



New York State Department of Labor  
David A. Paterson, Governor  
Colleen C. Gardner, Commissioner

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March 11, 2010

[REDACTED]

Re: Request for Opinion  
Student Vocational Experience  
RO-10-0005

Dear [REDACTED]:

I have been asked to respond to your facsimile dated January 5, 2010 in which you ask several questions relating to the running of an apprenticeship program at your restaurant. You first ask whether it is legal for a restaurant to take on unpaid student or non-student apprentices, and in what capacity such individuals may work. You next ask what information you are required to obtain from the culinary school and whether there are any restrictions on the types of schools from which student apprentices may come.

Based on the content of your inquiry, it does not appear that you are inquiring about the operation of a formal registered apprenticeship program under the provisions of Article 23 of the Labor Law. In registered apprenticeship programs, individuals work to gain experience in a trade, while earning apprentice wages, which are usually 40% - 50 % of journey person wages. New York State Labor Law and the regulations promulgated thereunder require that all learners and apprentices in these registered programs be paid not less than the minimum wage. (*see*, 12 NYCRR §137-2.7; 12 NYCRR §142-2.12)

Rather, your inquiry appears to be relating to arrangements between an employer and an education institution through which students are assigned or tasked to work in a restaurant as part of their curriculum (e.g. a culinary school). While, as noted above, apprentices and learners in registered apprenticeship programs are required to be paid the minimum wage, students obtaining vocational experience are excluded from that requirement since they are not deemed to be working while obtaining such experience. To qualify as a "student obtaining educational experience," the student must be fulfilling the curriculum requirements of the educational institution which he/she attends. That institution must require the student to obtain supervised and directed vocational experience in another establishment. Therefore, in response to your first question, a restaurant may

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take on an unpaid student provided it is to satisfy the curriculum requirements of the educational institution in which the student is enrolled. However, non-students or students who are not fulfilling curriculum requirements do not fit within the exception and, therefore, must be paid in accordance with the Labor Law's minimum wage and overtime provisions. Nothing in the law limits the type of work a student obtaining vocational experience may perform, but many educational institutions, in setting forth criteria for students obtaining such experience, set forth restrictions of their own.

With regard to your second question, in contacting various educational institutions, you should primarily inquire as to whether the student's curriculum requires the student to obtain supervised and directed vocational experience, and whether they will be able to provide documentation of the curriculum requirements. There are no restrictions as to the type or level of educational institutions so long as that institution is, in fact, a bona fide educational institution.

This opinion is based on the facts set forth in your letter dated January 5, 2010. A different opinion might result if the circumstances outlined in your letter change, if the facts provided were not accurate, or if any other relevant fact was not provided. If you have any further questions, please do not hesitate to contact me.

Very truly yours,  
Maria L. Colavito, Counsel

By: 

Jeffrey G. Shapiro  
Associate Attorney

JGS:mp

cc: Carmine Ruberto