through yet.) But I wouldn't be surprised if you all want a pure motion to strike.

Moynihan is meeting with McEntee late today. I should have a better sense of where we're at after that. But I don't see a lot of go-to-the-mat labor champs on our committee.

FLORIDA DEPARTMENT OF CHILDREN & FAMILIES

Lawton Chiles
Governor

Edward A. Feaver
Secretary

MEMORANDUM

DATE: May 27, 1997

TO: Susan Golonka, National Governors' Association, by Internet Mail and FAX (202) 624-5313

FROM: Don Winstead, Welfare Reform Administrator

SUBJECT: Questions regarding Federal Guidance on the Fair Labor Standards Act and Other Federal Laws Applicable to Work Activities Under Welfare Reform

We have reviewed the information provided by the Department of Labor (USDOL) and the Department of Agriculture (USDA) regarding the application of the Fair Labor Standards Act (FLSA) and other federal laws to work activities under welfare reform. While the information provided by the federal agencies was useful in clarifying their position on these important issues, the information also prompted a number of additional questions. The following questions are provided to try to clarify some of the remaining questions and issues. We thought this might be helpful in your meetings with representative from the Administration.

As the questions show, we found the information provided by the federal agencies to have implications far beyond the relatively narrow question of whether work experience participants should receive the equivalent of the minimum wage. The extent to which the USDOL guidance firmly defined work experience as "work" rather than "preparation for work" or "work simulation" appears to have profound implications for program design and program costs. There appear to be also areas of significant potential federal fiscal liability that were not addressed in the guidance received. We have tried to provide questions that might be useful in defining the scope of their intent.

We have tried to avoid framing questions that are too "Florida-specific" to be useful for general information, however a couple of points about our Work and Gain Economic Self-Sufficiency (WAGES) Program may be helpful in putting our questions in context:

- Florida is a state administered, state operated system with a business oriented State Board of Directors that provided oversight to the program. Local oversight and planning responsibility is provided by 24 local coalitions.

- State law provides that subsidized employment activities such as wage supplementation are restricted to private sector employment (whether for-profit or not-for-profit).

- Work experience, community service work or workfare activities are restricted to the public sector or the private not-for-profit sector. Part of the rationale for this restriction was to minimize the likelihood of problems related to worker displacement.

- Although much analysis at the federal level (CBO, CRS, etc.) has been based on the assumption that states will strive to only meet participation requirements, we believe this is not the case. Our state (like a number of others) has time limits that are shorter than allowed under federal law (2 or 3 years). To provide families with their best opportunity to achieve self-sufficiency, we are striving for full participation by all families with an employable adult or a teen subject to the educational requirement.

- Although work experience has not involved a significant number of participants under our past JOBS program, we estimate that we must have a large number of people in this activity in order to meet our objectives of meeting federal participation requirements and providing all participants with an opportunity for employment before they reach their time limit. By the end of calendar 1997, we expect to have approximately 40,000 participants in work experience or community service work placements.

- Florida is a relatively low grant state with the maximum payment to a family of three being $303 per month.

- With that background, we pose the following questions:

EMPLOYER/ EMPLOYEE RELATIONSHIP

1. The information from the federal agencies makes it clear that work experience is work and that the benefit payment contingent on such work is earnings. Footnote #3 on page 2 of the USDOL guidance indicates that "for the FLSA to apply, there must be an employment relationship between and employer and an employee. If the work experience participant is the employee, who is the employer?

2. An April 15, 1997 memorandum by the American Law Division, Congressional Research Service examines some of the legal issues related to the FLSA. This analysis indicates that the payment of compensation is a key factor in the employer/ employee relationship. The memorandum quotes a USDOL publication as saying, "As a general rule of thumb, if you pay wages or compensation, you create an employment relationship." The memorandum also makes a distinction between the term "employee" as defined in the FLSA versus agency law or common law definitions. Does the administration agree with the CRS analysis? When the entity

that provides the compensation is different from the entity that is the worksite and provides supervision and direction in the workplace, does this analysis tend to tie the definition of employer more to the entity providing compensation?

3. Page 5 of the USDOL guidance addresses the applicability of the Occupational Safety and Health Act (OSHA). This section states that, "Generally, case law under OSHA tends to place compliance responsibility on the party most directly controlling the physical conditions at a worksite." If a work experience participant is assigned to a worksite that is a private, not-for-profit agency, is it possible that the state would be considered the employer for FLSA purposes, as the provider of compensation and that the private, not-for-profit agency would be the employer for OSHA purposes as the party controlling the worksite? If these questions depend on criteria other than payment of compensation and control of the worksite, what are those criteria?

TREATMENT OF INCOME.

If work experience is work and payments contingent on this "work" constitute "earnings" there are many possible implications of this treatment of income. The following questions explore these implications.

4. Ms. A. receives $303 per month in cash assistance under the state's IV-A TANF plan. Given her shelter expenses, her food stamp allotment is $285 per month with her cash assistance grant budgeted as unearned income. She is assigned to a work experience activity for 20 hours per week based on the value of her cash assistance and a portion of her food stamp allotment. Since Ms. A is considered an employee, is it correct that her $303 in cash assistance should be considered earned income for food stamp purposes? If so, this would increase Ms. A's food stamp allotment from $285 to $312 per month.

5. Continuing the previous example. Since Ms. A receives earnings of $303 in cash assistance, is it correct that the state would be required to withhold 7.65% of her earnings for FICA? This would reduce Ms. A's cash income by approximately $23 per month. Correct?

6. Since Ms. A's 20 hour per week work experience requirement is based on her cash assistance amount divided by the minimum wage for about 15 hours per week ($303 divided by 4.33 weeks per month, divided by $4.75 per hour), the remaining 5 hours per week are based on a portion of her food stamp benefit. Assuming the state has received approval to operate a simplified food stamp program, this would mean that approximately $103 of her food stamp allotment is "earned" and the remaining $209 would be "unearned". Would the state be required to withhold 7.65% of Ms. A's "earned" food stamp allotment, or approximately $8 for FICA? Since FICA is withheld from the "earned" portion of the food stamp benefit and since the food stamp benefit is 100% federally funded, we assume that the FICA contribution based on the food stamp allotment would be 100% federal funds while the FICA withheld

from the cash assistance would be either TANF block grant funds or state maintenance of effort funds? Would the withheld food stamp benefit be shown as an adjustment to the state's issuance reports or would some other accounting report be required?

7. Since Ms. A has two children and has "earnings," are we correct that she would qualify for the Earned Income Tax Credit (EITC)? Would this be based on the sum of her cash assistance "earnings" and the "earned" portion of her food stamp benefit? Could Ms. A receive a portion of the EITC as an advance EITC payment? Would the state add the amount of her advance EITC to her cash assistance payment or would the portion of the advance EITC that was based on her food stamp "earnings" be added to the food stamp allotment?

8. If the state chose to increase the required hours of work experience, from 20 to 30 hours (the maximum she could be required to "work" given her $615 total cash and food stamps), would the calculation of FICA and the EITC change because of the increase in "earnings"?

9. Since the EITC and advance EITC would be based entirely on "earned" welfare benefits, could the value of the EITC be added to the cash assistance and food stamp benefit in calculating the required hours of work experience?

10. Assume Ms. A is required to participate in work experience for 30 hours per week based on her $615 in "earnings" divided by the minimum wage. If it is determined that Ms. A was ineligible due to unreported assets, but that she did "work" the required number of hours, we assume that there would be no "overpayment" of cash assistance or food stamps that could be recovered from Ms. A since she must be paid the minimum wage for her "work"? To the extent that a state uses work experience, this could significantly reduce benefit recovery receivables for states and the federal government.

11. Assume that the state TANF plan was determined complete effective October 1, 1997 and that Ms. A was assigned to perform 20 hours per week of work experience in early October. The state did not have an approved simplified food stamp program and Ms. A was exempt from food stamp employment and training requirements due to the ages of her children. Her cash assistance benefit divided by the minimum wage equaled 15 hours per week. Since she was "suffered or permitted" to work 20 hours per week, must the state now pay Ms. A retroactive benefits for 5 hours per week times the minimum wage?

CHILD SUPPORT IMPLICATIONS

12. When Ms. A is placed in her work experience, since she has become "employed" and receives "earnings" must her placement be reported as a "new hire" on the state

directory of new hires as required by section 453A of Title IV-D of the Social Security Act, as amended ?

13. Under prior interpretations of law, public assistance paid to Ms. A created a public debt which could be recovered through child support enforcement activities. Once Ms. A is assigned to work experience and the cash assistance paid is considered her "earnings" for which she has "worked" would we be correct that this amount would not be considered add to the public debt and that the state could not distribute any collected support to the federal government nor could the state retain any amount so collected?

14. Does this further mean that Ms. A does not receive "assistance from the state" but rather receives "earnings" as compensation for work? If this is correct, can Ms. A be required to cooperate with child support?

15. Ms. B has three children. She receives cash assistance and food stamps for herself and two of her children. Her third child is in foster care and services for foster care maintenance are provided under the state program funded under title IV-E of the Social Security Act. If Ms. B is the obligor and has a support obligation established with respect to the child support for the child in foster care and if she is assigned to work experience and therefore receives "earnings," could an income deduction order be enforced against her "earnings"?

TIME LIMIT IMPLICATIONS

16. If the entire amount of cash assistance received by a family in a month is considered "earnings" due to participation in work experience, would such payment continue to be considered "assistance under any State program funded under this part [TANF] attributable to funds provided to funds provided by the Federal Government" for purposes of the federal time limit?

UNEMPLOYMENT INSURANCE IMPLICATIONS

17. If the answer to the previous question is yes and if a work experience participant is "laid off" from the work experience assignment, could the participant qualify for unemployment compensation. If the recipient was still eligible for cash assistance but not assigned to work experience, would the unemployment compensation received be budgeted as income for calculation of cash assistance and food stamp benefits?

18. Assume the work experience placement was with a public sector worksite and the participant was "laid off" or otherwise removed from work experience and qualified for unemployment compensation. If the state paid the unemployment compensation payment from the TANF block grant, would a month in which the individual received unemployment compensation count toward the time limit regardless of whether the individual otherwise received cash assistance?

wp - FLSA

STATE OF MARYLAND
OFFICE OF THE GOVERNOR

PARRIS N. GLENDENING
GOVERNOR

ANNAPOLIS OFFICE
STATE HOUSE
100 STATE CIRCLE
ANNAPOLIS, MARYLAND 21401
(410) 974-3901

WASHINGTON OFFICE
SUITE 311
444 NORTH CAPITOL STREET, N.W.
WASHINGTON, D.C. 20001
(202) 638-2215

TDD (410) 333-3098

June 4, 1997

The Honorable William J. Clinton
The White House
1600 Pennsylvania Avenue, N.W.
Washington DC 20500

Dear Mr. President:

As you know, Maryland, like all states across the nation, is in the midst of reforming welfare and moving people from welfare to work. We are particularly pleased that since the start of my Administration in January 1995, Maryland has cut its welfare rolls by 29 percent, or 68,000 people.

In recent weeks, I have followed with great interest the national discussion about how laws concerning the workplace affect welfare to work programs. As a strong supporter of the increase in the minimum wage that was enacted last year, and after reviewing the Department of Labor's guidance entitled *How Workplace Laws Apply to Welfare Recipients*, I strongly support the Administration's efforts to ensure that all workers receive a total compensation package that is at least equal to the minimum wage.

This debate is about fundamental fairness. We agree that providing anything less than the equivalent of the minimum wage would undermine the wage scale of Americans currently working hard to support their families in minimum wage jobs. Families that are already working hard to support their families should never fear that someone coming off welfare threatens either their job or their level of compensation. Nor should welfare recipients engaged in work activities receive total compensation that is less than the minimum wage.

In Maryland, our preference is literally to move people from welfare to work. We believe that the Administration's guidance means that Maryland will be able to continue moving people from welfare to work and at the same time ensure that all working Marylanders earn the minimum wage. In the coming weeks we know that you will be working closely with the Congress, the governors and leaders across the nation on clarifying this issue and defining the total compensation package. We look forward to working with you. I am confident that we will ensure that no one will be required to sustain themselves or their families on wages below the minimum threshold.

Please count on my personal and continued support of your efforts to clarify and implement fully all of the provisions of the federal welfare reform legislation. Together, we can work to fulfill our mutual vision of ending welfare as we have known it and transforming it into a system that helps our citizens move from dependency to lasting independence.

Sincerely,

Parris N. Glendening

Parris N. Glendening
Governor

WR - vocational education
and return a copy to me

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

A A U W M E M O

DATE: June 6, 1997

TO: Elena Kagan, Deputy Assistant to the President for Domestic Policy
Cynthia Rice, Special Assistant to the President for Domestic Policy

FROM: Nancy Zirkin, Director of Government Relations, 785-7720
Cindy Brown, Senior Legislative Associate, 785-7730

SUBJECT: Welfare reform mark-up

The American Association of University Women (AAUW) is pleased that the Clinton Administration is carrying out its commitment to improve the welfare law that was enacted last summer. AAUW expressly urges the Administration to take a stronger stand on two issues in the welfare reconciliation – vocational educational training and workplace protections.

Vocational Educational Training: Current law caps the number of participants in vocational educational training at 20 percent of the entire welfare caseload for each state. This cap includes teenage parents who are completing high school or a GED program. However, the Ways and Means Committee proposal, as approved by the Subcommittee on Human Resources, states that the cap will be 30 percent of those required to participate in a work activity for each fiscal year, including teen parents. We strongly urge that the Administration support the current law and oppose the Ways and Means language.

If the Ways and Means Committee provision is adopted, teen parents will comprise the total exception and no adult recipients will be able to participate in vocational education training. This will be particularly harmful to women who are 97 percent of adult welfare recipients.

States must have flexibility to provide vocational education training where appropriate. Numerous studies have found that welfare recipients that participate in vocational training earn higher wages than those who do not, thereby reducing welfare dependency and recidivism. For example, Iowa program data show that participants who completed vocational educational training had starting wages 25% higher than those in job search. Further nearly half of those who completed post-secondary education or training (48 percent) never returned to welfare over the nest five years, compared to just 31 percent o those in job search. If the true goal of welfare reform is to move families permanently into the workforce and out of poverty, then states must have the option of providing vocational educational training.

Workfare Employment Protections: We urge the Administration to strongly oppose the workfare provisions included in the Ways and Means proposal which would specifically exclude workfare participants from being defined as "employees." This provision would deprive poor workers, predominately women and minorities, of basic workplace protections and rights enjoyed by other workers including:

- A guaranteed minimum wage
- Protections under civil rights laws and the Equal Pay Act
- Protection of sexual harassment and other on-the-job exploitation
- Opportunities to accumulate leave to use when their children are sick
- Protections from unsafe working conditions and the right to protective equipment

Women must have these protections to succeed in the workplace and move permanently from welfare to work.

AAUW 6/6/97

EK—
DLC's OK on FLSA, but not Texas.
—BR

Visit the DLC-PPI Web site for more information on welfare policy: http://www.dlcppi.org/.

Democratic Leadership Council—Thursday, May 29, 1997

Welfare To Work: Eyes on the Prize

st year's landmark federal welfare reform legislation may ve ended the old welfare system, but it left to the states critical task of creating a real employment system to lace it. Three recent events in Washington show that the eral government still plays—and must play—a critical in ensuring that states rise to the challenge.

The Clinton Administration announced that federal ployment law requires states to pay the minimum wage participants in "workfare" programs. Widely interpreted a sop to organized labor, this ruling in fact makes sense ou remember that the object of welfare reform is not kfare which simply requires that recipients do public tor work in exchange for public assistance—but placing fare recipients in private-sector, unsubsidized jobs.

Workfare should represent the jobs of last, not first, ort for welfare recipients. Allowing low-benefit states to et work participation requirements "on the cheap" ough workfare slots that pay far below entry-level wages he private sector could create a huge disincentive to any aningful efforts to actually help welfare recipients gain se jobs.

Congress could help such states meet the minimum ge requirement by making it clear that food stamp nefits count when states calculate total workfare npensation—without the added hurdle of getting federal roval state by state.

Meanwhile, the Treasury Department is soon to make a ng on whether workfare participants qualify for the ned income tax credit. It is critical that Treasury say ." Otherwise, the single most important economic entive to move from workfare into private sector s and independence from public assistance could be

The Clinton Administration turned down a request from cas to privatize the welfare intake and eligibility ermination process as part of a larger, integrated system uman services programs. In contrast to the minimum ge decision, allegations of pandering to unions, in this e representing welfare caseworkers, are probably ified.

States should indeed have maximum flexibility to design ew system that draws on private-sector expertise and integrates various services so that citizens do not lessly shuttle from office to office to meet their needs.

There is a legitimate concern that states could set up a tem that gives private contractors financial incentives to discourage people from seeking public assistance. To address this concern in the Texas case, the President's key advisors (including two Cabinet members) recommended a reasonable compromise permitting private-sector management of a one-stop system, while retaining public sector control of eligibility determination. Unfortunately, the Clinton Administration rejected this compromise.

If states are to "end welfare as we know it," then the federal government should not be in the business of protecting job security for public sector welfare caseworkers. For their part, the states should involve the private sector, but should also focus the incentives of the new system on how many recipients get jobs in the end, not how many get assistance at the beginning.

(3) The federal budget agreement just approved by Congress provides for an additional $3 billion for states for welfare-to-work programs. When Congress begins putting the details on paper, we have a few suggestions.

First, this money should focus on job readiness, placement, and support services—not education activities. Other funds are available for the education of welfare recipients the emphasis of past, failed welfare reform efforts—while these new funds are critical to making sure we actually link recipients to private-sector labor markets.

Second, these funds are limited and should be available to states and local governments on a matched, competitive basis for creative work-based initiatives. There should be performance bonuses for successful placement and retention in the private sector, and the option of vouchers for recipients should be encouraged.

Third, Congress should not create barriers for states already moving to create one integrated program for assistance to all dislocated and disadvantaged workers. While targeted funding for different populations makes sense, there is no reason to have a separate, parallel employment system for welfare recipients.

Finally, welfare-to-work programs must be evaluated. Data collection focusing on job retention should be required—especially since the rest of the welfare block grant does not require collection of any information about what happens to families who are no longer receiving assistance.

The bottom line is this: the federal government has a continuing responsibility to keep states' eyes on the prize by strongly encouraging states to devote their resources to building a bridge to private-sector jobs, and making those jobs pay for recipients.

