

Labor Protections and Welfare Reform

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The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 increased emphasis on the need to move welfare recipients from welfare to work. The new law gives state and tribal governments broad latitude to meet specified work requirements. However, requirements of other laws affecting workers and the workplace also must be met.

In an effort to help you better understand the requirements of these other laws, the United States Department of Labor has prepared a guide entitled "*How Workplace Laws Apply to Welfare Recipients*" that is attached. In addition, the United States Department of Agriculture has developed additional guidance to clarify the use of food stamps as a means to meet the requirements of the minimum wage law that is also attached.

If you have questions concerning the application of workplace laws to the Temporary Assistance for Needy Families program, please direct inquiries to the U.S. Department of Labor or other designated contact.

How Workplace Laws Apply to Welfare Recipients

The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) in August 1996 increased emphasis on the need to move welfare recipients from welfare to work. Under the Act, the Aid to Families with Dependent Children (AFDC) program was replaced with the Temporary Assistance for Needy Families (TANF) program. The new welfare law gives state and tribal governments broad latitude to meet specified work requirements.¹ However, requirements of other laws affecting workers and the workplace also must be met.

Work Activities Requirements

The new welfare law requires 25 percent of all TANF families and 75 percent of two-parent families to have an adult engaged in work activities in FY 1997 (families with no adults are exempted). States have the option of exempting single parents of children under one from the work requirement. The required participation rates increase each year, culminating at 50 percent for all families with an adult and 90 percent for two-parent families in FY 2002.

In order to be counted towards the work participation rate, a single parent is required to be engaged in a work activity, as defined by the law, for 20 hours per week in FY 1997. For an adult in a two-parent family, 35 hours of work are required. The mandated hours of work for single parents

increase, to 25 hours in FY 1999 and 30 hours in FY 2000. Qualifying work activities include a range of subsidized and unsubsidized, private and public sector employment.

In addition, a limited number of TANF recipients can meet the work requirement by participating in vocational training and high school education programs.²

This guide contains general questions and answers on how workplace laws enforced by the Department of Labor apply to welfare recipients. It is an effort to answer fundamental questions about the relationship between welfare law and workplace laws such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA), Unemployment Insurance (UI) and anti-discrimination laws. States should consider the applicability of these laws as they design and implement their work programs.

This guide is simply a starting point. It cannot provide the answers to the wide variety of inquiries that could be raised regarding specific work programs. The impact of these laws on work programs for welfare recipients and the answers to many questions will be determined by the specific facts of the particular situation. Many questions will have to be answered on a case-by-case basis.

Employment Laws

1. Do federal employment laws apply to welfare recipients participating in work activities under the new welfare law in the same manner they apply to other workers?

Yes. Federal employment laws, such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA), Unemployment Insurance (UI), and antidiscrimination laws, apply to welfare recipients as they apply to other workers. The new welfare law does not exempt welfare recipients from these laws.

The Fair Labor Standards Act

2. Does that mean that welfare recipients engaged in work activities under the new welfare law will have to be paid the minimum wage?

The minimum wage and other FLSA requirements apply to welfare recipients as they apply to all other workers)-³ If welfare recipients are "employees" under the FLSA's broad definition, they must be compensated at the applicable minimum wage.

Welfare recipients would probably be considered employees in many, if not most, of the work activities described in the new welfare law. Exceptions are most likely to include individuals engaged in activities such as vocational education, job search assistance, and secondary school attendance, because these programs are not ordinarily considered employment under the FLSA.

3. Are welfare recipients who participate in job training exempt from the minimum wage laws?

An individual in training that meets certain criteria under the FLSA and is not otherwise an employee, is considered a trainee and is not entitled to the minimum wage. Similarly, a welfare recipient engaged in training that meets those criteria would not be an employee covered by the minimum wage requirements of the FLSA. The relevant criteria for such training are:

- o Training is similar to that given in a vocational school;
 - o Training is for the benefit of the trainees;
 - o Trainees do not displace regular employees;
 - o Employers derive no immediate advantage from trainees' activities;
 - o Trainees are not entitled to a job after training is completed; and
 - o Employers and trainees understand that trainee is not paid.
4. How does the FLSA affect "workfare" arrangements that require welfare recipients to participate in work activities as a condition for receiving cash assistance from the state?

