

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814



May 7, 1998

ALL-COUNTY LETTER NO. 98-32

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY WELFARE-TO-WORK
COORDINATORS

REASON FOR THIS TRANSMITTAL

- State Law Change
 Federal Law or Regulation Change
 Court Order or Settlement Agreement
 Clarification Requested by One or More Counties
 Initiated by CDSS

SUBJECT: APPLICATION OF THE FAIR LABOR STANDARDS ACT TO
WELFARE-TO-WORK ACTIVITIES UNDER THE CALIFORNIA WORK
OPPORTUNITY AND RESPONSIBILITY TO KIDS (CalWORKs)
PROGRAM

The purpose of this letter is to clarify the application of the Fair Labor Standards Act (FLSA) to welfare-to-work activities under the CalWORKs program. Under the FLSA, individuals must be paid the minimum wage only if they are "employees." The FLSA does not apply if an employment relationship does not exist.

The United States Department of Labor (DOL) has issued a guide which states that the FLSA applies to welfare recipients if they are employees. The guide further states that welfare recipients would probably be considered employees in many, if not most, of the work activities described in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. However, the DOL guide emphasizes that the impact of the FLSA on particular work programs will need to be determined on a case-by-case basis.

After reviewing a preliminary draft of this All County Letter, the DOL has stated that whether an employment relationship exists should be determined based on the circumstances of each individual recipient's case, not based on the classification of the work activity in which the recipient is participating. The DOL emphasized that whether an employment relationship exists is determined by the economic realities of the relationship and by whether "work" is being performed for the benefit of a covered employer. The DOL noted that the FLSA would not apply to recipients participating in a CalWORKs activity as "trainees."

CDSS has reviewed and considered the DOL's advice, as well as case law concerning the application of the FLSA. It is the position of CDSS that, although an employment relationship exists in some of the welfare-to-work activities described in California Welfare and Institutions Code Section 11322.6 (including unsubsidized and subsidized employment), no employment

relationship exists for at least the following welfare-to-work activities: work experience; community service; adult basic education; job skills training; vocational education and training; job search and job readiness assistance; education directly related to employment; satisfactory progress in secondary school or in a course of study leading to a certificate of general educational development; and mental health, substance abuse and domestic violence services that are necessary to obtain and retain employment. The goal of all of these non-employment welfare-to-work activities is to assist recipients to obtain skills necessary for employment and to remove barriers to employment.

For recipients with little or no job skills or work history, work experience and community service activities provide experience in a work site setting to enable recipients to develop basic work orientation skills (e.g., showing up for work regularly and on time, following directions, and working cooperatively with others) and to develop or refresh specific job skills. These activities assist individuals who, despite their prior involvement in other CalWORKs training and services, have not been able to obtain employment sufficient to leave aid or to meet their required hours of participation.

CDSS has determined that no individualized determination regarding the application of the FLSA is necessary for these non-employment welfare-to-work activities. The economic reality for individuals participating in these activities is that they are aid recipients, not employees. CDSS and counties have no statutory authority to enter into compensation agreements with welfare recipients based on CalWORKs benefits. CDSS and counties cannot decide on what terms to pay CalWORKs grants or the amount to pay because eligibility and grant amounts are controlled by statute.

The nature of the relationship with aid recipients is not employment, but assistance. These activities do not provide employment, but rather, as part of a comprehensive assistance program under CalWORKs, provide assistance to enable unemployed and unemployable recipients to obtain the skills to become employed.

These activities are not provided by statute for the benefit of the state, CDSS, counties, or any entity providing an activity. Rather, the activities are provided for the training and rehabilitation of unemployed and unemployable recipients. Among other things, these activities contribute to recipients' sense of self-worth and accomplishment and their ability to overcome barriers to employment to enable them to enter or re-enter the economic marketplace.

Because the FLSA does not apply to non-employment welfare-to-work activities, the FLSA does not control the number of hours recipients must participate in these activities, or the level of payment. Therefore, under CalWORKs, recipients must participate in welfare-to-work activities, including employment and non-employment activities, for the number of hours necessary to meet the participation requirements specified in California Welfare and Institutions Code Section 11322.8.

If you have any questions regarding this matter, please contact Milt Yee, Employment Programs Unit, at (916) 657-3399.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Wagstaff".

BRUCE WAGSTAFF
Deputy Director
Welfare to Work Division