EMPLOYEE PROTECTIONS FOR WELFARE-TO-WORK PARTICIPANTS

Rex Babin
The Albany Times Union
North America Syndicate

A Guide to the Issues by the
AFL-CIO Public Policy Department

CONTENTS

Making the Case:
Key Arguments for Building Support
Among State Officials

The Department of Labor announcement that workfare workers are covered by the minimum wage and other employee protections is generating a strong backlash in Congress and among Republican Governors. The talking points on pages 2-4 can be sent to potential allies in state governments to generate editorial writing and positive public statements.

When approaching potential state allies, you can make the following points:

* The minimum wage increase was supported by over 80 percent of the American public. Congressional activity to deny workfare coverage will knock the bottom out of the labor market again.

* Minimum wage coverage and other employee protections for workfare workers are not new laws, they simply apply existing laws to workfare workers who are employees. Where a welfare recipient is in real training or in school, employee protections won't apply.

* Where workfare workers and existing workers are side-by-side doing the same jobs, it is grossly unfair to set two different standards for treatment. This will happen everywhere if the Congressional Republicans succeed.

* The key to working your way out of poverty and supporting a family is decent working standards. If we are serious about transforming welfare, we have to ensure full benefits from working.

* States have extensive flexibility to meet this requirement. Every state but Mississippi can pay the equivalent of the minimum wage for workfare under existing law and benefit levels.

j:\...\statetalk.doc

Employee Protections for Workfare Participants: Good Policy for Welfare-to-Work

Differences in state programs, employer wage strategies, and the range of state options for placing workfare participants suggest an almost limitless combination of outcomes under the new welfare law. This variety of potential outcomes suggests that welfare-to-work policy and good employment policy can co-exist. In fact, we believe the application of existing labor laws, particularly the Fair Labor Standards Act (FLSA), to workfare workers is a key to successful welfare reform.

The Administration's acknowledgment that FLSA and minimum wage standards apply to workfare is a welcome intervention, but creates no new laws. The Administration has acknowledged the reality that workfare workers and incumbent workers are doing the same jobs all over the country. Where workfare is work it must be rewarded as work.

CAN WELFARE REFORM SUCCEED IF EMPLOYEE PROTECTIONS EXIST?

- States have 13 options for meeting work requirements, many of which are activities that would most likely NOT be covered by the FLSA coverage, such as job readiness training, or time in vocational-education, and fulfilling high school. Minimum wage standards will have no effect on the cost of these options and these programs will be more suited to the particular needs of many welfare recipients.

- Although federal requirements for hours-of-work increase over time, the range of options for meeting these work requirements also expand.

- States have significant flexibility about how to meet work requirements. They can limit the numbers of people in workfare without cutting off aid (e.g., by age of kids, opt-out of 2 month community service option, waiver from food stamp work requirement to relieve pressure of finding so many "slots").

- Some states are already very far along in meeting the initial work requirements (NY already relies heavily on vocational education; Illinois and Pennsylvania may already meet their first year work requirements without having to place more recipients).

- The most important goal of welfare-to-work policy -- placing former welfare recipients in unsubsidized, private sector jobs -- will be encouraged by increasing the standards required under other options. Employee protections are a positive incentive for states to pursue comprehensive reform.

- The whole point of welfare reform is reduced welfare dependency. The key to reduced dependency is living-wage work and skill development.

- Any Congressional action to reverse the Administration's position would run counter to every legislative effort to reform welfare by expanding work. Since the original Social Security Act, federal policy has acknowledged that pressure to enforce work must also include pressure to raise living standards through fair payment. Many federal programs (WPA, CWTP, CETA) required prevailing wage payments, not just minimum wage.

- If states cannot meet the competing demands of creating jobs, defending living standards, and protecting state budgets, the Department of Health and Human Services has the power to grant additional flexibility under "reasonable cause" exemptions.

BACKGROUND STATISTICS ON THE IMPACT OF MINIMUM WAGE REQUIREMENTS

- The new welfare law requires states to have 25 percent of their caseloads in work-related activities for 20 hours a week this year. Any estimates of the impact of minimum wage coverage must acknowledge that (1) not all work activities will be covered by the minimum wage, (2) not all welfare recipients have to be in work, and (3) not all recipients will be forced to work full time. These realities make detailed estimates difficult.

- The Center on Law and Social Policy has estimated that only one state (Mississippi) would be unable to conform with the welfare law's current work requirements without increasing benefit levels if food stamps are included in the calculation of earnings. This is already allowable under the Food Stamps Workfare program, a program which also includes minimum wage requirements.

- Minimum wage requirements could easily be met by employers involved in workfare programs. The median state grant of $383 means that in more than half of the states employers would only have to pay 70 cents an hour or less to meet FLSA requirements.

- State grants under the Temporary Assistance for Needy Families program (TANF) are set at 1994 levels, but caseloads have fallen. States receive funding for 5.0 million families, but current caseloads are only 4.1 million. The difference between funding and caseloads will make it easier for states to comply.

- The Urban Institute reports that even in 1994, before the welfare law passed, 23 percent of all adults receiving welfare were engaged in work activities or training that may be allowable under TANF work requirements.

WHAT THIS MEANS FOR EMPLOYEES

- Without FLSA coverage, workers sitting right next to each other doing exactly the same tasks will see that one is getting at least the minimum wage and the other is not. Acknowledging the

employee status of workfare participants is key to promoting workplace acceptance.

- If the intent of welfare reform is to get welfare recipients into the real world of work, then they should experience the real world of work; if we want them to be able to support their own families off of welfare, they should be working at jobs that pay at least the minimum wage.

- Without FLSA coverage, employers will have incentives to fill positions with much cheaper welfare recipients rather than "regular" workers, degrading the entire lower end of the labor market in the process. In Mississippi, for example, a workfare worker working the required 20 hours a week would earn the equivalent of only $1.50 an hour for their grant.

WHAT THIS MEANS FOR EMPLOYERS

- Without FLSA coverage, employers could hire welfare recipients for free, even if their welfare grant divided by the hours worked were less than the minimum wage. With FLSA coverage, employers would have to at least chip in the extra on top of the grant subsidy to come up to the minimum wage (see estimate above).

- Employers will still enjoy heavily subsidized workers through workfare and tax breaks.

- When the public supported welfare reform, we don't believe they intended welfare reform to provide free labor for businesses.

- In some states, private businesses can get tax breaks on top of the subsidized labor so that they have heavy incentives to displace current workers or create short-term positions solely to take advantage of low-cost labor.

AFL-CIO Public Policy Department

j:\...\flsa2.txt

Employment Protections for Welfare-to-Work Participants
Press Briefing
National Press Club
Washington, DC
May 1, 1997

STATEMENT OF
DAVID A. SMITH, DIRECTOR
AFL-CIO PUBLIC POLICY DEPARTMENT

At the end of the day, this issue does not turn on complicated technical exegesis of the Fair Labor Standards Act, although, as my colleagues here have argued, we believe the law is unambiguous.

Rather it turns on four questions of right and wrong:

> It is wrong to say to one group of citizens that they do not have the same rights, are not protected by the same laws, and that they are not as valuable as everybody else.
>
> It is wrong to artificially subsidize an employer so that that employer has a perverse incentive to lay off hard working, low income workers and replace them with cheaper workers just because the later group are TANF recipients
>
> It is wrong to believe that welfare reform should be done on the cheap. Many of those who argue that, for instance, the minimum wage ought not to apply, rest their case on cost. This is a difficult job and we will not do it well if we are not willing to invest in creating meaningful jobs and building the skills of the participants
>
> And, finally, it is wrong to send a message to participants in this program that we don't mean what we say - we don't mean that you have an opportunity to work with dignity and earn enough money to support your family, we don't mean that we are going to help you join the labor force and find permanent unsubsidized employment, and we don't mean that you have the right to be treated just like any other American citizen.

We opposed TANF in Congress, we urged the President to veto it, and we still believe it is bad law. We must not make it worse by failing to recognize that if we replace welfare as we knew it with temporary subsidized work paying sub-standard wages and without the protections of basic American labor law, we will have taken a sizeable step backwards.

#30 #

j:\flsa.wpd

The Washington Post

AN INDEPENDENT NEWSPAPER

Wages of Welfare Reform

THE PRESIDENT was right to order that welfare recipients put to work under the terms of last year's welfare bill be paid the minimum wage. The objecting governors and other critics are likewise right when they say that his decision will throw the bill even further out of whack than it already was. What the president basically proved in doing the right thing on the wage was how great a mistake he made in caving in to election-year pressures, some of them of his own making, and signing the bill to begin with.

The problem with the welfare part of this legislation—as distinct from the gratuitous cuts that it also imposed in other programs for the poor—is the mismatch that exists between its commands and the resources it provides to carry them out. The basic command is that welfare recipients work, but that's not something that can be achieved by the snap of a finger or the waving of a wand or it would have happened long ago. A lot of welfare recipients aren't capable of holding down jobs without an enormous amount of support. Nor, in many cases, are there jobs enough in the private sector to accommodate them even if they could hold them down.

The cost to the states of putting to work as many recipients as the bill requires was already going to be greater over time than the fixed funding in the bill. The minimum wage decision will only add to the cost; hence the squawk from the governors. But it's not the decision that was wrong. Welfare recipients put to work are no less entitled to the protections of the wage and hour laws than other workers. To pay them less would also be to undercut the wages of other workers with whom they will now compete for low-paying jobs. That was a major part of the argument organized labor used in pushing for the order. Wages in that part of the economy are already too low to support a family, and income inequality in the country generally is too great.

The law requires that increasing percentages of welfare recipients work each year. States that fail to meet the targets risk loss of some of their federal funds. The number of hours a recipient must work to qualify also increases. Twenty hours a week will be enough at first, but eventually that will rise to 30. For now, the way the president's order is written, most states will be able to put recipients to work themselves, or pay private employers to do so, for about the amount of a monthly welfare check. But over time that will cease to be true; a welfare check that will pay for 20 hours at the minimum wage won't cover 30.

The state will have to come up with the difference. Or it will have to start lopping people off the rolls for other reasons. The bill gives states power to do that, too, and that's what welfare advocacy groups fear may happen in states whose low benefits won't cover all the hours the bill requires. Back to the mismatch: The bill requires more than it pays for. As with the other flaws in this misbegotten legislation, sooner or later this one needs to be fixed, or a lot of vulnerable people including children badly in need of help are going to end up harmed instead.

France Reaps Its Reward

FOR SOME time now, a debate has raged about the efficacy of linking trade and politics in relations with China. Some say you can use one to achieve results in the other; others argue that business is business and let's keep human rights out of it. An event in Beijing on Thursday should settle the matter: You can use trade to influence political relationships.

Unfortunately, the example at hand involves China's using trade to get its way, not the other way around. A month ago, France helped make sure that the United Nations Human Rights Commission wouldn't even discuss China's dismal human rights, China notes France has made a wise decision," President Jiang Zemin said, according to a spokesman. Of course, there's no need for Americans to get too high and mighty about such French behavior. This country, too, has made its opportunistic deals.

Nevertheless we were reading about Mr. Chirac's salute to China—which "will be one of the top nations of the world," and which "must be one of our main partners"—at the same time we happened to be reading about Wei Jingsheng. Mr. Wei is a brave dissident, one of thousands in Chinese jails for peacefully expressing views unacceptable

VIEWPOINTS Q

Newsday
EDITORIALS
"Where there is no vision, the people perish."

Workfare Wages

Paying minimum wage makes sense; welfare clients already get that much in grants.

During the supercharged debate over welfare reform, the politicians said time and again that the point was to end dependency and instill in recipients respect for the value of work. Now the White House has agreed with the U.S. Labor Department that welfare beneficiaries in work programs are performing a service in exchange for income — so by definition, they are covered by the Fair Labor Standards Act and must be paid the minimum wage. That is as it should be.

The governors who lobbied so hard for welfare revision boasted that they could move welfare recipients into private-sector jobs. To the extent they succeed, a debate over paying minimum wage is moot: Private employers must pay it. Besides, those in education and training programs would be exempted.

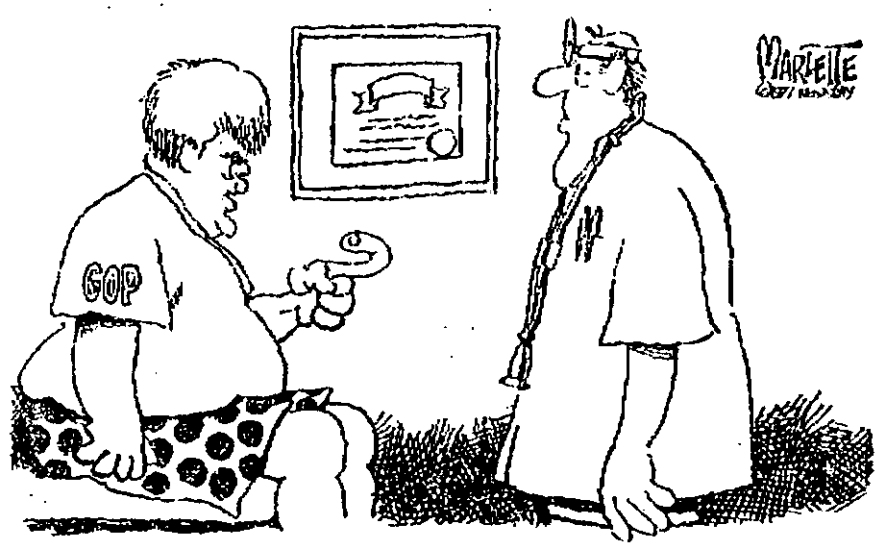
The controversy arises over what to do about recipients who are working for local or state governments, performing tasks like cleaning parks or providing clerical help.

The governors and others who complain about costs have a weak case: The minimum wage is itself so low that in all the states but Mississippi, welfare benefits plus food stamps already equal or exceed what the minimum wage would pay a welfare worker for the required 20-hour week. Costs will rise over time as more hours of work are required, and after the minimum wage rises to $5.15 in October. Even then, however, a 30-hour-a-week welfare worker would be paid $8,034 a year — $4,000 less than the poverty level for a family of three.

The issue does get more complicated when other ramifications are explored. The Treasury Department, for example, is researching whether there are implications for payment of Social Security and unemployment taxes. None of these intricacies was thought through in the political rush to enact welfare revision last year. Now they must be.

Paying the minimum wage is the right thing to do economically and philosophically. There already is enough downward pressure on wages among those on the lowest rungs without creating a new pool of subminimum workers to pull wage rates down further. And besides, if government wants welfare recipients to start thinking and acting like workers, it must treat them as workers, too.

MARLETTE'S VIEW



"IT HAPPENS EVERY TIME I POINT AT THE DEMOCRATS!"

Vallone's NYPD Audit Board Deserves Support

Who's going to watch the officers who watch the officers? In 1994, the Mollen commission board all his own — composed solely of his appointees — and he beat Vallone in court.

about Vallone's new proposal, they haven't yet cut loose with the heavy duty bombast

NEWARK STAR LEDGER SUNDAY MAY 25, 1997

Paid in full

There's a strange double standard applied to people on welfare. They are considered second-class citizens, even when it comes to work.

The effort to force people off welfare through a host of reforms has gained momentum, and recipients are being given time limits and other requirements aimed at getting them trained and working.

But some people want more. They think that welfare recipients who go to work shouldn't be paid the minimum wage.

That doesn't make sense, and the White House knows it. It agreed that most of the recipients being placed in work programs should be covered by the minimum wage law.

That didn't sit well with governors of both parties or the authors of the welfare reform law, who said the move would vastly increase the cost of running work programs and leave most states unable to enroll the required number of recipients. They'd rather pay them less than what is already a low wage.

Previous welfare laws explicitly outlined when minimum wage laws applied, but the new legislation does not. That left the door open to interpretation.

Labor leaders insisted that workfare recipients are covered by the Fair Labor Standards Act, which requires the minimum wage in most cases, and after months of study, the White House agreed.

Public employee unions have opposed workfare programs in part because of concerns about worker displacement. The fear was that local governments would be less likely to hire union members to sweep streets if workfare participants could be forced to do the same work at much lower rates.

Paying the minimum wage to workfare participants should not be an issue. If the goal is to get them into the workforce and keep them there, it makes sense that they should not be paid second-class wages. Those who believe that the minimum wage somehow subverts welfare reform ought to reassess their position.

At a time when the safety net is threatened, it is particularly foolish to eliminate a class of nonworking poor only to create a class of serfs.

Department of Labor Statement

May 22, 1997

MEMORANDUM TO INTERESTED PARTIES

SUBJECT: LABOR PROTECTIONS AND WELFARE REFORM

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 increased emphasis on the need to move welfare recipients from welfare to work. The new law gives state and tribal governments broad latitude to meet specified work requirements. However, requirements of other laws affecting workers and the workplace also must be met.

In an effort to help you better understand the requirements of these other laws, the United States Department of Labor has prepared a guide entitled *"How Workplace Laws Apply to Welfare Recipients"* that is attached. In addition, the United States Department of Agriculture has developed additional guidance to clarify the use of food stamps as a means to meet the requirements of the minimum wage law that is also attached.

Representatives of the Departments of Labor, Health and Human Services, and Agriculture are available to brief you and your staffs on the attached information. If you require additional information, you can contact Paul Richman of the Department of Labor, at (202) 219-6181.

attachments

How Workplace Laws Apply to Welfare Recipients

The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) in August 1996 increased emphasis on the need to move welfare recipients from welfare to work. Under the Act, the Aid to Families with Dependent Children (AFDC) program was replaced with the Temporary Assistance for Needy Families (TANF) program. The new welfare law gives state and tribal governments broad latitude to meet specified work requirements.[1] However, requirements of other laws affecting workers and the workplace also must be met.

Work Activities and Requirements

The new welfare law requires 25 percent of all TANF families and 75 percent of two-parent families to have an adult engaged in work activities in FY 1997 (families with no adults are exempted). States have the option of exempting single parents of children under one from the work requirement. The required participation rates increase each year, culminating at 50 percent for all families with an adult and 90 percent for two-parent families in FY 2002.

In order to be counted towards the work participation rate, a single parent is required to be engaged in a work activity, as defined by the law, for 20 hours per week in FY 1997. For an adult in a two-parent family, 35 hours of work are required. The mandated hours of work for single parents increase, to 25 hours in FY 1999 and 30 hours in FY 2000. Qualifying work activities include a range of subsidized and unsubsidized, private and public sector employment.

In addition, a limited number of TANF recipients can meet the work requirement by participating in vocational training and high school education programs.[2]

---

[1] This guide refers only to state governments, although it is possible that county or local government entities will be responsible for implementing state and tribal welfare programs. Information in the guide concerning the role of a state agency in implementing the welfare program, paying out the benefits, and, where relevant, employing welfare recipients, would apply to a county or local government agency, where that agency, not the state, implements welfare, pays out the benefits and employs welfare recipients.