Welfare recipients in "workfare" arrangements, which require recipients to work in return for their welfare benefits, must be compensated at the minimum wage if they are classified as "employees" under the FLSA's broad definition.

Where the state is the employer of a workfare participant who is an employee for FLSA purposes, the state may consider all or a portion of cash assistance as wages for meeting the minimum wage so long as the payment is clearly identified and treated as wages, the payment is understood by all parties to be wages, and all applicable FLSA record keeping criteria are met. Where a private company or local government agency is the employer of the workfare participant, the state welfare agency may use the recipient's welfare benefits to subsidize or reimburse that employer for some or all of the wages due.

5. Could states that operated Community Work Experience Programs (CWEP) for welfare recipients under the predecessor JOBS program continue to operate such programs in the same manner under the new welfare law?

The ability of states to operate programs like CWEP will depend on the details of their particular programs. The old welfare law specifically stated that a CWEP participant was not entitled to a salary or any other work or training expense provided under any other law. Under CWEP, the welfare grant divided by the hours worked was required to meet or exceed the minimum wage. The new welfare law eliminated CWEP and the entire JOBS program. As a result, welfare recipients must be compensated at the minimum wage if they are classified as "employees" under the FLSA's broad definition. However, if welfare recipients are participating in activities where they are not "employees" under the FLSA definition, they will not have to be compensated at the minimum wage. Thus, while states may be able to continue programs similar to those that existed under CWEP, they may need to modify the programs to reflect changes in the law.

6. May food stamps be counted towards meeting minimum wage requirements?

Under two programs created by the Food Stamp law, food stamp benefits (coupons or their cash value) may contribute towards meeting minimum wage requirements for TANF recipients in work activities.

Under the Food Stamp work supplementation programs employers may receive the value of the food stamp allotment as a wage subsidy for new employees hired as part of the work supplementation program. As with other wage subsidy programs, the value of the Food Stamp

benefit is converted to a cash wage subsidy paid by the employer as a wage and is counted towards the minimum wage. This program is restricted to recipients of TANF or other public assistance and contains specific worker protections and nondisplacement provisions.

The Food Stamp law specifically permits states to establish Workfare programs (to be approved by the U.S. Department of Agriculture) under which certain welfare recipients are required to perform work in return for compensation in the form of food stamps. In other words, participants may be required to "work off" the value of their food stamps. The state or other employers participating in the workfare program may then credit the value of the food stamps towards its minimum wage obligations. The number of hours that a food stamp recipient may be required to work is determined by dividing the value of the food stamp allotment by the state or federal minimum wage (whichever is higher), up to a maximum of 30 hours per week.

Participation in Food Stamp workfare programs may be counted towards TANF participation requirements, so that a participant who is employed by the state may receive food stamps as compensation for certain hours and receive welfare benefits as compensation for other hours of employment. In all cases, total compensation must equal or exceed the minimum wage for each hour worked. Additional guidance on the use of food stamps towards the minimum wage will be provided by the U.S. Department of Agriculture's Food Stamp Program Office.

7. Aside from food stamps, may noncash benefits provided by the state, such as child care services or transportation, be credited toward meeting FLSA minimum wage requirements?

Only under limited circumstances. Such benefits may be credited as wages only when the state is the employer and all of the following criteria are met:

- o Acceptance of noncash benefits must be voluntary;
- o Noncash benefits must be customarily furnished by the employer to its employees, or by other employers to employees in similar occupations; and
- o Noncash benefits must be primarily for the benefit and convenience of the employee.

