

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

455 Golden Gate Avenue, Room 3166
San Francisco, CA 94102
(415) 703-4150

H. THOMAS CADELL, JR., Chief Counsel

January 7, 1993

Wayne D. Clayton
O'Melveny & Myers
400 South Hope Street
Los Angeles, CA 90071-2899

Re: Vocational Trainees

Dear Mr. Clayton:

The Labor Commissioner has asked this office to respond to your letter of November 20th, 1992, regarding the training program your client, a nonprofit service-provider wishes to inaugurate.

You explain that the program will teach skills, at varying levels, to homeless or near-homeless young adults. In addition to the current program which includes individual and group counseling, schooling and tutoring, vocational counseling, a life-skills workshop, pro bono legal representation and recreational/cultural activities, the program anticipates engaging in training which will include on-site "hands-on" experience with "trainer businesses". It is in regard to this latter training that you seek guidance.

Your letter correctly states the Division policy regarding such programs. It is simply a matter of applying those policy statements to the factual situations which arise. It is not possible for the Division to find that in each and every case, based upon the nature of the Program and the design of the vocational training component, that a student participant will be a "trainee" exempt from the minimum wage requirements under California law.

As you state, the Program will have only limited oversight over the participants while they are engaged in the on-site portion of their training with the private employers. The description of the program sounds like any on-the-job training project. The 6- to 8-week training program your letter describes for the "offset printing" trade would rival that of many small offset shops. While the program could not be considered a full apprenticeship, it appears that the training goes far beyond that anticipated in the DLSE "training" exception.

Wayne D. Clayton
January 7, 1993
Page 2

Your reliance on federal law in this area is misplaced. What the federal cases you cite interpret are the provisions of the federal Code of Federal Regulations. The court in *Alcala v. Western Ag Enterprises* (1986) 182 Cal.App.3d 546, was not speaking of the interpretation of regulations adopted by the Department of Labor, but of the interpretation of the language of the Fair Labor Standards Act. As the court stated in *DLSE v. Texaco, Inc.* (1983) 152 Cal.App.3d Supp. 1, 9; 199 Cal.Rptr. 561 "[u]nder settled law, the federal cases, although entitled to "considerable respect," are not binding on this court, *Kahn v. Kahn* (1977) 68 Cal.App.3d 372, 387, 137 Cal. Rptr. 332. State courts are, of course, always the final arbiters of the meaning of state law. (*Meanley v. McColgan* (1942) 49 Cal. App.2d 203, 209, 121 P.2d 45.) Since the question revolves around the application of the California minimum wage, the interpretation by the DLSE is given great weight by the courts. *Skyline Homes v. Department of Industrial Relations* (1985) 165 Cal.App.3d 239; 211 Cal.Rptr. 792; 166 Cal.App.3d 232(c) (hrg. den. 5/29/85) You should be aware, in this regard, that the definition of "Hours Worked" for purposes of the Fair Labor Standards Act differs substantially from the definition found in the California Industrial Welfare Commission Orders.

This letter is not intended to endorse or condemn the Program which you have proposed in general terms. The purpose underlying the Program is laudable, but that is not the criteria. We have raised some questions for your consideration. It may be possible, with close supervision of the on-site training of the participant by the Program personnel, to meet the requirements for an exception to the minimum wage.

However, the Division feels that it can not give blanket approval to a training program which is described in general terms, involves a number of undisclosed trainers and training sites and which has not yet been implemented.

If we may be of assistance to you in implementing a training program which will meet the requirements of an exception to the minimum wage obligation, please direct your questions to the office of the Labor Commissioner here in San Francisco. We can set up an appointment for one of our Deputies to inspect the worksite and review the program.

Yours truly,

H. THOMAS CADELL, JR.
Chief Counsel

c.c. Victoria Bradshaw