[2] Indian Tribes may choose to run their own Tribal TANF programs separate from the state. While these programs must incorporate time limits and work requirements, participation rates are determined on a case-by-case basis according to economic need.

About This Guide

This guide contains general questions and answers on how workplace laws enforced by the Department of Labor apply to welfare recipients. It is an effort to answer fundamental questions about the relationship between welfare law and workplace laws such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA), Unemployment Insurance (UI) and anti-discrimination laws. States should consider the applicability of these laws as they design and implement their work programs.

This guide is simply a starting point. It cannot provide the answers to the wide variety of inquiries that could be raised regarding specific work programs. The impact of these laws on work programs for welfare recipients and the answers to many questions will be determined by the specific facts of the particular situation. Many questions will have to be answered on a case-by-case basis.

Employment Laws

1. **Do federal employment laws apply to welfare recipients participating in work activities under the new welfare law in the same manner they apply to other workers?**

   Yes. Federal employment laws, such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA), Unemployment Insurance (UI), and anti-discrimination laws, apply to welfare recipients as they apply to other workers. The new welfare law does not exempt welfare recipients from these laws.

The Fair Labor Standards Act

2. **Does that mean that welfare recipients engaged in work activities under the new welfare law will have to be paid the minimum wage?**

   The minimum wage and other FLSA requirements apply to welfare recipients as they apply to all other workers.[3] If welfare recipients are "employees" under the FLSA's broad definition, they must be compensated at the applicable minimum wage.

[3] The FLSA establishes federal minimum wage, overtime pay (for hours worked over 40 in a workweek), child labor, and recordkeeping requirements. The law affects full-time and part-time workers in the private sector and in federal, state and local governments. For the FLSA to apply, there must be an employment relationship between an employer and an employee. To "employ" under the FLSA means to "suffer or permit to work." This is a broader definition of employment than exists under the traditional common law. To determine if there is an employment relationship for purposes of the FLSA, one must consider all the circumstances, including the economic realities of the workplace relationship.

Welfare recipients would probably be considered employees in many, if not most, of the work activities described in the new welfare law. Exceptions are most likely to include individuals engaged in activities such as vocational education, job search assistance, and secondary school attendance, because these programs are not ordinarily considered employment under the FLSA.

3. **Are welfare recipients who participate in job training exempt from the minimum wage laws?**

An individual in training that meets certain criteria under the FLSA and is not otherwise an employee, is considered a trainee and is not entitled to the minimum wage. Similarly, a welfare recipient engaged in training that meets those criteria would not be an employee covered by the minimum wage requirements of the FLSA. The relevant criteria for such training are:

- Training is similar to that given in a vocational school;
- Training is for the benefit of the trainees;
- Trainees do not displace regular employees;
- Employers derive no immediate advantage from trainees' activities;
- Trainees are not entitled to a job after training is completed; and
- Employers and trainees understand that trainee is not paid.

4. **How does the FLSA affect "workfare" arrangements that require welfare recipients to participate in work activities as a condition for receiving cash assistance from the state?**

Welfare recipients in "workfare" arrangements, which require recipients to work in return for their welfare benefits, must be compensated at the minimum wage if they are classified as "employees" under the FLSA's broad definition.

Where the state is the employer of a workfare participant who is an employee for FLSA purposes, the state may consider all or a portion of cash assistance as wages for meeting the minimum wage so long as the payment is clearly identified and treated as wages, the payment is understood by all parties to be wages, and all applicable FLSA record keeping criteria are met. Where a private company or local government agency is the employer of the workfare participant, the state welfare agency may use the recipient's welfare benefits to subsidize or reimburse that employer for some or all of the wages due.

5. **Could states that operated Community Work Experience Programs (CWEP) for welfare recipients under the predecessor JOBS program continue to operate such programs in the same manner under the new welfare law?**

The ability of states to operate programs like CWEP will depend on the details of their particular programs. The old welfare law specifically stated that a CWEP participant was not entitled to a salary or any other work or training expense provided under any other law. Under CWEP, the welfare grant divided by the hours worked was required to meet or exceed the minimum wage. The new welfare law eliminated CWEP and the entire JOBS program. As a result, welfare recipients must be compensated at the minimum wage if they are classified as "employees" under the FLSA's broad definition. However, if welfare recipients are participating in activities where they are not "employees" under the FLSA definition, they will not have to be compensated at the minimum wage. Thus, while states may be able to continue programs similar to those that existed under CWEP, they may need to modify the programs to reflect changes in the law.

6. **May food stamps be counted towards meeting minimum wage requirements?**

Under two programs created by the Food Stamp law, food stamp benefits (coupons or their cash value) may contribute towards meeting minimum wage requirements for TANF recipients in work activities.

Under the Food Stamp work supplementation program, employers may receive the value of the food stamp allotment as a wage subsidy for new employees hired as part of the work supplementation program. As with other wage subsidy programs, the value of the Food Stamp benefit is converted to a cash wage subsidy paid by the employer as a wage and is counted towards the minimum wage. This program is restricted to recipients of TANF or other public assistance and contains specific worker protections and non-displacement provisions.

The Food Stamp law specifically permits states to establish Workfare programs (to be approved by the U.S. Department of Agriculture) under which certain welfare recipients are required to perform work in return for compensation in the form of food stamps. In other words, participants may be required to "work off" the value of their food stamps. The state or other employers participating in the workfare program may then credit the value of the food stamps towards its minimum wage obligations. The number of hours that a food stamp recipient may be required to work is determined by dividing the value of the food stamp allotment by the state or federal minimum wage (whichever is higher), up to a maximum of 30 hours per week.

Participation in Food Stamp workfare programs may be counted towards TANF participation requirements, so that a participant who is employed by the state may receive food stamps as compensation for certain hours and receive welfare benefits as compensation for other hours of employment. In all cases, total compensation must equal or exceed the minimum wage for each hour worked. Additional guidance on the use of food stamps towards the minimum wage will be provided by the U.S. Department of Agriculture's Food Stamp Program Office.

7. **Aside from food stamps, may noncash benefits provided by the state, such as child care services or transportation, be credited toward meeting FLSA minimum wage requirements?**

Only under limited circumstances. Such benefits may be credited as wages only when the state is the employer and all of the following criteria are met:

- Acceptance of noncash benefits must be voluntary;
- Noncash benefits must be customarily furnished by the employer to its employees, or by other employers to employees in similar occupations; and
- Noncash benefits must be primarily for the benefit and convenience of the employee.

Because these criteria are quite strict, it is likely that these benefits will not count as wages in most circumstances.

Credit may not be taken for pensions, health insurance (including Medicaid), or other benefit payments otherwise excluded under the FLSA.

Occupational Safety and Health Act

8. **How does the Occupational Safety and Health Act (OSHA) apply to welfare recipients participating in work activities under the new welfare law?**

The new welfare law does not exempt employers from meeting OSH Act requirements. Therefore, OSH Act coverage applies to welfare recipients in the same way that it applies to all other workers. However, because the OSHA does not have direct jurisdiction over public sector employees in many states, the question of who is the responsible "employer" is an important one. This is particularly true in cases where work activities are administered as part of a public-private partnership. In these situations, OSHA will determine whether the employee is in the public or private sector on a case-by-case basis. Generally, case law under OSHA tends to place compliance responsibility on the party most directly controlling the physical conditions at a worksite.

9. Does that mean that welfare recipients in work activities deemed to be public employees are exempt from health and safety regulations?

It depends on the state. OSHA does not have direct jurisdiction over public sector employees in many states. Yet, in the 23 states and two territories where there are OSHA-approved state plans, the states are required to extend health and safety coverage to employees of state and local governments. To the extent participants in these states and territories are employees of public agencies, they would be protected by the applicable health and safety standards. In the other states and territories, there would be no OSHA coverage of participants who are public sector employees.

Unemployment Insurance

10. Are welfare recipients participating in work activities covered by the Unemployment Insurance (UI) System ?

Generally, unemployment insurance laws apply to welfare recipients in work activities in the same way that they apply to all other workers. Unemployment insurance coverage extends only to workers who are considered "employees," according to definitions provided by state UI laws. Consequently, if welfare recipients are in work activities where they would be classified as employees, they will be covered by the UI system.

There are some exceptions. While federal law requires states to extend UI coverage to services performed for state governments and non-profit employers, services performed as part of publicly funded "work-relief" employment or "work training" programs may be excluded by states and, in fact, are excluded by all states except Hawaii. Under the new welfare law, a number of community service-related activities could fall within the "work-relief" exception to UI coverage.

An Unemployment Insurance Program Letter (UIPL 30-96) issued in August 1996 clarified the criteria applicable to the "work-relief" and "work training" exceptions. In order to fall within the exception, activities must primarily benefit community and participant needs (versus normal economic considerations) and services must not otherwise normally be provided by other employees. If such activities do not fall within the exception, participants providing services for these entities would likely be covered by the UI program.

11. What about welfare recipients who are working for private sector employers? Will they be covered by the UI program?

The "work relief" and "work training" exceptions for UI do not apply to the private sector. For private employers the question of UI coverage will hinge on whether a participant is deemed an "employee." The tests for making these determinations are made by the states and are generally similar to the common law test which is based on "the right to direct and control work activities."

Anti-Discrimination Laws

12. Would federal anti-discrimination laws apply to welfare recipients who participate in work activities under the new welfare law?

Yes. Anti-discrimination issues could arise -- primarily under titles VI and VII of the Civil Rights Act, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, the Age Discrimination in Employment Act, and the Equal Pay Act. Furthermore, if participants work for employers who are also federal contractors, discrimination complaints could be filed under Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, or the Vietnam Era Readjustment Assistance Act. As with the other laws discussed above, these laws would apply to welfare recipients as they apply to other workers. Additional guidance on these laws, many of which are not within the jurisdiction of the Department of Labor, will be forthcoming.

This guide is for general information and is not to be considered in the same light as statements of position contained in Interpretive Bulletins published in the Federal Register and the Code of Federal Regulations, or in official opinion letters of the Department of Labor.

United States
Department of
Agriculture

Food and
Consumer
Service

3101 Park
Center Drive

Alexandria, VA
22302-1500

USDA GUIDANCE

The Department of Labor has concluded that the Fair Labor Standards Act (FLSA) applies to participants in the Temporary Assistance for Needy Families (TANF) program in the same way as it applies to other workers. This means that in many cases participants will have to be paid the minimum wage.

In calculating the minimum wage, States can combine food stamp benefits and TANF grants. This can be done in either workfare or a wage supplementation program. Under a wage supplementation program, the value of benefits are cashed out and provided to an employer who in turn pays the money to participants as a wage.

Furthermore, for those TANF households normally exempt from food stamp workfare because they include parents or caretakers of a dependent child under 6 years old (between 1 and 6 in some States), States may use the Simplified Food Stamp Program to ensure that food stamps count toward the minimum wage. The simplified program was designed to be the vehicle for creating conformity between TANF and the Food Stamp Program. States can include parents or other caretakers of a dependent child under the age of six in food stamp workfare simply by adopting TANF rules relating to workfare exemptions. Simplified programs must be cost neutral. Because removing the workfare exemption for parents or caretakers of dependent children will not increase program costs, we will provide expedited approval to such requests.

To make this change, States need only send a letter to the Food and Consumer Service (FCS) indicating their wish to avail themselves of the simplified program. A cost neutrality analysis is not required.

For additional information on the Simplified Food Stamp Program, States should contact FCS at (703) 305-2519. FCS' mailing address is Food and Consumer Service - Food Stamp Program, 3101 Park Center Drive, Alexandria, VA 22302.

WHITE HOUSE CALLS FOR MINIMUM WAGE IN WORKFARE PLAN

GOVERNORS ARE OPPOSED

Administration Says Welfare Recipients Who Work Are Covered by Labor Laws

By JASON DePARLE

WASHINGTON, May 15 — Weighing in on one of the most contentious issues from last year's landmark welfare bill, the White House said today that most of the recipients being placed in work programs should be covered by minimum-wage laws.

The long-awaited legal interpretation drew surprised and angry response from governors of both parties and from the authors of the welfare law, who said it had the potential to gut the legislation's work requirements.

Applying the minimum wage, they said, would vastly increase the cost of running work programs and leave most states unable to enroll the required number of recipients. Critics say it could also reduce the incentive for workfare participants to leave the rolls for private jobs.

"This could really hamper what we're trying to do," said Representative E. Clay Shaw Jr., Republican of Florida, the main author of the bill. "It could drastically cut back the hours that welfare recipients are required to work."

Gov. Thomas Carper of Delaware, a Democrat, said that if the interpretation held, states would either have to raise their benefits or reduce their work programs at the risk of Federal penalty. "It's an untenable position to put a state in," he said.

The issue, which has been the subject of lengthy, behind-the-scenes discussion, arose from what amounts to an oversight in drafting the legislation. While previous welfare laws explicitly outlined when minimum wage laws applied, the current law is silent.

Seizing on the issue months ago, labor leaders argued that workfare recipients were covered by the Fair Labor Standards Act, which requires the minimum wage in most circumstances. In late February, the Labor Department drafted a confidential report siding with the unions, and after months of study, the White House has agreed, although with what may be limited enthusiasm.

"Our reading of the Fair Labor Standards Act is that it covers workfare recipients," Bruce Reed, the White House domestic policy adviser, said today in an interview.

Mr. Reed, a strong supporter of work requirements, disagreed with those who said the interpretation would leave states unable to put welfare recipients to work. "Most recipients would be earning the minimum wage anyway," he said.

The decision marks the second time in recent weeks that the White House has sided with union leaders on issues arising from the welfare bill. On May 2, the Administration barred a Texas plan that would have given private corporations a broad new role in providing social services.

That decision was made by President Clinton himself, after an Oval Office appeal from the leaders of public employees' unions, whose jobs would have been at risk. It was widely interpreted as an effort to repay the union leaders who have supported the Democratic Party.

By contrast, it was unclear whether today's development stemmed from political considerations or mostly from a technical reading of the nation's labor laws.

While expressing concern about the decision, Mr. Shaw declined to interpret it as a sign of waning Presidential support for work requirements. "I still feel the President is a full partner on welfare reform," he said. "If the White House thinks their hands are tied by the current labor laws and wants us to fix it, we'll do that."

Mr. Reed declined to comment on whether the White House would support legislation that exempted workfare programs from minimum wage laws.

The debate over the Fair Labor Standards Act is being closely watched because it may offer clues about whether welfare recipients are covered by other labor laws as well. In some states, for instance, workers covered by the labor act are automatically eligible for workers' compensation and unemployment insurance.

20

White House Calls for Minimum Wage for Workfare Plans

Continued From Page A1

Mr. Reed said a similar issue had delayed a formal announcement of Administration policy. He said he was waiting for the Treasury Department to decide whether workfare participants qualified for the earned income tax credit, a wage supplement that offers low-wage workers cash payments of up to $3,300 a year.

Applying the fair labor law may also set precedents that make it easier for labor leaders to organize recipients into unions.

Public employee unions have long opposed workfare programs, in part because of concerns about worker displacement. They fear that local governments would be less likely to hire union members to rake leaves or sweep streets if workfare participants could be forced to do the same work at much lower wages.

Today's announcement marked the second union victory on that issue this week. In New York, a state judge ruled on Monday that participants in a city workfare program must be paid not only the minimum wage, but the "prevailing wage" paid to other public employees, or as much as $8 or $9 an hour.

While today's decision may ease some of the concerns, it may make private employers less enthusiastic about hiring welfare recipients.

"It adds terrific costs," said Gov. John Engler of Michigan, a Republican who helped design the welfare law. "If we're going to tell every employer, 'Oh, by the way, we're going to have a Federal auditor here,' that's going to be a terrific disincentive" to hiring recipients.

Among the issues remaining to be clarified is how the wage would be calculated. The average cash welfare benefit is about $370 a month, meaning recipients could not be required to work more than 77 hours a month — or 19 hours a week — at the minimum wage of $4.75 an hour.

But the welfare law requires most recipients to work 20 hours a week in 1997, rising to 30 hours by 2000.

But Mr. Reed said that under some circumstances, states could also include the value of food stamps when calculating the effective wage. That would increase the estimated "wages" paid to welfare recipients by hundreds of dollars a month. But a confidential background paper prepared by the Department of Labor suggests that food stamps could be counted only in certain limited circumstances.

Since welfare recipients also receive Medicaid, Mr. Shaw said the value of that program should also be considered part of the wage. But the paper from the Labor Department said the value of Medicaid would not apply.

Mr. Reed's comments came in an interview today, and the White House has not publicly released the pivotal, technical details.

The fair labor law would require the minimum wage to apply when workfare participants are engaged in a traditional "employee-employer" relationship. While that would appear to cover most work programs, it would not apply if recipients were engaged in educational or training activities.

In March, the American Public Welfare Association passed a unanimous resolution urging that workfare programs be exempt from the labor act. The organization represents the state officials who run welfare programs.

Robert Rector, an analyst at the Heritage Foundation, a conservative research organization in Washington, said the decision to apply minimum wage laws would cripple the work requirements. "That's a gangland execution of welfare reform," he said. "You want to make welfare less attractive than low-skilled jobs. You want to increase the incentive for people to get off the rolls as quickly as possible."

But the founder of one influential work program disagreed. Peter Cove, the founder of America Works, said treating welfare recipients as traditional workers "tells them that they're being valued, and that's terribly important."

POSITIVE REACTIONS TO ANNOUNCEMENT THAT
MINIMUM WAGE AND LABOR PROTECTIONS WILL APPLY
TO WELFARE RECIPIENTS IN THE WORKPLACE

"As employers, Lutheran Services in America organizations face the same issues that every non-profit and corporate employer in America does by having to work within a budget and provide services to its clientele. But, we also believe that workfare recipients perform important work that should be valued fairly and covered by the Fair Labor Standards Act. We in Lutheran Services in America challenge other employers to join us to be involved and become responsible in the opportunities we give workers."

-- Rev. Faye R. Codding
Lutheran Services in America, employer at nursing homes and child care centers

"The National Association of Service & Conservation Corps's 120 member Corps across the country historically have employed welfare recipients to perform work for the benefit of their communities. Traditionally, Youth Corps have paid at least the minimum wage to everyone who has worked for them, regardless of their status as recipients of public benefits. We applaud the Clinton Administration for reaffirming this policy for all employers."

-- Kathleen Selz, President
National Association of Service and Conservation Corps

"Peter Cove, the founder of America Works, said treating welfare recipients as traditional workers 'tells that they're being valued, and that's terribly important."

-- New York Times, May 16, 1997

"(Wisconsin) state officials said that they did not think the Wisconsin Works welfare plan would be disrupted by a White House decision that minimum wage laws should apply to welfare recipients forced into public service jobs. That's largely because they expect to pay grants equivalent to more than the federal minimum wage of $4.75 when W-2 begins statewide in September."