Because these criteria are quite strict, it is likely that these benefits will not count as wages in most circumstances.

Credit may not be taken for pensions, health insurance (including Medicaid), or other benefit payments otherwise excluded under the FLSA

Occupational Safety and Health Act

8. How does the Occupational Safety and Health Act (OSHA) apply to welfare recipients participating in work activities under the new welfare law?

The new welfare law does not exempt employers from meeting OSH Act requirements. Therefore, OSH Act coverage applies to welfare recipients in the same way that it applies to all other workers. However, because the OSHA does not have direct jurisdiction over public sector employees in many states, the question of who is the responsible "employer" is an important one. This is particularly true in cases where work activities are administered as part of a public-private partnership. In these situations, OSHA will determine whether the employee is in the public or private sector on a case-by-case basis. Generally, case law under OSHA tends to

place compliance responsibility on the party most directly controlling the physical conditions at a worksite .

9. Does that mean that welfare recipients in work activities deemed to be public employees are exempt from health and safety regulations?

It depends on the state. OSHA does not have direct jurisdiction over public sector employees in many states. Yet, in the 23 states and two territories where there are OSHA-approved state plans, the states are required to extend health and safety coverage to employees of state and local governments. To the extent participants in these states and territories are employees of public agencies, they would be protected by the applicable health and safety standards. In the other states and territories, there would be no OSHA coverage of participants who are public sector employees.

Unemployment Insurance

10. Are welfare recipients participating in work activities covered by the Unemployment Insurance (UI) System?

Generally, unemployment insurance laws apply to welfare recipients in work activities in the same way that they apply to all other workers. Unemployment insurance coverage extends only to workers who are considered "employees," according to definitions provided by state UI laws. Consequently, if welfare recipients are in work activities where they would be classified as employees, they will be covered by the UI system.

There are some exceptions. While federal law requires states to extend UI coverage to services performed for state governments and non-profit employers, services performed as part of publicly funded "work-relief" employment or "work training" programs may be excluded by states and, in fact, are excluded by all states except Hawaii. Under the new welfare law, a number of community service-related activities could fall within the "work-relief" exception to UI coverage.

An Unemployment Insurance Program Letter (UIPL 30-96) issued in August 1996 clarified the criteria applicable to the "work-relief" and "work training" exceptions. In order to fall within the exception, activities must primarily benefit community and participant needs (versus normal economic considerations) and services must not otherwise normally be provided by other employees. If such activities do not fall within the exception, participants providing services for these entities would likely be covered by the UI program.

11. What about welfare recipients who are working for private sector employers? Will they be covered by the UI program?

The "work relief" and "work training" exceptions for UI do not apply to the private sector. For private employers the question of UI coverage will hinge on whether a participant is deemed an "employee." The tests for making these determinations are made by the states and are generally similar to the common law test which is based on "the right to direct and control work activities."

Anti-Discrimination Laws

12. Would federal anti-discrimination laws apply to welfare recipients who participate in work activities under the new welfare law?

Yes. Anti-discrimination issues could arise -- primarily under titles VI and VII of the Civil Rights Act, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, the Age Discrimination in Employment Act, and the Equal Pay Act. Furthermore, if participants work for employers who are also federal contractors, discrimination complaints could be filed under Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, or the Vietnam Era Readjustment Assistance Act. As with the other laws discussed above, these laws would apply to welfare recipients as they apply to other workers. Additional guidance on these laws, many of which are not within the jurisdiction of the Department of Labor, will be forthcoming.

This guide is for general information and is not to be considered in the same light as statements of position contained in Interpretive Bulletins published in the Federal Register and the Code of Federal Regulations, or in official opinion letters of the Department of Labor.

USDA Guidance

The Department of Labor has concluded that the Fair Labor Standards Act (FLSA) applies to participants in the Temporary Assistance for Needy Families (TANF) program in the same way as it applies to other workers. This means that in many cases participants will have to be paid the minimum wage.

