



New York State Department of Labor
Elliot Spitzer, Governor
M. Patricia Smith, Commissioner

OPINION
FILE

May 11, 2007

[REDACTED]

Re: Request for Opinion
Volunteers
Our File No.: RO-07-0043

Dear [REDACTED]:

I have been asked to respond to your letter of April 30, 2007 to Deputy Commissioner [REDACTED] in which you ask whether New York's Minimum Wage Law is applicable to Student Assistants who serve as classroom aides to the teachers in your religious school. You state that these Student Assistants are full-time high school students who work up to four hours weekly on Sunday mornings. In a telephone conversation had on May 4, 2007, [REDACTED] of your office stated that these Student Assistants are not compelled in any way to perform this work, but receive compensation for such work, albeit at less than the minimum wage. Please be advised that, under the circumstances as described, and pursuant to applicable law, these Student Assistants may either work as volunteers for no wages, or must be paid wages at the minimum wage or higher.

Labor Law §652(1) states that every employer shall pay to each of its employees a wage of not less than the minimum wage. Labor Law §652(3) includes non-profitmaking institutions in this requirement. Labor Law §651(5)(f) excludes "volunteers" from the definition of "employee" when the volunteer work is performed for entities "organized and operated exclusively for religious, charitable or educational purposes." State regulation 12 NYCRR §142-3.12(c)(5) expands on the definition of "volunteer," defining that term as "a person who works for a nonprofitmaking institution under no contract of hire, express or implied, *and with no promise of compensation* other than reimbursement for expenses as part of the conditions of work." (Emphasis added).

In this case, the Student Assistants cannot be considered "volunteers" exempt from minimum wage requirements as they are promised and receive compensation for their activities. To be considered a "volunteer" a person cannot receive compensation for his/her services. Any compensation paid removes that person from the category of "volunteer" and places him/her into

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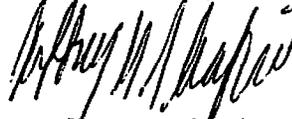
the category of an "employee," who must be paid at least the minimum wage.

While we understand that your Congregation's motives and intentions in engaging these young people in the activities described are very good and commendable ones, this, unfortunately, does not obviate the need to comply with the legal requirements regarding payment of wages that apply under these circumstances.

This opinion is based upon the information provided in your letter of April 30, 2007 and the May 4, 2007 telephone conversation had with [REDACTED]. A different opinion might result if any facts provided have been inaccurately stated, or if there are other relevant facts which have not been disclosed. If you have any further questions, please feel free to contact me.

Very truly yours,

Maria L. Colavito, Counsel



By: Jeffrey G. Shapiro
Senior Attorney

cc: Carmine Ruberto

JGS:dmm