David Reimer, director of the City of Milwaukee Department of Administration and Milwaukee Mayor John Norquist and others "want workfare recipients to get minimum-wage pay, to get paychecks after they work instead of grants in advance, ... to generally have the same kind of work experience that other workers do. Their theory, in part, is that this will make it much easier for them to adjust to the real work world when they seek a private sector job."

-- Milwaukee Journal, May 17, 1997

"....states like Connecticut, which focus on moving welfare recipients into the private sector job market, will see little impact. 'Our program focuses on getting work in the private sector in order to meet the requirements,' said John Ford, director of Connecticut's Department of Family Services."

-- New York Times, May 17, 1997

"The President was right to order that welfare recipients put to work under the terms of last year's welfare bill be paid the minimum wage.....Welfare recipients put to work are no less entitled to the protections of the wage and hour laws than other workers. To pay them less would also be to undercut the wages of other workers with whom they will now compete for low-paying jobs. That was a major part of the argument organized labor used in pushing for the order. Wages in that part of the economy are already too low to support a family, and income inequality in the country generally is too great."

-- Washington Post Editorial, May 19, 1997

Workfare Media Conference
May 1, 1997
Lutheran Services In America

Rev. Faye R. Codding
122 C. St. N.W.
Suite 125
Washington, D.C. 20001
202-626-7935

Lutheran Services in America organizations spend 2.8 billion dollars serving 2 million people and includes over 3,000 locations across the US. We employ workers at all levels and seek to serve those who are in need.

When Congress passed Welfare Reform Legislation which was signed into law on August 22, 1996 we all knew that we would have to move beyond the rhetoric of personal responsibility to work opportunity and responsibility by the employer. If welfare reform is to happen in this country then work opportunity that includes at the very least the minimum wage must happen. Rather than pitting personal responsibility and structural change against one another, we realize that both kinds of effort are needed.

As employers, our umbrella alliance of service organizations has endorsed the fair work campaign so that workers have both sufficiency and sustainability in their lives. We know from our experience that work "a job" must include sufficiency- adequate levels of income support so that people can live dignified lives. It must also contain sustainability- workers can not live in fear of taking other peoples jobs nor be treated differently in others by wages, benefits or personnel policies. Without sufficiency and sustainability welfare legislation becomes nothing more than rhetoric.

Lutheran Services in America organizations face the same issues that every non-profit and corporate employer in America does with working within a budget and providing services to its clientele. We are well aware of what it means to be an employer and because of this we believe that workfare recipients need positive learning and training experiences as well as new jobs and that workfare recipients perform important work that should be valued fairly.

We in Lutheran Services in America challenge other employers to join us to be involved and become responsible in the opportunities we give to workers. It is reform for all of us and requires all of us to become a part of this if we every to see the face of poverty change.

Statement by Truth Freemyn
Manager, Workplace Anti-Discrimination Program
9to5, National Association of Working Women
231 West Wisconsin Avenue, Suite 900
Milwaukee, WI 53203-2308
414-274-0925

On behalf of 9to5, it's a pleasure to be part of this press conference today. 9to5 knows first-hand the consequences of unfair labor practices for those required to participate in workfare programs. Many of our members have gone *to welfare from work* because of problems such as inadequate leave, on-the-job discrimination, lack of needed health benefits or child care. Others -- myself included -- have gone to work from welfare -- and back again. These women need what every.worker needs: a livable wage, decent benefits, affordable child care, protection from injustice at work. No special rights -- just the fundamental rights that should be provided to all workers. What women coming off welfare *don't* need is government-sanctioned discrimination.

Equal protection for those in workfare programs is the ultimate test of fairness. Work is work and must be treated as such. Whether you're cleaning patients or streets or bathrooms, caring for the very old or very young, answering phones or entering data, the work you are performing is needed by society and should be valued with the same base pay and benefits, the same labor law protections, as that of others working alongside you.

Just last week I attended a rally in Milwaukee on "Take Our Daughters to Work" day. Several women spoke at the rally about why they couldn't take their daughters to work. Francis is in a "work experience" program cleaning up at public housing projects, laboring alongside non-workfare employees. She told the audience, ""We do the same

25.

work but we don't get the same pay. And we're not getting much work experience. We've been doing the same thing we do at home -- clean bathrooms and other people's messes."

It's hard for anyone to face unjust treatment on the job. But the consequences are even more disastrous for women struggling to get off welfare. Fearing the loss of benefits -- of the last-resort form of economic support for your family -- can cause you to lose your voice as a worker.

All workers deserve the right to fair pay and benefits. They also deserve the right to be protected from discrimination, from unsafe working conditions, from violations of minimum wage and overtime laws. They deserve the right to organize to bargain collectively. Above all, they deserve the dignity of *equal treatment* with their co-workers. To do otherwise would not only create financial and emotional hardship for those in workfare programs and their families. It would also open the Pandora's box of undermining the hard-won rights of working people in general.

If we want to see real change in the system, we need to make sure we don't take a step backward. Without exception, 9to5 members who have been on welfare describe the system as demeaning. Moving into a work situation must be a way out of humiliation, not an expanded version of it.

We urge the Clinton administration to move swiftly to issue guidelines to the states that those in workfare programs are indeed workers and should be covered by wage and hour, anti-discrimination and health and safety law.

KIDS PEPP

PUBLIC EDUCATION AND POLICY PROJECT

122 S. MICHIGAN AVE.
SUITE 2050
CHICAGO, IL 60603
312-922-3863
FAX: 312-922-3337

A JOINT PROJECT OF FAMILY FOCUS AND THE OUNCE OF PREVENTION FUND

PAUL METZGER
CHAIRMAN
THE OUNCE OF PREVENTION FUND

IRVING B. HARRIS
CHAIRMAN EMERITUS
THE OUNCE OF PREVENTION FUND

BERNICE WEISSBOURD
PRESIDENT
FAMILY FOCUS, INC.

April 24, 1997

President William J. Clinton
White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear President Clinton:

We would like to take this opportunity to highlight our concerns regarding employment protections for low-income heads of household who will likely be required to participate in "workfare" programs in order to receive cash benefits under the Temporary Assistance for Needy Families (TANF) block grant. We are asking that you support extending employment protections to welfare recipients participating in workfare.

The Kids Public Education and Policy Project was established in 1987 as a joint effort of the Ounce of Prevention Fund and Family Focus, Inc. to advocate for state and federal policies benefiting children and families.

According to provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, states have the ability to use workfare programs in order to meet the work participation requirements outlined in the legislation. Our concern is that only employers, and not workfare participants, will benefit unless the employment supports under the Fair Labor Standards Act (FLSA), Title VII of the Civil Rights Act of 1964 and the Occupational Safety and Health Administration (OSHA) are extended to this vulnerable population. Put directly, employers should not benefit at the expense of low-income parents who are trying to support their families.

The provisions of the new welfare legislation permit employers to use workfare participants for up to 20 hours per week without any compensation, including wages, skill training or promises of eventually hiring workfare employees. The employer's role under the workfare arrangement clearly meets the "economic realities" test which has been used by the courts to define whether or not a worker is an employee for FLSA coverage. This test factors in the employer's employment authority and control over the workfare participant and maintenance of participant employment records.

Under the old guidelines for the JOBS program, workers were covered under Title VII, OSHA and FLSA's minimum wage protection, mandating that the hours a recipient worked could not exceed her grant divided by the minimum wage. If these same protections are not extended to workfare participants, then this "make work" program—which does nothing to create jobs—will punish welfare recipients in two ways. First, it will force participants to work instead of allowing

them to receive the education, job readiness and job search they require in order to move towards self-sufficiency before losing eligibility for time-limited cash assistance. Second, without basic employment protections, workfare participants will face the possibility of discrimination or working in unsafe environments in order to avoid being sanctioned or losing cash benefits entirely.

The combination of TANF's work requirements and the lack of entry-level jobs puts welfare recipients in a difficult position. Because we are charging welfare recipients with the serious task of finding family-supporting employment, we have a responsibility to eliminate programs and policies which pose barriers. The responsible implementation of work-oriented welfare reform requires nothing less.

Again, we urge you not to allow workfare programs to become the next major stumbling block for families who are moving towards self-sufficiency. Please support extending employment protections to welfare recipients participating in workfare.

We look to you to provide the leadership necessary to ensure that welfare recipients enter the world of work with the same employment protections granted to the rest of the workforce.

Sincerely,

Nancy Shier

Nancy Shier, Director

Leadership Conference on Civil Rights

1629 "K" St., NW, Suite 1010
Washington, D.C. 20006
Phone: 202 / 466-3311
Fax: 202 / 466-3435
TTY: 202 / 785-3859

May 1, 1997

Contact: Wade Henderson, 202/466-3311
Jocelyn Frye, 202/986-2600

Statement of Wade Henderson, Executive Director, Leadership Conference on Civil Rights, on Workplace Protections for Welfare Recipients

The Leadership Conference on Civil Rights -- the nation's oldest and most broadly-based civil rights coalition -- believes that newly-created welfare programs must adhere to fundamental principles of equality, fairness, and social justice, and increase the chances for all families in need to become economically self-sufficient. In keeping with these principles, the Leadership Conference joins with the diverse array of organizations gathered here today to stress the critical need for fair wages, safe working conditions, and fair treatment in the workplace for those who are struggling to escape poverty and the welfare system.

Because of strict requirements in the new welfare law, many states are now facing difficult choices about how to craft their welfare programs. The stakes are high for states, but the stakes are highest for welfare recipients who now must go to work or risk losing vital benefits for themselves and their families. Thus, the critical question is how can we maximize welfare recipients' chances for success in the workplace.

Fortunately, we already know a great deal about the workplace and what it takes for many workers to succeed: safe and healthy working conditions, protection against on-the-job discrimination, earning a decent wage that can support a family, and access to the skills training and support services needed to perform the job well. Many of us in this room have worked tirelessly for the enactment of laws, such as the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Occupational Safety and Health Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Family and Medical Leave Act, designed to make these protections a reality for most workers. These laws represent our national commitment to ensuring fair and humane workplaces for workers, and setting basic, minimum standards below which no workplace should fall.

The new welfare law -- a law that ironically purports to help move individuals from welfare to work -- says virtually nothing about the workplace, or ensuring that welfare recipients who go to work and play by the new rules are afforded the same workplace protections so fundamental to the success and protection of other workers. The absence of such protections may have devastating consequences for welfare recipients:

- ethnic minorities may be shunned by employers simply because they have an accent and are assumed to be in this country illegally, or unfairly forced to produce identification documents, simply because they "look foreign;"

- individuals may be forced to work without proper equipment or work in hazardous conditions without protective gear;

- women, who are the majority of adult welfare recipients, may be targeted for sexual and racial harassment in the workplace because they are particularly vulnerable -- they risk losing vital benefits if they cannot keep their jobs; and

- rigid new work participation requirements also may discourage states and employers from assessing and accommodating the needs of individuals with disabilities, even though a recent study by the Urban Institute found that 16-20 percent of women receiving AFDC (under the old welfare law) reported one or more disabilities that limited the work that they could do.

Unfair wages, unsafe conditions, or unfair treatment are no more tolerable just because the worker happens to be a welfare recipient -- we all have a stake in ensuring that welfare recipients, like other workers, are not exploited and forced to work in substandard conditions.

If our commitment to help those struggling to escape poverty is real, then we must be vigilant in ensuring that the protections so critical to the success of other workers are also available to welfare recipients. The Leadership Conference believes that we must stand firm in our commitment to uphold basic employment protections for all individuals, particularly those most vulnerable. Ensuring that low-income individuals are protected against sub-minimum wages, inhumane working conditions, exploitation, and discrimination is only one piece of a larger, more fundamental struggle to help low-income families chart an escape path from poverty to financial independence.

WOMEN
EMPLOYED
INSTITUTE

22 WEST MONROE STREET, SUITE 1400 • CHICAGO, ILLINOIS 60603
VOICE 312.782.3902 • FAX 312 782 5249

April 25, 1997

President William J. Clinton
The White House
1600 Pennsylvania Ave.
Washington, DC 20500

Dear President Clinton:

On behalf of hundreds of thousands of women in poverty who will be required to meet the work requirements of Temporary Assistance for Needy Families (TANF) under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, we urge you to support employment protections for participants of "Workfare" and other work-related programs.

Most Workfare programs, which states can create to meet their TANF work requirements, require TANF recipients to work in exchange for their benefits. Unfortunately, TANF does not mention the full range of employment and anti-discrimination laws that can protect Workfare participants from unlawful conduct. Current workers who do not receive TANF are already protected by such employment laws as the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act, the Family and Medical Leave Act and the Occupational Safety and Health Act. Denying Workfare participants similar protections sends the intolerable message that employers need not worry about treating Workfare participants fairly or with dignity and would allow Workfare employers to benefit from the labor of Workfare participants who are trying to support their families.

In a typical Workfare arrangement, employers will get TANF recipients to work for 20 hours per week and perform any work that the employer assigns. The employer will direct the participant's work, supervise the participant, and monitor the participant's progress, but will not be required to pay the participant's wages, provide skill training or commit to hiring the participant permanently. In most cases, the employer's extensive authority to direct and control the participant's work will satisfy the legal tests, such as the "economic realities" test that courts have used to determine whether a worker is covered by a particular employment law.

If employment protections are denied to Workfare participants, then this "make work" program, which is not creating jobs, is punishing recipients. In the absence of basic employment protections, Workfare participants are treated as prisoners who may have to endure discrimination or working in unsafe and hazardous environments or risk being sanctioned and losing their TANF benefits if they do not work under these conditions.

In light of TANF's strict work participation requirements and our economy's lack of a sufficient number of entry-level jobs, we must create programs and policies that help women find livable wage jobs that can support women and their families. Unfortunately, many Workfare programs will not advance these goals. Workfare forces participants to work in any job without regard to whether they need additional education, pre-employment or vocational skills training, or whether that job will lead to permanent, unsubsidized employment before their time limited cash assistance expires. But, if states decide to implement Workfare programs, basic employment protections must be extended to program participants.

As you stated in your proclamation for Women's History Month, women are almost an equal share of the labor force, yet gender barriers still exist that must be broken down. Do not allow Workfare to increase the barriers that women on welfare face as they work to become self-sufficient. We count on you to insure that Workfare workers are covered by the same employment protections that our country ensures for the rest of our workforce.

Sincerely,

American Friends Service Committee
American Jewish Congress Commission for Women's Equity
Black Women's Agenda, Inc.
Center for Women Policy Studies
Chicago Commons Employment and Training Center
Chicago Jobs Council
Child Care Action Campaign
Clearinghouse on Women's Issues
Church Women United
Day Care Action Council of Illinois
Hadassah
Illinois Hunger Coalition
INET for Women
League of Women Voters of Chicago
League of Women Voters of Illinois
Mid America Institute on Poverty
National Association of Social Workers
National Center for the Early Childhood Workforce
National Council of Negro Women, Inc.
National Organization for Women
National Women's Conference

May 1, 1997

President William J. Clinton
The White House
1600 Pennsylvania Ave. NW
Washington, DC 20500

Dear President Clinton:

Last summer, you signed two landmark laws that together were hailed as honoring our commitment to work and a shared national consensus that work should lift families from poverty. The first measure, the Small Business Job Protection Act of 1996, raised the federal minimum wage from $4.25 to $5.15, an increase benefiting millions of working families. The second, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, ended "welfare as we know it," replacing the nation's 60-year-old entitlement program with block grants to the states. A central element of welfare reform is the requirement that most recipients of Temporary Assistance to Needy Families (TANF) must be engaged in work activities for 20 to 35 hours per week, depending on family status. This requirement is projected to move a million new workers into the low wage labor market this year alone.

We write today to urge you to take all steps within your power to ensure that the nation's basic worker protection guarantees, including the fundamental right to receive the minimum wage in exchange for work, are applied to TANF recipients who are working. Unlike previous assistance programs, the PRWORA does not explicitly address federal worker protection rights of TANF recipients. This omission, coupled with the extraordinary vulnerability of these workers and the fast track implementation of welfare reform in many states, makes it imperative that the Administration act immediately to provide critical clarification and guidance.

Like you, we believe in the value and dignity of work, and that work must pay. For that reason, we joined you last year in fighting to raise the minimum wage so millions of poor workers would be better able to support their families and contribute to their communities. For that same reason, we call on you now to ensure application of minimum wage protections to working TANF recipients who -- like the working poor families for whom we all worked last year -- are entitled to dignity, fairness and an opportunity to rise from poverty through their labor. Failure to enforce minimum wage protections for these workers would undermine the basic premise and promise of welfare reform -- that work pays -- and unlawfully relegate them to second class status in the nation's worker protection scheme. Such failure would also further erode the earnings and job security of current workers, particularly those in the low wage labor market. According to the Economic Policy Institute, simply introducing a million new workers into the low wage labor market is likely to reduce current low wage workers' earnings by around 12 percent; this result will be magnified if the basic wage floor -- the minimum wage -- is pulled out from under working poor TANF recipients. Finally, failure to enforce minimum wage and other worker protections for TANF recipients opens the door to their exploitation and abuse and invites conscious efforts to pit groups of workers against each other.

For all these reasons, quick and decisive action by the Administration is essential to ensure that in the effort to make welfare reform work -- a goal we all share -- we do no damage to the fundamental worker protection framework that has governed the work place and guided the nation for sixty years. As organizations committed to the rights of all workers, including those moving from welfare to work, we urge you to act promptly to clarify application of minimum wage and other worker protection laws for working TANF recipients.

Sincerely,

A. Philip Randolph Institute
ACORN
Americans for Democratic Action
Bread for the World
Business & Professional Women/USA
Catholic Charities USA
Center for Community Change
Center for Women Policy Studies
Coalition on Human Needs
Disability Rights Education & Defense Fund, Inc.
Feminist Majority
Labor Project for Working Families
Mexican American Legal Defense & Education Fund, Inc.
Migrant Legal Action Program
NAACP, Washington Bureau
National Center for the Early Childhood Work Force
National Committee on Pay Equity
National Council of Jewish Women
National Employment Law Project
National Hispana Leadership Institute
National Law Center for Homelessness
National Women's Law Center
NETWORK: A National Catholic Social Justice Lobby
9 to 5/National Association of Working Women
United Church of Christ, Office for Church in Society
Wider Opportunities for Women
Women's Legal Defense Fund
Women Work! The National Network for Women's Employment

GENERAL ASSEMBLY
STATE OF ILLINOIS
HOUSE OF REPRESENTATIVES

May 22, 1997

The Honorable Bill Clinton
President of the United States
The White House
1600 Pennsylvania Ave. N.W.
Washington, DC 20500

Dear President Clinton:

We, the undersigned members of the Illinois General Assembly, strongly endorse the Department of Labor's policy decision to extend labor standards coverage to Workfare participants. As sponsors and supporters of state legislation that would have enacted minimum wage and other protections for these workers (Amendment #2 to HB 1758), we firmly believe this policy will not harm efforts to place welfare recipients in work activities. In fact, it may aid them in finding long-term employment.