In calculating the minimum wage, States can combine food stamp benefits and TANF grants. This can be done in either workfare or a Waco supplementation program. Under a wage supplementation program, the value of benefits are cashed out and provided to an employer who in turn pays the money to participants as a wage.

Furthermore, for those TANF households normally exempt from food stamp workfare because they include parents or caretakers of a dependent child under 6 years old (between 1 and 6 in some States), States may use the Simplified Food Stamp Program to ensure that food stamps count toward the minimum wage. The simplified program was designed to be the vehicle for creating conformity between TANF and the Food Stamp Program. States can include parents or other caretakers of a dependent child under the age of six food stamp workfare simply by adopting TANF rules relating to workfare exemptions. Simplified programs must be cost neutral. Because removing the workfare exemption for parents or caretakers of dependent children will not increase program costs, we will provide expedited approval to such requests.

To make this change, States need only send a letter to the Food and Consumer Service (FCS) indicating their wish to avail themselves of the simplified program. A cost neutralizer analysis is not required.

For additional information on the Simplified Food Stamp Program, States should contact FCS at (703) 305-2519. FCS' mailing address is Food and Consumer Service - Food Stamp Program, 3101 Park Center Drive, Alexandria, VA 22302.

Contacts

Fair Labor Standards Act (FLSA)

NORTHEAST

Connecticut, Rhode Island
Joseph Pellegrino
380 Westminster Mail Room
346
Providence, RI 02903
ph.: (401) 528-4431
fax: (401) 528-4388

Maine, Massachusetts, New
Hampshire, Vermont
Patricia Slate
JFK Federal Building
Rm 525, Government Center
Boston, MA 02203
ph.: (617) 565-2066
fax: (617) 565-3700

New Jersey, New York
Mary Dodds
201 Varick Street
Room 750
New York, NY 10014
ph.: (212) 337-2000
fax: (212) 620-6957

Puerto Rico, Virgin Islands
David Heffelfinger
159 Carlos Chardon Street
Room 102
Hato Rey, PR 00918
ph.: (809) 766-5263
fax: (809) 766-5792

Delaware, D.C., Maryland
George Loeblein

Florida

Susan Maciejewski
227 N. Bronough St.
Room 4120
Tallahassee, FL 32301-1329
ph.: (904) 942-8341
fax: (904) 942-8342

Kentucky, Tennessee
William Rucinski
1321 Murfreesboro Road
Suite 511
Nashville, TN 3721
ph.: (615) 781-5344
fax: (615) 781-5347

North Carolina, South
Carolina
Randy Bazemore
Somerset Park Bldg
Suite 260
4407 Bland Road
Raleigh, NC 27609
ph.: (919) 790-2742
fax: (919) 790-2843

MIDWEST

Illinois, Wisconsin
Sylvia Solano
230 S. Dearborn, Room 412
Chicago, IL 60604
ph.: (312) 886-1142
fax: (312) 353-2327

Indiana, Ohio
Tom Buckley

SOUTHWEST

Arkansas, Louisiana, Oklahoma
Karen Clampitt
701 Loyola Avenue
Room 13028
New Orleans, LA 70113
ph.: (504) 589-6974
fax: (504) 589-4751

Colorado, North Dakota,
South Dakota
Diane Rhodes
Federal Building
301 South Howes St.
P.O. Box 1855
Fort Collins, CO 80522
ph.: (970) 482-6915
fax: (970) 224-5073

Montana, Utah, Wyoming
Ruth Bauman
10 West Broadway
Suite 307
Salt Lake City, UT 84101
ph.: (801) 524-5706
fax: (801) 524-5722

New Mexico, Texas
Karen Dulaney Smith
Room 578
300 East 8th Street
Austin, TX 78701
ph.: (512) 916-5638
fax: (512) 916-5969

