

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

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Legal Section

IN REPLY REFER TO:

October 27, 1988

Al M. Carnesciali
Christian Science Committee on
Publication for Southern California
12792 Valley View Street, Ste. 203
Garden Grove, CA 92645-2597

Dear Mr. Carnesciali:

Your September 28th letter regarding the application of the California Industrial Welfare Commission Orders to employees of church offices and attendants in Christian Science Reading Rooms has been assigned to this office for response.

There currently is no exemption from the California Minimum Wage Orders for "employees" of religious organizations. However, members of religious orders or "volunteers" are exempt under certain conditions.

In determining whether one is a volunteer or an employee, the Division of Labor Standards Enforcement takes the position that the intent of the parties is the controlling factor. If the person intends to volunteer his or her services for public service, religious, or humanitarian objectives, not as an employee and without contemplation of pay, the individual is not an employee of the religious, charitable, or similar nonprofit corporation which receives the services. In certain circumstances, a regular employee of a religious, charitable, or nonprofit organization may donate services as a volunteer. However, these may not be the usual services of that employee's job.

However, when religious, charitable or nonprofit organizations operate commercial enterprises which serve the general public, such as restaurants or thrift stores, or when they contract to provide personal services to businesses, such enterprises are subject to the Industrial Welfare Commission Orders and volunteers may not be utilized.

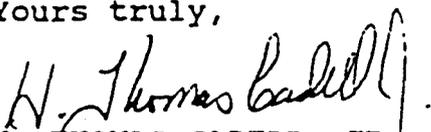
If the person performing the service is an employee, that person must be paid pursuant to the IWC Orders. If the person is truly a volunteer, with no expectation of any pay, and is not performing services of a commercial nature, the person is not covered by the IWC Orders.

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As you will note, except for the occasional situation where a bona fide employee volunteers services of a humanitarian or religious nature, the term "employee" and "volunteer" are at odds with each other since there is no expectation of payment by a volunteer.

I hope this adequately addresses the question you raise. If you have any further questions please feel free to contact the undersigned.

Yours truly,


H. THOMAS CADELL, JR.
Chief Counsel

c.c. Lloyd W. Aubry, Jr.
Dale Louton, Sr. Deputy

1988.10.27