While Workfare may be helpful in introducing some welfare recipients to the demands of the workplace, without job rights participants could all too easily be exploited. Treating Workfare participants differently from other employees would send the wrong message. It tells them and their potential employers they should not be viewed as members of the workforce. In contrast, treating Workfare participants as employees, with the rights and protections due employees, will help integrate them into the workforce and motivate them to develop and advance on the job.

We are deeply disturbed at the possibility that Americans can be denied workplace protections because of their poverty. We believe the decision to extend minimum wage coverage under the FLSA will not hamper efforts to move welfare recipients into work, but will rather open the door to their becoming fully functioning members of the workforce. This is the stated goal of welfare reform, and one we can all support.

Sincerely yours,

Carol Ronen

(Signatures continued on page 2)

Honorable Bill Clinton
May 22, 1997
Page 2

Representative Carol Ronen
Representative Constance Howard
Representative Larry McKeon
Representative Louis Lang
Representative Michael Smith
Representative Kevin McCarthy
Representative Rosemary Mulligan
Representative Michael Giglio
Representative Angelo "Skip" Saviano
Representative Janice Schakowsky
Representative Larry Woolard
Representative Steve Davis
Representative Arthur Turner
Representative Mike Bost
Representative Lou Jones
Representative Shirley Jones
Representative Miguel Santiago
Representative Charles Morrow

"I applaud the President in his decision to apply labor standards, most notably the minimum wage, to welfare recipients required to return the job market. Welfare recipients put to work are entitled to the same benefits and protections as any other worker.. To pay them less than a minimum wage is unconscionable."

-Sharon Sayles Belton,
Mayor, City of Minneapolis

CAPITOL OFFICE
STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0001
PHONE: (916) 445-0703
FAX: (916) 445-0764

DISTRICT OFFICE
110 NORTH AVENUE 56
LOS ANGELES, CA 90042
PHONE: (213) 255-7079
FAX: (213) 255-3279

Assembly
California Legislature

ANTONIO R. VILLARAIGOSA
MAJORITY FLOOR LEADER
ASSEMBLYMEMBER, FORTY-FIFTH DISTRICT

"I have introduced legislation which would require that welfare recipients in work assignments in California have the same rights as other workers on job sites, including , first and foremost the right to receive at least the minimum wage. I strongly believe this is the best policy for California and for the nation. The Clinton Administration is to be congratulated for concluding that the Fair Labor Standards Act protects working welfare recipients.

Assemblymember Antonio Villaraigosa (D-Los Angeles)
Assembly Majority Leader
California State Assembly

Leadership Conference on Civil Rights

1629 "K" St., NW, Suite 1010
Washington, D.C. 20006
Phone: 202/466-3311
Fax: 202/466-3435
TTY: 202/785-8669

May 15, 1997

President William J. Clinton
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Re: Welfare Reform and Civil Rights Enforcement

Dear President Clinton:

On behalf of the 180 national organizations that comprise the Leadership Conference on Civil Rights, the nation's oldest and most broadly-based civil rights coalition, we write to request your assistance in making the civil rights and economic security of low-income individuals and families a higher national priority, as states implement the recently-enacted **Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).**

The Leadership Conference believes that real welfare reform must remain true to fundamental principles of equality, fairness, and social justice while increasing the chances for all families in need to become economically independent. The changes required by the PRWORA create new challenges -- and new risks -- to upholding these fundamental principles.

New Threats of Discrimination Targeted at Low-Income Families

The PRWORA creates perverse new incentives for states to deny assistance to needy families and act in discriminatory ways, thus, erecting new hazards for individuals who already face discrimination: persons of color, women, people with disabilities, and older people. For example:

- With the elimination of the individual entitlement to welfare benefits and services and the lack of clear rules, crucial decisions about who gets benefits, who gets services, and who gets penalized, may be made in arbitrary and discriminatory ways. For example, as a result of the new legislation states now have wide latitude to use different rules in different geographic areas. As a result, communities with a high concentration of racial or ethnic minorities such as cities may receive lower benefits, fewer services, or be subject to harsher rules and penalties.

- The harsh new restrictions aimed at legal immigrants will likely worsen discriminatory practices that many ethnic minorities already face. Individuals who are eligible to participate in a particular welfare program could be shut out simply because they have an accent and are assumed not to be citizens. While the Department of Justice will be issuing guidance on verification of status procedures to providers that distribute federal public benefits, there will be no procedure to monitor the providers and likely no consequence to a provider that discriminates. Others may lose benefits because they are unfamiliar with new welfare program rules and cannot obtain materials in their native language. Still others are already being shunned by employers, or unfairly selected out to produce identification documents, simply because they "look foreign."

- Early reports suggest that pressure on states to place recipients in jobs and meet strict new work participation requirements may push women, especially women of color, into low wage, stereotyped "women" and "minority" jobs with little training and few prospects for future employment. States attempting to raise their work participation rates also may "cream" job seekers, i.e., focus more attention on individuals perceived as "more desirable" or the closest to being job-ready, and offer less desirable assignments to minorities, people with disabilities, older workers, pregnant women, immigrants and others who too often lose out on job opportunities, because of discriminatory stereotypes about their abilities.

- Early reports also suggest that rigid new work participation requirements may discourage states and employers from assessing and accommodating the needs of individuals with disabilities. A recent study by the Urban Institute found that 16-20 percent of women receiving AFDC (under the old welfare law) reported one or more disabilities that limited their ability to work. But some individuals with disabilities may be unable to comply with the new law's work requirements because their disability has never been identified, assessed, or reasonably accommodated. Moreover, specific provisions in the new law may have discriminatory effects on individuals with disabilities: the twelve month time limit on participation in vocational education, for example, may unfairly impact individuals with learning disabilities who need to enroll in specialized programs of a longer duration.

- **Increased sexual harassment is a foreseeable problem.** Women are the majority of adult welfare recipients. Given the documented instances of sexual harassment in our society, it is reasonable to assume that some of these women may become victims of harassment in the workplace because they are particularly vulnerable -- i.e. they risk losing vital benefits if they cannot keep their jobs.

- **Children may be penalized unfairly by welfare reform simply because of the circumstances of their birth; i.e. because their parents were unmarried, or young, or immigrants.** As a result, the new law will take benefits away from children who otherwise would receive them under the old AFDC program and who now desperately need them.

Recommendations

Welfare reform should not mean a loss of civil rights protection. Moreover, devolution of power to the states cannot and must not mean the abandonment of the federal government's responsibility to provide basic civil rights protections for low-income individuals and families. The new welfare law does not modify the many civil rights laws that protect against discrimination, nor does it alter the federal government's continuing obligation to enforce such laws. In this changed environment, the role of your Administration will be critical. We urge the Administration to:

1. **Vigorously enforce the laws prohibiting discrimination in federally funded programs, including those specifically listed in the legislation and Title IX of the Education Amendments of 1972, as part of welfare implementation.** As the recent U.S. Commission on Civil Rights report, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs* (June 1996) concluded, there has been a history of under enforcement of Title VI, especially in the context of block grant programs. Given the heightened potential for discriminatory practices under the PRWORA, the federal government must develop new strategies to detect and challenge discrimination, and better coordinate its enforcement efforts.

2. **As states submit, amend and expand their state plans, the federal government should require specific information about the "objective criteria" states will use to determine eligibility; how they will assure "fair and equitable treatment;" and how they will provide welfare recipients an opportunity to be heard as required by the PRWORA.** The Department of Health and Human Services does not have the authority to disapprove state plans, but it does have the responsibility to determine whether the plans are complete. Requiring states, as they submit their plans in future years, to articulate the standards and procedures they intend to follow is critical to prevent arbitrary and discriminatory decision-

making at both the level of individual benefit determinations as well as the level of state-wide implementation. For example, if the state plan proposed differences in treatment for predominantly minority urban areas and predominantly white suburban areas, potential violations of Title VI could be identified and deterred.

3. **Vigorously enforce other civil rights and labor laws on behalf of welfare recipients, including Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act, the Occupational Safety and Health Act, the Fair Labor Standards Act, the Americans With Disabilities Act and Section 504 of the Rehabilitation Act, the Immigration Reform and Control Act, and the Family and Medical Leave Act.** Welfare recipients, whose families' access to subsistence benefits hinges on their ability to get and keep jobs, will be easy and vulnerable targets for discrimination. They are entitled to the same protections against discrimination, unsafe working conditions, and exploitive pay as other workers. And enforcing the law on their behalf protects all workers, by reducing the incentive to replace current employees with cheaper and more exploitable labor.

4. **Ensure that states comply with the requirements of the PRWORA to maintain assistance to single recipients who cannot obtain child care for a child under six years old, and maintain Medicaid coverage for eligible families.** The Administration should ensure that states comply with the law's provision protecting families with children under six from being penalized if lack of child care prevents them from accepting a work assignment by requiring states to conduct case reviews of a sample drawn from families that have been sanctioned.

5. **Work to repeal the provisions of the PRWORA that severely limit the eligibility of legal immigrants and refugees for a wide variety of federal benefit programs, and to address the inadequacies of the naturalization process.** The provisions of the PRWORA related to legal immigrants are blatantly discriminatory in that they treat foreign-born individuals differently than those who are born in the United States, denying them benefits until they have become naturalized citizens regardless of whether they work and pay taxes to the United States government. These provisions have a particularly discriminatory impact on elderly and disabled immigrants, many of whom are unable to fulfill the English language and civics requirements for naturalization or to take a meaningful oath of allegiance and therefore will remain permanently ineligible for Supplemental Security Income and Food Stamps.

We also urge efforts to allow legal immigrants to continue to receive assistance while they are in the naturalization process, to waive the English language and civics requirements for an expanded class of elderly immigrants, and to allow individuals who are too disabled to naturalize to continue to receive federal benefits.

In addition to challenging discriminatory practices at the state level, we urge the Administration to work diligently at the federal level to remedy the harshest effects of the new law. The Administration has begun some of this work, but there is more to do. For example, we support proposals in the Administration's budget to mitigate the new law's hardships for the most vulnerable legal immigrants, people with disabilities and children. But the far-reaching impact of the new law -- almost all noncitizens are no longer eligible for SSI and Food Stamp benefits, and new immigrants will be barred from federal means-tested benefit programs for five years -- will require the Administration to take more steps to restore the status of legal immigrants as full and equal members of American society.

We strongly urge the Administration to take advantage of any flexibility permitted under the new law to minimize its negative consequences. For example, the PRWORA targeted the SSI Childhood Disability program for cuts, and required the Social Security Administration to develop a new definition of childhood disability. Unfortunately, the Social Security Administration failed to take advantage of the statute's flexibility, and has issued unnecessarily harsh interim final regulations. If these regulations are not changed, they are likely to disqualify at least 135,000 children with significant impairments, and to fall especially heavily on children with mental retardation or mental health problems.

Restricting children's eligibility for the SSI Childhood Disability Program will also restrict their eligibility for Medicaid. Most children who qualify for SSI are automatically eligible for Medicaid; thus, children who fail to meet the new restrictive definitions for SSI eligibility lose this automatic coverage. Some will qualify for Medicaid on other grounds; others, however, will not. We commend the Administration for proposing to continue Medicaid coverage for children currently receiving SSI, who are disqualified under the new rules defining childhood disability. However, this proposal only helps current recipients. It will not ensure Medicaid coverage for children who would have qualified for SSI, and thus Medicaid, under the former rules, but cannot meet the stringent new standards.

<u>New Barriers to Economic Security Facing Low-Income Families</u>

Ensuring that low-income individuals are protected from discrimination is only one piece of a larger, more fundamental struggle to help low-income families chart an escape path from poverty to financial independence. The new law ignores many of the specific barriers -- such as the lack of

livable wage jobs, transportation, health care, child care, domestic violence counseling, and limited access to quality education and job training programs -- that make it difficult for low-income individuals to move permanently from welfare to work. Many welfare recipients, for example, are being forced to drop out of school and take "dead-end" jobs even though completing their education may be the only way they can get jobs to support themselves and their families.

The welfare to work initiatives included in the budget may mean more funding to help individuals get jobs, but it is unclear what these initiatives will be and how much funding will be available. Even the original budget proposal -- $3.6 billion allocated over five years -- is not enough to meet the needs of all of those who must find work. **We urge you to pursue meaningful and much-needed reforms, and seek additional funds to: (1) create new jobs that pay decent wages; (2) expand access to education and job training so that welfare recipients can be better prepared for the workplace; and (3) provide necessary support services, such as child care, health care, domestic violence counseling, and transportation costs, that welfare recipients need to go to work.** Without such reforms, welfare recipients will be pitted against, or simply displace, other low-wage workers as they vie for an inadequate supply of jobs and compete for ever-dwindling support services.

This Administration has distinguished itself by standing firm in its commitment to uphold basic civil rights protections for all individuals. We urge you to make the promise of our civil rights laws a reality for all individuals, particularly those most vulnerable, by making civil rights enforcement a top priority as the new welfare law is implemented. And, we urge you to go even further, by working to restore equal treatment for immigrants to this county, a safety net for children and adults with disabilities, and assistance to poor families struggling to achieve financial independence.

Sincerely,

Dr. Dorothy I. Height
Chairperson
Leadership Conference on Civil Rights

Wade Henderson
Executive Director
Leadership Conference on Civil Rights

Horace Deets
Executive Director
American Association of Retired Persons

Jackie DeFazio
President
American Association of University Women

Marian Wright Edelman
Founder & President
Children's Defense Fund

Marcia Greenberger
Co-President
National Women's Law Center

Antonia Hernandez
Executive Director
Mexican American Legal Defense & Educational Fund

Judith L. Lichtman
President
Women's Legal Defense Fund

Paul Marchand
Director
The Arc of the United States

Gerald McEntee
International President
American Federation of State, County & Municipal Employees

Kweisi Mfume
President & CEO
National Association for the Advancement of Colored People

Karen Narasaki
Executive Director
National Asian Pacific American Legal Consortium

Hugh Price
President
National Urban League

Rabbi David Saperstein
Executive Director
Religious Action Center
Union of American Hebrew Congregations

Andrew L. Stern
President
Service Employees International Union

Patrisha Wright
Executive Director
Disability Rights Education and Defense Fund

Stephen P. Yokich
President
International Union, United Automobile Workers of America

Raul Yzaguirre
President
National Council of La Raza

Principles of Unity

Workfare, in its current form, the New York City Work Experience Program (WEP), is unacceptable. People are involuntarily placed in jobs, don't receive the benefits or protections of the unionized workers they often replace, and have little or no prospect of getting a job elsewhere. It is not a job training program -- it is a program which effectively replaces and displaces other workers. It does not create jobs or opportunities for anyone, nor does it educate participants. It depresses wages and work standards for everyone. It divides workers and turns them against each other. It destroys families and takes parents from young children.

Therefore, we are opposed to workfare. What we really need are additional job opportunities.

However, in order to ensure that workfare is abolished and replaced with jobs paying a living wage, we do support the following legislative and administrative changes for all welfare to work programs:

Workers' Rights

All workfare program participants are workers entitled to:

*union concurrence in establishing and implementing workfare programs, including, but not limited to education of supervisors as to WEP workers' rights.

*an effective grievance procedure.

*same wages, benefits, leave, workers' compensation, wage replacement and working conditions as other incumbent workers.

*same labor standards and protections as other workers doing the same or similiar work, including health and safety and "right to know" training.

*same civil rights protections as other workers under federal, state and local laws .

Workfare participants must know the range of and limits on work to be done. WEP workers must not be used to displace, supervise or train paid workers. They must also have the right to organize and form independent organizations or to join unions.

Education/Job Training

Workfare programs' stated aim is to provide job training which will lead to a meaningful job elsewhere. To ensure this, the welfare system must:

*exhaust maximum use of education, job training, and meaningful job search assistance before placement into a workfare assignment.

*require that the welfare agency and benefits recipient jointly develop an individual employability plan.

*allow participants to go to school, including post secondary education, as exemptions from workfare.

*require that participants in any unpaid or subsidized work program be given placement options commensurate with their work experience, and/or skills, and that participation in work placements be voluntary.

*have access to quality, affordable child care for each participant who needs it.

Implementation/Monitoring

Workfare programs are established without input from those outside government and it has been impossible to gauge the relative success of workfare programs. Workfare programs must:

*establish a public process through which welfare recipients, labor, community-based organizations, employers, educational institutions and other interested constituencies can have input into welfare-to-work planning documents.

*mandate establishment of Community Review Boards to monitor implementation of welfare work programs. These Boards should be broadly

representative and include at a minimum welfare recipients, labor, community based organization and employers.

*require reporting of job placement outcomes for work participants and results achieved by each employer measured against the City's own established standards for job placement in other training programs.

Principles of Unity
Official Endorsements as of 5/10/97

African-American Agenda 2000
Amalgamated Transit Union Local 726
Association to Benefit Children
Broadway Democrats
Catholic Charities, Diocese of Brooklyn
Catholic Worker
Center for the Study of Family Policy -- Hunter College
Center on Social Welfare Policy and Law
Child Care Council at the City University of New York
Coalition for the Homeless
Communications Workers of America Local 1180
Community Food Resource Center
Community Service Society
Councilmember Stephen DiBrienza
Councilmember Thomas Duane
Dwelling Place
Federation of Protestant Welfare Agencies
Fifth Avenue Committee
Franciscan Sisters of Allegany
Greater NY Labor and Religion Coalition
Guyanese American Workers United
Intercommunity Center for Justice & Peace
Jews for Racial and Economic Justice
Labor Party/New York Metro Chapter
Lafayette Avenue Presbyterian Church
Latino Workers Center
Local 100, H.E.R.E.
Manhattan Borough President Ruth Messinger
Methodist Federation for Social Action (NY)
National Association of Letter Carriers (NY)
National Conference of Black Lawyers -- NYC Chapter
National Employment Law Project
New York Catholic Charities
New York City Coalition Against Hunger
New Yorkers for Fiscal Fairness
R.E.A.C.H.
Same Boat Coalition
St. Marks in the Bowery
United Auto Workers Local 2325
Urban Justice Center
Welfare Reform Network
Welfare Rights Initiative
Women's Housing & Economic Development Corporation
Women's Studies/Hamilton College

l'l' Cynthia's

What the Governors are Saying About the President's Proposal to Extend FLSA to Workfare Participants

"It's an untenable position to put a state in."

Democratic Governor Thomas Carper of Delaware
The New York Times, May 16, 1997

"It adds terrific costs. If we're going to tell every employer, 'Oh, by the way, we're going to have a Federal auditor here,' that's going to be a terrific disincentive" to hiring recipients.

Republican Governor John Engler of Michigan
The New York Times, May 16, 1997

"The administration's decision will 'essentially destroy the delicate blueprint' this state has designed to move people off welfare rolls and into jobs."

Democratic Governor Lawton Chiles of Florida
Associated Press, May 17, 1997

"We have a program that's getting people from welfare to work and the president may be stepping in and upsetting the apple cart."

Pete McDonough, Spokesman for New Jersey Republican
Gov. Christie Whitman. *Associated Press, May 17, 1997*

"The Clinton Administration's decision to force states to pay the Federal minimum wage to welfare recipients represents a step backward that will hinder our ability to move people from welfare into work."

Republican Governor George Pataki of New York
The New York Times, May 17, 1997

OPTIONS

- Exempt from FLSA and/or related labor protection laws (doesn't help states meet minimum wage)

- Allow states to count other benefits toward the minimum wage:

    - Medicaid
    - child care
    - housing
    - transportation

- Weaken work requirements by allowing states to meet more of the work requirements through education or training

- Exempt workfare from FICA/EITC, if necessary

- Other options?

Related Questions to answer:

- Does the Ways and Means proposal permit states to count training toward the minimum wage only after they have exhausted the other device for meeting the minimum wage (counting other benefits)?
- Does the Ways and Means proposal remove protections for race, gender, disability discrimination?
- How easy is it for states to meet the 30 hour work requirement via training?

June 2, 1997

TO: Elena Kagan
Cynthia Rice

FR: Diana Fortuna Diana

Attached are 2 FLSA documents.

1. DOL's internal Q&A's on FLSA. DOL needs our comments. We saw a draft of these earlier, but DOL says they got comments from everyone but us. Please get me your comments.

2. Charts on how close each state comes to meeting the minimum wage by combining TANF and food stamps. HHS wants to release these ASAP to Moynihan and Daschle, who requested them. I told Mary Bourdette I'd get back to her with an answer on this today. The charts show a lot of states have problems in addition to Mississippi:

Characteristics:	States with Problems:
• 20 hr work requirement, family of 2 (40% of families):	WV, TX, AR, SC, TN, LA, AL, MS
• 20 hr work requirement, family of 3:	Mississippi
• 30 hr work requirement, family of 2:	All except Alaska, HA, VT CT, NY, NH, CA, RI, MA
• 30 hr work requirement, family of 3:	21 states (includes DE, NV, FL, IN, GA, NC)

HHS's explanatory text notes that states are actually in worse shape than the charts show, because the analysis assumes the maximum food stamp benefit, while 25% of welfare families get less than the maximum.

I am trying to think of anything they left out that cuts the other way, but can't think of anything concrete apart from "TANF is a flexible program, so it is possible that people in wage supplementation or other programs are getting less than the average TANF benefits, making additional funds available for those in workfare." Or the TANF "windfall."

Decisions we must make:

- Release to Moynihan and Daschle? CRS is doing this analysis and will probably release it soon. Mary argues that we might as well arm our friends with this data. Do we want to be the first to show that Mississippi is not the only state with a problem?

- Release both the 20 and 30 hour charts? DOL argues that we should only release the 20 hour chart because, when the requirement increases from 20 to 30 hours, states are permitted to meet 10 of the 30 through training. HHS argues that states have already made plans for more than 20 hours a week with our praise, and so we should release both.

- Whether the explanatory text includes all the right qualifications.

What do you think? Should we get together on a conference call on this?

5/27

The Difference Between the Minimum Wage for 30 Hours a Week and the Combined Maximum Food Stamps and TANF Benefits: Key Points and Methodological issues

- The attached tables illustrate that a number of states will have difficulty paying the minimum wage by combining the maximum AFDC and Food Stamp benefits for a 30 hour work week as required for two parent families in FY 1997 and at state option for some single parent families beginning in FY 2000.

- The analysis calculates the effective wage rate for a 30 hour work week. While two parent families must participate for 35 hours per week beginning in FY 1997, only 30 of those hours must be in work activities as described in Sec. 407. Similarly, while single parent families must participate for 30 hours a week beginning in FY 2000, only 20 of those hours must be within the activities described in Sec. 407. States could place recipients in training for 10 of the 30 hours and not be required to pay the minimum wage for 10 hours of training. In addition, single parents with a child under 6, about 60% of the caseload, are required to participate for only 20 hours per week even when the hours requirement increases in later years. Relatively low benefit states that choose to require recipients to participate in work for all 30 hours may face additional costs.

- The analysis utilizes the maximum food stamp benefit calculated for a family that receives the maximum TANF benefit. Approximately 25% of the 1995 AFDC caseload received less than maximum benefits. While some of these families receive less benefits because of earnings (presumably at least at the minimum wage), a significant portion receive less benefits because of unearned income that would not count toward satisfying the minimum wage requirement. As a result, it is almost certain that **each state** would have some cases in which food stamp and TANF benefits combined would not meet the minimum wage, if the parent were required to work.

- Families that receive child support may receive less than the maximum benefit. As a policy matter, states may not want families to work off their child support benefits and therefore may have to provide additional compensation to meet the minimum wage.

- Most of the discussion has centered on the potential impact of the FLSA for a family of three, the average unit size of an AFDC family. However, 40% of those on AFDC have only two persons in the unit. Almost forty states would be unable to pay the minimum wage by combining TANF and food stamp benefits for a family of two for a 30 hour work week.

- The table assumed a 100% excess shelter deduction. However, except for the lowest benefit states, if the excess shelter deduction were 0% the value of combined AFDC and food stamp benefits would be significantly reduced.

- The analysis assumes that states maintain the level of benefits offered under AFDC. To the extent that states increase their benefit levels, even fewer states would have be unable to meet the minimum wage by combining food stamp and TANF benefits. To the extent that states decrease their benefit levels, more states would be unable to meet the minimum wage simply by combining food stamps and TANF benefits.

For Illustrative Purposes Only

TABLE TWO: FAMILY OF TWO

The Difference Between the Minimum Wage and the July 1996 Monthly Maximum Benefits for a family of two

State	Maximum Monthly AFDC Benefit July 1996 For a family of 2	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 30 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 30 hours/week for 4.3 weeks/mo.
Alaska	821	231	$1,052	$8.16	$0
Hawaii	565	357	$922	$7.15	$0
Vermont	533	172	$705	$5.47	$0
Connecticut	513	178	$691	$5.36	$0
New York	468	203	$671	$5.20	$0
New Hampshire	481	188	$669	$5.19	$0
California	479	188	$667	$5.17	$0
Rhode Island	449	218	$667	$5.17	$0
Massachusetts	474	190	$664	$5.15	$0
Washington	440	218	$658	$5.10	$6
Wisconsin	440	200	$640	$4.96	$24
Minnesota	437	201	$638	$4.95	$26
Oregon	395	218	$613	$4.75	$51
South Dakota	380	218	$598	$4.64	$66
Michigan	371	218	$589	$4.57	$75
Iowa	361	218	$579	$4.49	$85
Kansas	352	218	$570	$4.42	$94
Montana	349	218	$567	$4.40	$97
Utah	342	218	$560	$4.34	$104
North Dakota	333	218	$551	$4.27	$113
Pennsylvania	330	218	$548	$4.25	$116
Dist. of Columbia	326	218	$544	$4.22	$120
New Jersey	322	218	$540	$4.19	$124
Wyoming	320	218	$538	$4.17	$126
Maine	312	218	$530	$4.11	$134
New Mexico	310	218	$528	$4.09	$136
Virginia	294	218	$512	$3.97	$152
Nebraska	293	218	$511	$3.96	$153
Maryland	292	218	$510	$3.95	$154
Nevada	289	218	$507	$3.93	$157
Colorado	280	218	$498	$3.86	$166
Ohio	279	218	$497	$3.85	$167
Illinois	278	218	$496	$3.84	$168
Arizona	275	218	$493	$3.82	$171
Delaware	270	218	$488	$3.78	$176
Idaho	251	218	$469	$3.64	$195
Virgin Islands	180	281	$461	$3.57	$203
Florida	241	218	$459	$3.56	$205

For Illustrative Purposes Only

TABLE TWO: FAMILY OF TWO

The Difference Between the Minimum Wage and the July 1996 Monthly Maximum Benefits for a family of two

State	Maximum Monthly AFDC Benefit July 1996 For a family of 2	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 30 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 30 hours/week for 4.3 weeks/mo.
Oklahoma	238	218	$456	$3.53	$208
North Carolina	236	218	$454	$3.52	$210
Georgia	235	218	$453	$3.51	$211
Missouri	234	218	$452	$3.50	$212
Indiana	229	218	$447	$3.47	$217
Kentucky	225	218	$443	$3.43	$221
West Virginia	201	218	$419	$3.25	$245
Texas	163	218	$381	$2.95	$283
Arkansas	162	218	$380	$2.95	$284
South Carolina	159	218	$377	$2.92	$287
Tennessee	142	218	$360	$2.79	$304
Louisiana	138	218	$356	$2.76	$308
Alabama	$137	218	$355	$2.75	$309
Mississippi	96	218	$314	$2.43	$350

Notes:

1. This table uses the maximum monthly AFDC benefits as of July 1996. States have more flexibility under TANF to determine benefit levels and may choose to provide higher or lower benefits than suggested in this table. Food Stamp benefits have increased slightly since 7/96 ($2 for a family of 3).
2. The maximum food stamp benefit assumes 100% excess shelter, no child support, no medical deductions etc.
3. The min. wage is currently $4.75 an hour but will increase to $5.15 on 9/1/97. The tables use $5.15 as the wage
4. While the number of hours required for single parent participation does not increase to 30 until FY 2000, only 20 of those hours must be within the activities described in Sec. 407. As a result states could place recipients in training for 10 of the 30 hours and not be required to pay the minimum wage for the 10 hours of training.
5. Families may receive less than the maximum benefit for several reasons. While the table lists no additional costs for many states, it is likely that each state will have some cases in which food stamp benefits combined with TANF benefits would not meet the minimum wage.
6. AFDC benefits are calculated by the Congressional Research Service.

For Illustrative Purposes Only

TABLE ONE: FAMILY OF THREE

The Difference Between the Minimum Wage and the July 1996 Monthly Maximum Benefits for a family of three

State	Maximum Monthly AFDC Benefit July 1996 for a family of 3	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 30 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 30 hours/week for 4.3 weeks/mo.
Alaska	$923	$321	$1,244	$9.64	$0
Hawaii	$712	$471	$1,183	$9.17	$0
Connecticut	$636	$236	$872	$6.76	$0
Vermont	$633	$237	$870	$6.74	$0
Rhode Island	$554	$299	$853	$6.61	$0
New York	$577	$270	$847	$6.57	$0
California	$596	$248	$844	$6.54	$0
Washington	$546	$289	$835	$6.47	$0
Massachusetts	$565	$257	$822	$6.37	$0
New Hampshire	$550	$262	$812	$6.29	$0
Minnesota	$532	$267	$799	$6.19	$0
Wisconsin	$517	$272	$789	$6.12	$0
Oregon	$460	$313	$773	$5.99	$0
Michigan	$459	$300	$759	$5.88	$0
Kansas	$429	$313	$742	$5.75	$0
Montana	$438	$295	$733	$5.68	$0
New Jersey	$424	$307	$731	$5.67	$0
North Dakota	$431	$298	$729	$5.65	$0
South Dakota	$430	$298	$728	$5.64	$0
Utah	$426	$299	$725	$5.62	$0
Iowa	$426	$299	$725	$5.62	$0
Pennsylvania	$421	$301	$722	$5.60	$0
Maine	$418	$301	$719	$5.57	$0
Dist. of Columbia	$415	$302	$717	$5.56	$0
New Mexico	$389	$310	$699	$5.42	$0
Illinois	$377	$313	$690	$5.35	$0
Maryland	$373	$313	$686	$5.32	$0
Nebraska	$364	$313	$677	$5.25	$0
Wyoming	$360	$313	$673	$5.22	$0
Colorado	$356	$313	$669	$5.19	$0
Virginia	$354	$313	$667	$5.17	$0
Nevada	$348	$313	$661	$5.12	$3
Arizona	$347	$313	$660	$5.12	$4
Ohio	$341	$313	$654	$5.07	$10
Delaware	$338	$313	$651	$5.05	$13
Virgin Islands	$240	$402	$642	$4.98	$22
Idaho	$317	$313	$630	$4.88	$34
Oklahoma	$307	$313	$620	$4.81	$44

For Illustrative Purposes Only

TABLE ONE: FAMILY OF THREE

The Difference Between the Minimum Wage and the July 1996 Monthly Maximum Benefits for a family of three

State	Maximum Monthly AFDC Benefit July 1996 for a family of 3	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 30 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 30 hours/week for 4.3 weeks/mo.
Florida	$303	$313	$616	$4.78	$48
Missouri	$292	$313	$605	$4.69	$59
Indiana	$288	$313	$601	$4.66	$63
Georgia	$280	$313	$593	$4.60	$71
North Carolina	$272	$313	$585	$4.53	$79
Kentucky	$262	$313	$575	$4.46	$89
West Virginia	$253	$313	$566	$4.39	$98
Arkansas	$204	$313	$517	$4.01	$147
South Carolina	$200	$313	$513	$3.98	$151
Louisiana	$190	$313	$503	$3.90	$161
Texas	$188	$313	$501	$3.88	$163
Tennessee	$185	$313	$498	$3.86	$166
Alabama	$164	$313	$477	$3.70	$187
Mississippi	$120	$313	$433	$3.36	$231
Puerto Rico	$180	NA	NA	$0.00	NA

Notes:

1. This table uses the maximum monthly AFDC benefits as of July 1996. States have more flexibility under TANF to determine benefit levels and may choose to provide higher or lower benefits than suggested in this table. Food Stamp benefits have increased slightly since 7/96 ($2 for a family of 3).
2. The maximum food stamp benefit assumes 100% excess shelter, no child support, no medical deductions etc.
3. The min. wage is currently $4.75 an hour but will increase to $5.15 on 9/1/97. The tables use $5.15 as the wage
4. While the number of hours required for single parent participation does not increase to 30 until FY 2000, only 20 of those hours must be within the activities described in Sec. 407. As a result states could place recipients in training for 10 of the 30 hours and not be required to pay the minimum wage for the 10 hours of training.
5. Families may receive less than the maximum benefit for several reasons. While the table lists no additional costs for many states, it is likely that each state will have some cases in which food stamp benefits combined with TANF benefits would not meet the minimum wage.
6. AFDC benefits are calculated by the Congressional Research Service.

For Illustrative Purposes Only

TABLE THREE: FAMILY OF FOUR

The Difference Between the Minimum Wage and the July 1996 Monthly Maximum Benefits for a family of four

State	Maximum Monthly AFDC Benefit July 1996 For a family of 4	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 30 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 30 hours/week for 4.3 weeks/mo.
Hawaii	859	567	$1,426	$11.05	$0
Alaska	1,025	399	$1,424	$11.04	$0
Connecticut	741	289	$1,030	$7.98	$0
New York	687	325	$1,012	$7.84	$0
Vermont	711	298	$1,009	$7.82	$0
California	707	299	$1,006	$7.80	$0
Rhode Island	632	365	$997	$7.73	$0
Washington	642	349	$991	$7.68	$0
Massachusetts	651	316	$967	$7.50	$0
Minnesota	621	325	$946	$7.33	$0
Wisconsin	617	326	$943	$7.31	$0
Oregon	565	377	$942	$7.30	$0
New Hampshire	613	327	$940	$7.29	$0
Michigan	563	352	$915	$7.09	$0
Kansas	497	383	$880	$6.82	$0
Montana	527	353	$880	$6.82	$0
Maine	526	353	$879	$6.81	$0
North Dakota	517	356	$873	$6.77	$0
Pennsylvania	514	357	$871	$6.75	$0
Dist. of Columbia	507	359	$866	$6.71	$0
New Jersey	488	373	$861	$6.67	$0
Utah	498	361	$859	$6.66	$0
Iowa	495	362	$857	$6.64	$0
South Dakota	478	367	$845	$6.55	$0
Maryland	450	391	$841	$6.52	$0
New Mexico	469	370	$839	$6.50	$0
Nebraska	435	380	$815	$6.32	$0
Colorado	432	381	$813	$6.30	$0
Virgin Islands	300	511	$811	$6.29	$0
Ohio	421	385	$806	$6.25	$0
Illinois	414	392	$806	$6.25	$0
Arizona	418	385	$803	$6.22	$0
Virginia	410	388	$798	$6.19	$0
Nevada	408	388	$796	$6.17	$0
Delaware	407	389	$796	$6.17	$0
Wyoming	390	394	$784	$6.08	$0
Idaho	382	396	$778	$6.03	$0

For Illustrative Purposes Only

TABLE THREE: FAMILY OF FOUR

The Difference Between the Minimum Wage and the July 1996 Monthly Maximum Benefits for a family of four

State	Maximum Monthly AFDC Benefit July 1996 For a family of 4	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 30 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 30 hours/week for 4.3 weeks/mo.
Oklahoma	380	397	$777	$6.02	$0
Florida	364	397	$761	$5.90	$0
Indiana	346	397	$743	$5.76	$0
Missouri	342	397	$739	$5.73	$0
Georgia	330	397	$727	$5.64	$0
Kentucky	328	397	$725	$5.62	$0
West Virginia	312	397	$709	$5.50	$0
North Carolina	297	397	$694	$5.38	$0
Arkansas	247	397	$644	$4.99	$20
South Carolina	241	397	$638	$4.95	$26
Louisiana	234	397	$631	$4.89	$33
Tennessee	226	397	$623	$4.83	$41
Texas	226	397	$623	$4.83	$41
Alabama	$194	397	$591	$4.58	$73
Mississippi	144	397	$541	$4.19	$123

Notes:

1. This table uses the maximum monthly AFDC benefits as of July 1996. States have more flexibility under TANF to determine benefit levels and may choose to provide higher or lower benefits than suggested in this table. Food Stamp benefits have increased slightly since 7/96 ($2 for a family of 3).
2. The maximum food stamp benefit assumes 100% excess shelter, no child support, no medical deductions etc.
3. The min. wage is currently $4.75 an hour but will increase to $5.15 on 9/1/97. The tables use $5.15 as the wage
4. While the number of hours required for single parent participation does not increase to 30 until FY 2000, only 20 of those hours must be within the activities described in Sec. 407. As a result states could place recipients in training for 10 of the 30 hours and not be required to pay the minimum wage for the 10 hours of training.
5. Families may receive less than the maximum benefit for several reasons. While the table lists no additional costs for many states, it is likely that each state will have some cases in which food stamp benefits combined with TANF benefits would not meet the minimum wage.
6. AFDC benefits are calculated by the Congressional Research Service.

The Difference Between the Minimum Wage for 20 Hours a Week and the Combined Maximum Food Stamps and TANF Benefits: Key Points and Methodological issues

- The attached tables illustrate that relatively few states will face additional monthly costs if they combine the maximum AFDC and Food Stamp benefits to pay the minimum wage for a 20 hour work week.

- The analysis calculates the effective wage rate for a 20 hour work week as required in FY 1997 for single parent families (25% of the caseload is required to work in FY 1997). While the number of hours required for participation increases to 30 in FY 2000, only 20 of those hours must be within the activities described in Sec. 407. As a result, states could place recipients in training for 10 of the 30 hours and not be required to pay the minimum wage for 10 hours of training. In addition, single parents with a child under 6, about 60% of the caseload, are required to participate for only 20 hours per week even when the hours requirement increases in later years. Relatively low benefit states that choose to require recipients to participate in work for all 30 hours may face additional costs. Finally, two-parent families are required to participate in work activities for 30 hours a week beginning in FY 1997. The additional hours required for two-parent families would result in more states being unable to pay the minimum wage by combining food stamp and TANF benefits.

but more bens?

- The analysis utilizes the maximum food stamp benefit calculated for a family that receives the maximum TANF benefit. Approximately 25% of the 1995 AFDC caseload received less than maximum benefits. While some of these families receive less benefits because of earnings (presumably at least at the minimum wage), a significant portion receive less benefits because of unearned income that would not count toward satisfying the minimum wage requirement. As a result, it is almost certain that **each state** would have some cases in which food stamp and TANF benefits combined would not meet the minimum wage, if the parent were required to work.

- Families that receive child support may receive less than the maximum benefit. As a policy matter, states may not want families to work off their child support benefits and therefore may have to provide additional compensation to meet the minimum wage.

- Most of the discussion has centered on the potential impact of the FLSA for a family of three, the average unit size of an AFDC family. However, 40% of those on AFDC have only two persons in the unit. Eight states including Texas would be unable to pay the minimum wage by combining TANF and food stamp benefits for a family of two.

- The table assumed a 100% excess shelter deduction. However, except for the lowest benefit states, if the excess shelter deduction were 0% the value of combined AFDC and food stamp benefits would be significantly reduced.

- The analysis assumes that states maintain the level of benefits offered under AFDC. To the extent that states increase their benefit levels, even fewer states would have be unable to meet the minimum wage by combining food stamp and TANF benefits. To the extent that states decrease their benefit levels, more states would be unable to meet the minimum wage simply by combining food stamps and TANF benefits.

For Illustrative Purposes Only

TABLE TWO: FAMILY OF TWO

The Difference Between the Minimum Wage and the July 1996 Monthly Maximum Benefits for a family of two

State	Maximum Monthly AFDC Benefit July 1996 For a family of 2	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.
Alaska	821	231	$1,052	$12.23	$0
Hawaii	565	357	$922	$10.72	$0
Vermont	533	172	$705	$8.20	$0
Connecticut	513	178	$691	$8.03	$0
New York	468	203	$671	$7.80	$0
New Hampshire	481	188	$669	$7.78	$0
California	479	188	$667	$7.76	$0
Rhode Island	449	218	$667	$7.76	$0
Massachusetts	474	190	$664	$7.72	$0
Washington	440	218	$658	$7.65	$0
Wisconsin	440	200	$640	$7.44	$0
Minnesota	437	201	$638	$7.42	$0
Oregon	395	218	$613	$7.13	$0
South Dakota	380	218	$598	$6.95	$0
Michigan	371	218	$589	$6.85	$0
Iowa	361	218	$579	$6.73	$0
Kansas	352	218	$570	$6.63	$0
Montana	349	218	$567	$6.59	$0
Utah	342	218	$560	$6.51	$0
North Dakota	333	218	$551	$6.41	$0
Pennsylvania	330	218	$548	$6.37	$0
Dist. of Columbia	326	218	$544	$6.33	$0
New Jersey	322	218	$540	$6.28	$0
Wyoming	320	218	$538	$6.26	$0
Maine	312	218	$530	$6.16	$0
New Mexico	310	218	$528	$6.14	$0
Virginia	294	218	$512	$5.95	$0
Nebraska	293	218	$511	$5.94	$0
Maryland	292	218	$510	$5.93	$0
Nevada	289	218	$507	$5.90	$0
Colorado	280	218	$498	$5.79	$0
Ohio	279	218	$497	$5.78	$0
Illinois	278	218	$496	$5.77	$0
Arizona	275	218	$493	$5.73	$0
Delaware	270	218	$488	$5.67	$0
Idaho	251	218	$469	$5.45	$0
Virgin Islands	180	281	$461	$5.36	$0
Florida	241	218	$459	$5.34	$0

For Illustrative Purposes Only

TABLE TWO: FAMILY OF TWO

The Difference Between the Minimum Wage and the July 1996 Monthly Maximum Benefits for a family of two

State	Maximum Monthly AFDC Benefit July 1996 For a family of 2	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.
Oklahoma	238	218	$456	$5.30	$0
North Carolina	236	218	$454	$5.28	$0
Georgia	235	218	$453	$5.27	$0
Missouri	234	218	$452	$5.26	$0
Indiana	229	218	$447	$5.20	$0
Kentucky	225	218	$443	$5.15	$0
West Virginia	201	218	$419	$4.87	$24
Texas	163	218	$381	$4.43	$62
Arkansas	162	218	$380	$4.42	$63
South Carolina	159	218	$377	$4.38	$66
Tennessee	142	218	$360	$4.19	$83
Louisiana	138	218	$356	$4.14	$87
Alabama	$137	218	$355	$4.13	$88
Mississippi	96	218	$314	$3.65	$129

Notes:

1. This table uses the maximum monthly AFDC benefits as of July 1996. States have more flexibility under TANF to determine benefit levels and may choose to provide higher or lower benefits than suggested in this table. Food Stamp benefits have increased slightly since 7/96 ($2 for a family of 3).
2. The maximum food stamp benefit assumes 100% excess shelter, no child support, no medical deductions etc.
3. The min. wage is currently $4.75 an hour but will increase to $5.15 on 9/1/97. The tables use $5.15 as the wage
4. While the number of hours required for single parent participation does not increase to 30 until FY 2000, only 20 of those hours must be within the activities described in Sec. 407. As a result states could place recipients in training for 10 of the 30 hours and not be required to pay the minimum wage for the 10 hours of training.
5. Families may receive less than the maximum benefit for several reasons. While the table lists no additional costs for many states, it is likely that each state will have some cases in which food stamp benefits combined with TANF benefits would not meet the minimum wage.
6. AFDC benefits are calculated by the Congressional Research Service.

Moynihan
Daschle
Concerned

For Illustrative Purposes Only

TABLE ONE: FAMILY OF THREE

The Difference Between the Minimum Wage and the July 1996 Monthly Maximum Benefits for a family of three

State	Maximum Monthly AFDC Benefit July 1996 for a family of 3	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.
Alaska	$923	$321	$1,244	$14.47	$0
Hawaii	$712	$471	$1,183	$13.76	$0
Connecticut	$636	$236	$872	$10.14	$0
Vermont	$633	$237	$870	$10.12	$0
Rhode Island	$554	$299	$853	$9.92	$0
New York	$577	$270	$847	$9.85	$0
California	$596	$248	$844	$9.81	$0
Washington	$546	$289	$835	$9.71	$0
Massachusetts	$565	$257	$822	$9.56	$0
New Hampshire	$550	$262	$812	$9.44	$0
Minnesota	$532	$267	$799	$9.29	$0
Wisconsin	$517	$272	$789	$9.17	$0
Oregon	$460	$313	$773	$8.99	$0
Michigan	$459	$300	$759	$8.83	$0
Kansas	$429	$313	$742	$8.63	$0
Montana	$438	$295	$733	$8.52	$0
New Jersey	$424	$307	$731	$8.50	$0
North Dakota	$431	$298	$729	$8.48	$0
South Dakota	$430	$298	$728	$8.47	$0
Utah	$426	$299	$725	$8.43	$0
Iowa	$426	$299	$725	$8.43	$0
Pennsylvania	$421	$301	$722	$8.40	$0
Maine	$418	$301	$719	$8.36	$0
Dist. of Columbia	$415	$302	$717	$8.34	$0
New Mexico	$389	$310	$699	$8.13	$0
Illinois	$377	$313	$690	$8.02	$0
Maryland	$373	$313	$686	$7.98	$0
Nebraska	$364	$313	$677	$7.87	$0
Wyoming	$360	$313	$673	$7.83	$0
Colorado	$356	$313	$669	$7.78	$0
Virginia	$354	$313	$667	$7.76	$0
Nevada	$348	$313	$661	$7.69	$0
Arizona	$347	$313	$660	$7.67	$0
Ohio	$341	$313	$654	$7.60	$0
Delaware	$338	$313	$651	$7.57	$0
Virgin Islands	$240	$402	$642	$7.47	$0
Idaho	$317	$313	$630	$7.33	$0
Oklahoma	$307	$313	$620	$7.21	$0

For Illustrative Purposes Only

TABLE ONE: FAMILY OF THREE

The Difference Between the Minimum Wage and the July 1996 Monthly Maximum Benefits for a family of three

State	Maximum Monthly AFDC Benefit July 1996 for a family of 3	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.
Florida	$303	$313	$616	$7.16	$0
Missouri	$292	$313	$605	$7.03	$0
Indiana	$288	$313	$601	$6.99	$0
Georgia	$280	$313	$593	$6.90	$0
North Carolina	$272	$313	$585	$6.80	$0
Kentucky	$262	$313	$575	$6.69	$0
West Virginia	$253	$313	$566	$6.58	$0
Arkansas	$204	$313	$517	$6.01	$0
South Carolina	$200	$313	$513	$5.97	$0
Louisiana	$190	$313	$503	$5.85	$0
Texas	$188	$313	$501	$5.83	$0
Tennessee	$185	$313	$498	$5.79	$0
Alabama	$164	$313	$477	$5.55	$0
Mississippi	$120	$313	$433	$5.03	$10
Puerto Rico	$180	NA	NA	$0.00	NA

Notes:

1. This table uses the maximum monthly AFDC benefits as of July 1996. States have more flexibility under TANF to determine benefit levels and may choose to provide higher or lower benefits than suggested in this table. Food Stamp benefits have increased slightly since 7/96 ($2 for a family of 3).
2. The maximum food stamp benefit assumes 100% excess shelter, no child support, no medical deductions etc.
3. The min. wage is currently $4.75 an hour but will increase to $5.15 on 9/1/97. The tables use $5.15 as the wage
4. While the number of hours required for single parent participation does not increase to 30 until FY 2000, only 20 of those hours must be within the activities described in Sec. 407. As a result states could place recipients in training for 10 of the 30 hours and not be required to pay the minimum wage for the 10 hours of training.
5. Families may receive less than the maximum benefit for several reasons. While the table lists no additional costs for many states, it is likely that each state will have some cases in which food stamp benefits combined with TANF benefits would not meet the minimum wage.
6. AFDC benefits are calculated by the Congressional Research Service.

For Illustrative Purposes Only

TABLE THREE: FAMILY OF FOUR

The Difference Between the Minimum Wage and the July 1996 Monthly Maximum Benefits for a family of four

State	Maximum Monthly AFDC Benefit July 1996 For a family of 4	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.
Hawaii	859	567	$1,426	$16.58	$0
Alaska	1,025	399	$1,424	$16.56	$0
Connecticut	741	289	$1,030	$11.98	$0
New York	687	325	$1,012	$11.77	$0
Vermont	711	298	$1,009	$11.73	$0
California	707	299	$1,006	$11.70	$0
Rhode Island	632	365	$997	$11.59	$0
Washington	642	349	$991	$11.52	$0
Massachusetts	651	316	$967	$11.24	$0
Minnesota	621	325	$946	$11.00	$0
Wisconsin	617	326	$943	$10.97	$0
Oregon	565	377	$942	$10.95	$0
New Hampshire	613	327	$940	$10.93	$0
Michigan	563	352	$915	$10.64	$0
Kansas	497	383	$880	$10.23	$0
Montana	527	353	$880	$10.23	$0
Maine	526	353	$879	$10.22	$0
North Dakota	517	356	$873	$10.15	$0
Pennsylvania	514	357	$871	$10.13	$0
Dist. of Columbia	507	359	$866	$10.07	$0
New Jersey	488	373	$861	$10.01	$0
Utah	498	361	$859	$9.99	$0
Iowa	495	362	$857	$9.97	$0
South Dakota	478	367	$845	$9.83	$0
Maryland	450	391	$841	$9.78	$0
New Mexico	469	370	$839	$9.76	$0
Nebraska	435	380	$815	$9.48	$0
Colorado	432	381	$813	$9.45	$0
Virgin Islands	300	511	$811	$9.43	$0
Ohio	421	385	$806	$9.37	$0
Illinois	414	392	$806	$9.37	$0
Arizona	418	385	$803	$9.34	$0
Virginia	410	388	$798	$9.28	$0
Nevada	408	388	$796	$9.26	$0
Delaware	407	389	$796	$9.26	$0
Wyoming	390	394	$784	$9.12	$0
Idaho	382	396	$778	$9.05	$0

For Illustrative Purposes Only

TABLE THREE: FAMILY OF FOUR

The Difference Between the Minimum Wage and the July 1996 Monthly Maximum Benefits for a family of four

State	Maximum Monthly AFDC Benefit July 1996 For a family of 4	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.
Oklahoma	380	397	$777	$9.03	$0
Florida	364	397	$761	$8.85	$0
Indiana	346	397	$743	$8.64	$0
Missouri	342	397	$739	$8.59	$0
Georgia	330	397	$727	$8.45	$0
Kentucky	328	397	$725	$8.43	$0
West Virginia	312	397	$709	$8.24	$0
North Carolina	297	397	$694	$8.07	$0
Arkansas	247	397	$644	$7.49	$0
South Carolina	241	397	$638	$7.42	$0
Louisiana	234	397	$631	$7.34	$0
Tennessee	226	397	$623	$7.24	$0
Texas	226	397	$623	$7.24	$0
Alabama	$194	397	$591	$6.87	$0
Mississippi	144	397	$541	$6.29	$0

Notes:

1. This table uses the maximum monthly AFDC benefits as of July 1996. States have more flexibility under TANF to determine benefit levels and may choose to provide higher or lower benefits than suggested in this table. Food Stamp benefits have increased slightly since 7/96 ($2 for a family of 3).
2. The maximum food stamp benefit assumes 100% excess shelter, no child support, no medical deductions etc.
3. The min. wage is currently $4.75 an hour but will increase to $5.15 on 9/1/97. The tables use $5.15 as the wage
4. While the number of hours required for single parent participation does not increase to 30 until FY 2000, only 20 of those hours must be within the activities described in Sec. 407. As a result states could place recipients in training for 10 of the 30 hours and not be required to pay the minimum wage for the 10 hours of training.
5. Families may receive less than the maximum benefit for several reasons. While the table lists no additional costs for many states, it is likely that each state will have some cases in which food stamp benefits combined with TANF benefits would not meet the minimum wage.
6. AFDC benefits are calculated by the Congressional Research Service.

American Law Division
Congressional Research Service • The Library of Congress • Washington, D.C. 20540-7410

MEMORANDUM April 16, 1997

SUBJECT: Fair Labor Standards Act Coverage of Workfare Participants

AUTHOR: Vince Treacy
Legislative Attorney

Introduction

The imposition of mandatory work requirements by the 1996 Welfare Reform Act has presented a question concerning the applicability of wage and hour standards to individuals receiving assistance. The Act replaces the aid for families with dependent children (AFDC) program with a new system of block grants to states for Temporary Assistance for Needy Families (TANF). Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, §103, 110 Stat. 2105, Aug. 22, 1996.

The new program requires states to place some recipients in work activities. To be counted as engaged in work, the recipient must engage in unsubsidized employment, subsidized public or private employment, work experience, on-the-job training, job search and job readiness assistance, community service programs, vocational educational training, job skills training or education directly related to employment, satisfactory attendance at secondary school, or provision of child care services to an individual who is participating in a community service program. 42 U.S.C. § 407(d)(Supp.1997). In general, recipients who are required to engage in work activities in exchange for benefits are often called workfare participants.

With the new TANF program slated to go into mandatory effect on July 1, 1997, the question of application of the Fair Labor Standards Act (FLSA) to workfare participants has arisen. The Clinton administration has indicated that welfare recipients who must participate in local workfare programs to receive benefits should be covered by the FLSA. Administration advisor Gene Sperling said on March 17, 1997, that the White House is continuing to review federal labor law to determine whether welfare recipients who must work for their benefits are covered by the law. *Daily Labor Report*, Mar. 18, 1997.

Employees under FLSA

The Fair Labor Standards Act requires all covered employers to pay covered employees the requisite minimum wage, as well as one-and-one-half times their regular rate of pay for overtime hours in excess of 40 in a workweek. The Act also prohibits oppressive child labor, requires equal pay for equal work by men and women, prohibits retaliation against employees for filing complaints, and requires all covered employers to maintain employment records. 29 U.S.C. §§ 201-219.

Under the FLSA, the term "employee" is expressly defined as "any individual employed by an employer." 29 U.S.C. § 203(e)(1). The term "employ" means "to suffer or permit to work." 29 U.S.C. § 203(g). An "employer" includes "any person acting directly or indirectly in the interest of an employer in relation to an employee and includes *a public agency*. . . ." 29 U.S.C. § 203(d)(emphasis supplied). The statutory definition is "broad and comprehensive in order to accomplish the remedial purposes of the Act." *Secretary of Labor v. Lauritzen,* 835 F.2d 1529, 1534 (7th Cir. 1987).

The Supreme Court has held that, in defining the term "employee," Congress ordinarily means an agency law definition unless it clearly states otherwise. In the FLSA, however, Congress defined the term "employ" as "to suffer or permit to work." The Court found that the "striking breadth" of this definition has stretched the meaning of "employee" under the FLSA to cover some parties who might not qualify as employees under many other statutes by virtue of the strict application of agency law principles. *Nationwide Mutual Insurance Co. v. Darden,* 501 U.S. 318 (1992).

Moreover, under the *Chevron* doctrine of judicial deferral to an agency's interpretation of a statute which it administers and enforces, the courts have given great weight to Department of Labor interpretations under the FLSA. *Auer v. Robbins,* 117 S. Ct. 905, *citing Chevron U.S.A. v. Natural Resources Defense Council,* 467 U.S. 837, 842-43 (1984). The Department of Labor may provide guidance to employers and employees concerning application of FLSA standards to workfare programs, but Congress has not *required* it to provide guidance for the TANF program. In 1985, by contrast, Congress directed the Department to issue regulations covering public sector volunteers within four months. Pub. L. No. 99-150, § 4(b), 29 U.S.C. § 203 note, 99 Stat. 790, Nov. 19, 1985.

As interpreted by the Department of Labor and the courts, the word "employee" is not defined in terms of conventional dictionary definitions, nor in terms of the common law concept of employee, but rather on the basis of the underlying economic realities of the relationship between the individual and the employer. *Goldberg v. Whitaker House Coop.,* 366 U.S. 28 (1961). The Department therefore determines employee status not upon isolated factors, or upon single characteristics or technical concepts, but under the circumstances of the whole activity, including the economic reality. An employee generally is one who "follows the usual path of an employee" and is dependent on the

Guidelines developed by the Labor Department have long excluded student trainees from FLSA coverage. The six requirements must all be present: (1) training is similar to that given in a vocational school; (2) training is for the benefit of the trainees or students; (3) trainees or students do not displace regular employees, but work under their close supervision; (4) the employer derives no immediate advantage, and its operations on occasion may actually be impeded; (5) trainees or students are not necessarily entitled to a job at the conclusion of training; and (6) trainees and students understand they are not entitled to wages for their time in training. WH Pub. 1297 at 4-5.

School-to-Work. The School-to-Work (STW) Opportunities Act of 1994 established a program for work-based learning experiences for students. In its guidance under that Act, the Labor Department provided that a student is *not* to be considered an employee if *all* four of the following criteria are met:

> (1) the student receives ongoing instruction at the employer's worksite and receives close on-site supervision throughout the learning experience, with the result that any productive work that the student would perform would be offset by the burden to the employer from the training and supervision provided; and,
>
> (2) the placement of the student at a worksite during the learning experience does not result in the displacement of any regular employee--i.e., the presence of the student at the worksite cannot result in an employee being laid off, cannot result in the employer not hiring an employee it would otherwise hire, and cannot result in an employee working fewer hours that he or she would otherwise work; and,
>
> (3) the student is not entitled to a job at the completion of the learning experience--but this does not mean that employers are to be discouraged from offering employment to students who successfully complete the training; and
>
> (4) the employer, student, and parent or guardian understand that the student is not entitled to wages or other compensation for the time spent in the learning experience--although the student may be paid a stipend for expenses such as books or tools. STW Guide at 3-4.

Volunteer. The term "employee" does not include a volunteer. In the public sector, a volunteer is an individual who performs a service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation. 29 C.F.R. § 553.101(a)(1996). In the private sector, individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious, or humanitarian objectives, not as employees and without contemplation of pay, are not considered employees of the religious, charitable and similar nonprofit corporations which receive their services. WH Pub. 1297 at 6-7; *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 303 n.25 (1985).

business which he serves. U.S. Dep't of Labor, *Employment Relationship Under the Fair Labor Standards Act,* Wage and Hour (WH) Division Publication No. 1297 at 3 (1980) [*hereinafter* "WH Pub. 1297"].

In the Department's view, the FLSA applies if (1) an employment relationship exists and (2) the employer or the employee is covered under the FLSA. "As a general rule of thumb, if you pay wages or compensation, you create an employment relationship." An employment relationship "does not depend on the level of performance or whether the work is of some educational and/or therapeutic benefit." U.S. Dep't of Labor, *School-to-Work [STW] Opportunities and the Fair Labor Standards Act: Work-Based Learning and the Fair Labor Standards Act* at 5 (1995) [*hereinafter* "STW Guide"].

The performance of work is one factor in establishing an employment relationship. In addition, there must be compensation, benefit to the employer, duration, and stability of relationship. Employment thus occurs when the employer (1) has power to hire and fire the employees; (2) supervises and controls employee work schedules or conditions of employment; (3) determines the rate and method of employment; and, (4) maintains employment records. *Henthorn v. Department of Navy,* 29 F.3d 682, 684 (D.C. Cir. 1994); *Bonnette v. California Health & Welfare Agency,* 704 F.2d 1465, 1470 (9th Cir. 1983). The factors should not be "blindly applied" since this is not a "mechanical determination." The factors provide a "useful framework" but are not "etched in stone." The ultimate determination must be based on "the circumstances of the whole activity." 704 F.2d at 1470.

Non-employees under FLSA

The FLSA definition of "employee" is broad, but its scope is limited by several exceptions and exemptions. In general, the courts have found that non-employment relationships, in which work is performed by an individual for an entity, can be exempt from the FLSA where the individual rendering the services has the status of trainee, School-to-Work participant, volunteer, patient worker, recipient of rehabilitation services, workfare benefit recipient, independent contractor, prisoner, or religious person. WH Pub. 1297 (1980). In many of the recognized non-employment relationships, the lesser benefit to the employing entity is incidental to the *primary benefit* to the alleged employee.

Trainees. In *Walling v. Portland Terminal,* several trainees had worked for a railroad employer for one week in a brakeman training program which benefitted their own interests. The Supreme Court held that they were not employees under the FLSA, ruling that an individual who, without promise or expectation of compensation, but solely for his personal purpose or pleasure, worked on activities carried on by other persons either for their pleasure or profit, is not an employee. *Walling v. Portland Terminal* 330 U.S. 148, 151 (1947).

Patient worker. Under Labor Department regulations, a patient worker is a worker with a disability who is employed by a hospital or institution providing residential care. There is an employment relationship if the work performed is of any consequential economic benefit to the institution. Consequential economic benefit means work of the type normally performed by workers without disabilities. A patient does not become an employee if he or she merely performs personal housekeeping chores, such as maintaining his or her quarters, and receives a token remuneration for those services. 29 C.F.R. § 525.4 (1996).

Recipient of rehabilitation services. In *Williams v. Strickland,* 87 F.3d 1064 (9th Cir. 1996), the court held that a participant in a Salvation Army rehabilitation program was not an "employee" under the FLSA because he "had neither an express nor an implied agreement for compensation with the Salvation Army. The participant had entered a six-month program offering room, board, work therapy, and counseling. The admission statement stipulated that he was "a beneficiary not an employee" of the program. He engaged in work therapy on a full-time basis in exchange for food, clothing, shelter, and a small stipend. The court found that under the economic realities of the situation, the claimant was not an employee, since he did not have an express agreement for compensation, and he did not apply to the personnel department but rather was admitted to the rehabilitation program. His "relationship with the Salvation Army was solely rehabilitative." 87 F.3d at 1067.

The dissenting opinion maintained that the rehabilitative motive did not preclude an employment relationship, since the participant argued that his work significantly improved the value of repaired furniture, resulting in profits to the employer. The dissent found a material dispute of fact over the question whether his labor was purely rehabilitative and served only his own interest, and produced no economic benefit to the Salvation Army. 87 F.3d at 1069.

Workfare benefit recipients. At least one court decision, *Johns v. Stewart,* 578 F.3d 1544 (10th Cir. 1995), has denied coverage of workfare benefit recipients under the FLSA. In Utah, the State had voluntarily established a program to help tide over individuals who were waiting for approval of their applications for Supplemental Social Security (SSI) benefits for blind, disabled, or elderly persons with very low income. The two emergency assistance programs provided temporary cash assistance for the basic needs of applicants awaiting qualification for SSI. Participants completed a self-sufficiency plan with a case worker. The plans included rehabilitative activities as well as job search and job training activities. Participants received a monthly stipend, but were required to reimburse the state from their retroactive SSI benefits. In a lawsuit, the participants raised the charge, among others, that their benefits were less than required by the minimum wage requirement of the FLSA.

The Tenth Circuit held that workfare recipients were not covered by FLSA. In the court's view, the narrow focus on the work component of the program failed to take into consideration the circumstances of the whole activity, since the work component was just one requirement of the comprehensive assistance programs. Recipients were also required to meet a needs test; be unemployable,

marginally employable, or 60 years of age or older; have no dependent children and be able to perform a work project; and agree to participate in adult education, training, skills development, and job search activities. The court found that participation in work projects was simply one component of the comprehensive assistance plans, and that the overall relationship was one of assistance, not employment.

The court further found that participants were completely unlike state employees in every respect, since they applied for assistance, not for jobs; they received financial assistance checks, not state payroll checks; state and federal taxes were not withheld; and no sick or annual leave was accrued. While participants performed the same functions as some regular employees, they did not receive the same salary, safe working conditions, job security, career development, social security, pension, collective bargaining, or grievance procedures as regular employees. Focusing on the circumstances of the whole activity and applying the economic reality test, the court held the participants were not employees of the State Department of Human Services for purposes of the FLSA. 57 F.3d at 1558-59.

Independent contractor. As interpreted by the Labor Department, an independent contractor is one "who is engaged in a business of his own." Six factors are considered significant, although no single one is regarded as controlling:

> (1) the extent to which the services in question are an integral part of the employer's business;
> (2) the permanency of the relationship;
> (3) the amount of investment in facilities and equipment by the alleged independent contractor;
> (4) the nature and degree of control by the principal;
> (5) the alleged contractor's opportunity for profit or loss; and
> (6) the amount of initiative, judgment, or foresight in open market competition with others required for success by the claimed independent contractor. WH Pub. 1297 at 9.

Prisoners. Prisoners, under rulings by the federal courts of appeal, are not employees under the FLSA. *See, e.g., Henthorn v. Dep't of Navy,* 29 F.3d 682 (D.C. Cir. 1994).

Religious persons. "Persons such as nuns, monks, priests, lay brothers, ministers, deacons, and other members of religious orders who serve pursuant to their religious obligations in schools, hospitals and other institutions operated by the church or religions order are not considered to be 'employees' within the meaning of the Act." WH Pub. 1297 at 6-7. This does not prevent the establishment of an employer-employee relationship between the religious, charitable or nonprofit agency and the persons who perform work for it. *Dole v. Shenandoah Baptist Church,* 899 F.2d 1389 (4th Cir. 1990), *cert. denied,* 498 U.S. 846; *accord, DeArment v. Harvey,* 932 F.2d 721 (8th Cir. 1991).

Analysis

The statutory definition of "employee" is basically circular: an employee is any individual employed by an employer, and to employ is to suffer or permit to work. Administrative and judicial determinations down through the years have expanded upon the statutory definition. In addition, several general rules of construction and principles of interpretation have guided the Department and the courts in applying the statute.

- ¶ The FLSA is to be construed broadly in order to effectuate its remedial purpose.
- ¶ The FLSA definition of "employee" is one of the broadest in the law, and its breadth covers some individuals who might not qualify as such under a strict application of traditional agency law principles. *Nationwide Mutual Ins. Co v. Darden*, 501 U.S. 318 (1992).
- ¶ Exemptions and exceptions are to be construed narrowly in keeping with the remedial purpose of the Act.
- ¶ Individuals and employers may not waive FLSA protections by express or implied agreement. *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 302 (1985).
- ¶ Courts must assign weight to Department of Labor interpretations under the *Chevron* doctrine of judicial deferral to an agency's interpretation of a statute which it administers and enforces.

In the absence of an amendment to the law, state agencies must structure work activity programs in light of existing FLSA coverage. At the outset, programs should be designated as employment-based or non-employment-based. Employment based programs must comply with all FLSA requirements, unless the Department of Labor rules otherwise. Non-employment programs should be structured to meet existing FLSA exemptions.

Many of the "work activities" mandated under TANF may well fall within existing exceptions to the FLSA. Section 407(d) lists several activities which seem clearly outside the concept of "employment relationship" under the FLSA. These would include job search and job readiness assistance, vocational educational training for up to 12 months, job skills training directly related to employment, education directly related to employment, and satisfactory attendance at secondary school or course of study leading to an equivalency certificate. 42 U.S.C. § 407(d)(6),(8),(9),(10), & (11). None of these educational or training activities would ordinarily involve performance of services for compensation.

Some activities, such as work experience and on-the-job training, could be considered to be either training or employment, depending on the circumstances. 42 U.S.C. § 407(d)(4)&(5). In these activities, the participants and employers would need to meet *all* the criteria established for trainees and student learners. Job training programs, for example, should adhere to the guidance for the exemption of training and School-to-Work programs.

Other listed work activities would appear to fall under FLSA by their very nature. These include unsubsidized employment, subsidized private sector employment, subsidized public sector employment, community service programs, and the provision of child care services to an individual who is participating in a community service program. 42 U.S.C. § 407(d)(1),(2),(3),(7),&(12). In these instances, the Department of Labor and the courts are likely to focus on the economic realities, that is, on whether the relationship is one of employment or of assistance. The presence or absence of such factors as rehabilitation, training, or treatment could influence the determination.

It should be noted that the broad scope of the FLSA definition of "employee" may well lead to situations where individuals may be employees for purposes of FLSA coverage, but non-employees under other federal or state employment laws. Individuals covered by FLSA may be exempt from the National Labor Relations Act, the Occupational Safety and Health Act, or the Employee Retirement Income Security Act. They may also be non-employees for purposes of income tax withholding, employment tax, and social security taxes.

While the court in *Johns v. Stewart* found that workfare recipients did not resemble other state employees, this reliance may be mistaken, since the FLSA definition covers far more individuals than career public employees, and the mere fact that recipients are treated differently is not controlling. Similarly, it is unlikely that written agreements stipulating that the workfare participants are not employees will be given controlling weight, since employees cannot agree to waive their protection. *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 302 (1985).

Finally, it could be argued that workfare has a rehabilitative rather than an economic purpose, and that participants are outside the "employment relation" covered by the FLSA because their relationship is purely rehabilitative. The purpose of TANF, however, was to give assistance to needy families and parents by requiring the program to "end the dependence of needy parents on governmental benefits *by promoting job preparation, work*, and marriage." 42 U.S.C. § 601(a)(2)(Supp. 1997), as added, Pub. L. No. 104-193, §103, 110 Stat. 2113, Aug. 22, 1996 (emphasis supplied). The purpose of the Welfare Reform Act, according to its legislative history, was to respond to "overwhelming public support for the idea that *any able-bodied adult receiving public assistance should work*." H.R. Rep. No. 104-651, 104th Cong., 2d Sess. 823 (1996); 1996 U.S.Code Cong. & Admin. News (BNA) at 2325 (emphasis supplied).

It is true that *Johns v. Stewart* expressly held that workfare benefit recipients were not employees under the FLSA, but that holding may not control the treatment of workfare participants under TANF. Under *Johns v. Stewart*, the applicants for SSI benefits were blind, disabled, or elderly persons with very low income, who had to meet a needs test, and had to be unemployable, marginally employable, or over 59 years of age. The TANF program, on the other hand, appears to be aimed at able-bodied welfare recipients. The focus of TANF, on balance, appears to be on work rather than rehabilitation.

The Welfare Reform Act provided no express waivers or exemptions from FLSA coverage of workfare recipients. In the absence of authorizing legislation, neither the President nor the Department of Labor may waive FLSA coverage or requirements for workfare participants. Authority for any waiver, exemption, or modification of FLSA coverage for workfare participants must come from Congress.

The Department of Labor is authorized, but not required, to provide guidance to employers and employees concerning application of FLSA standards to particular situations. Agencies should seek this guidance, since no employer may be subjected to liability or punishment for acts taken in reliance on written administrative regulation, order, ruling, approval, or interpretation by the Administrator of the Wage-Hour Division of the Labor Department. 29 U.S.C. § 259(a).

Conclusion

Pending DOL guidance, agencies and employers must evaluate FLSA coverage on a case-by-case basis. Where workfare participants have the characteristics of employees under the FLSA, then they must receive minimum wage and overtime, unless they are individuals who qualify for an existing exemption or exception. Workfare participants who engage in work would not appear to be eligible for any of the exemptions for individuals such as volunteers, patient workers, independent contractors, prisoners, or religious personnel, since they appear to have none of the requisite characteristics for those exemptions. In some circumstances workfare participants *may* qualify for existing exemptions for individuals such as trainees or recipients of rehabilitation services.

In general, however, the purpose of the Welfare Reform Act was to put recipients of assistance back to work. To "suffer or permit" an individual to "work" is to "employ" the individual under the FLSA, and the resulting employment triggers the coverage of the FLSA, absent an applicable exemption or exception.

MINIMUM WAGE AND WORKFARE

Background: The Labor Department has concluded that the Fair Labor Standards Act (FLSA) applies to welfare recipients in workfare or other subsidized employment programs in the same way as that law applies to all other employees. This means that most welfare recipients in these programs will receive at least the minimum wage.

The House Ways and Means Subcommittee on Human Resources proposes to amend the welfare law so that welfare recipients engaged in workfare would not be employees for the purposes of the Fair Labor Standards Act or any other federal law. Although requiring the minimum wage for hours worked, the proposal would permit states to count child care, Medicaid, and housing benefits in their calculation of the minimum wage. It would also allow states to count additional hours of job search, education, and training toward the welfare law's work requirements.

The Administration strongly opposes the Ways and Means Subcommittee's provision on the minimum wage and welfare work requirements.

- This Ways and Means Subcommittee proposal would undermine the fundamental goals of welfare reform. The Administration believes strongly that everyone who can work must work -- and that those who work should earn the minimum wage, whether they are coming off of welfare or not.

- The House Ways and Means Subcommittee proposal does not meet this test. It effectively creates a subminimum wage for workfare participants. And it weakens the welfare law's work requirements.

- This Subcommittee proposal also was not addressed in the budget agreement between the White House and Congress and should therefore not be included in the reconciliation bill.

Cynthia A. Rice 06/05/97 11:02:47 AM

Record Type: Record

To: Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP

cc: Bruce N. Reed/OPD/EOP, Laura Emmett/WHO/EOP

Subject: Mark Greenberg and FLSA

Mark Greenberg from the Center for Law and Social Policy called me and would like to come talk to us about FLSA. I have worked a lot with Mark -- he is a very smart lawyer who knows a lot about welfare and in my experience he can be trusted to work confidentially. He is a pragmatic liberal who will work on improvements (i.e., he was the MOE godfather despite hating block grants).

I thought it might be useful to hear his views before our 2:00 meeting tomorrow. At a minimum he will clue us into every possible way others will try to weaken the work rates to soften the FLSA burden. He may have some suggestions more up our alley too.

Shall we meet with him sometime before 2:00 tomorrow?