WEST

207 Appraisers Stores
Bldg. 103 Gay Street
Baltimore, MD 21202
ph.: (410) 962-3199
962-4984
fax: (410) 962-9512

Pennsylvania
John DuMont
1000 Liberty Avenue
Federal Bldg.
Room 313
Pittsburgh, PA 15222
ph.: (412) 395-4996
fax: (412) 395-5772

Virginia, West Virginia
Dan Short
2 Hale Street
Suite 301
Charleston, WV 25301
ph. : (304) 347-5206
fax: (304) 347-5467

SOUTHEAST

Alabama, Georgia, Mississippi
John Bates
Atlanta Federal Center Room
7M40
61 Forsyth Street, SW
Atlanta, GA 30303
ph.: (404) 562-2205
fax: (404) 562-2224

2 South Main Street Room
200
Akron, OH 44308
ph.: (330) 375-5822
fax: (330) 375-5461

Michigan
Frances Kamulski
5700 Crooks Road Room 310
Troy, MI 48098-2809
ph. : (313) 226-6935
fax: (313) 226-3439

Minnesota
Maureen Katoll
230 S. Dearborn Room 562
Chicago, IL 60604
ph. : (312) 353-0563
fax: (312) 353-2539

Iowa, Kansas, Missouri,
Nebraska
Anne Hayes
1100 Main, Suite 700
Kansas City, MO 64105
ph.: (816) 426-5424 ext. 228
fax: (816) 426-3482

Alaska, Idaho, Oregon,
Washington
Ralph Knipe
111 SW Columbia
Suite 1010
Portland OR 97201
ph.: (503) 326-3057 ext. 123
fax: (503) 326-5951

Arizona, Nevada
Jennifer Carr
3221 North 16th Street
Room 301
Phoenix, AZ 85016
ph. : (602) 640-2995
fax: (602) 640-2979

California, Hawaii, Pacific
Territories
Harry Hu
455 Market Street
Suite 800
San Francisco, CA 94105
ph.: (415) 744-5590 ext. 5
fax: (415) 744-5088

Occupational Health and Safety Administration (OSHA)

John Miles, Director of Compliance
 U.S. Department of Labor, Rm. N-3468
 200 Constitution Ave., NW Washington, DC
 20210
 ph.: (202) 219-9308
 fax: (202) 219-9187

Unemployment Insurance (UI)

Virginia Chupp
 U.S. Department of Labor
 Division Chief for Legislation, Rm. C-4512
 200 Constitution Ave., NW
 Washington, DC 20210
 ph.: (202) 219-5200 ext. 391
 fax: (202) 219-8506

Or contact your State Unemployment Insurance office.

Non-Discrimination Laws

<p>Title VII, Civil Rights Act Of 1964 Americans with Disabilities Act Age Discrimination in Employment Act Equal Pay Act Equal Employment Opportunity Comm. Office of Legal Counsel "Attorney of the Day" 1801 L Street, NW Washington, DC 20507 ph.: (202) 663-4691 fax: (202) 663-4639 TTY: (202) 663-7026</p>	<p>Rehabilitation Act (Section 504) Americans with Disabilities Act U.S. Department of Justice Civil Rights Division Disability Rights Section P.O. Box 66738 Washington, DC 20035-6738 ph.: 1-800-514-0301 TDD: 1-800-514-0383</p> <p>Title VI, Civil Rights Act of 1964 U.S. Department of Justice Civil Rights Division Coordination and Review Section P.O. Box 66118 Washington, DC 20035-6118 ph.: 1-888-TITLE-06 (1-888-848-5306)</p>	<p>Executive Order 11246 Vietnam Veterans Era Readjustment Assistance Act Rehabilitation Act (Section 503) U.S. Department of Labor Office of Federal Contract Compliance Division of Program Operations 200 Constitution Avenue, NW Washington, DC 20210 ph.: (202) 219-9471 fax: (202) 219-6195</p>
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1. This guide refers only to state governments, although it is possible that county or local government entities will be responsible for implementing state and tribal welfare programs. Information in the guide concerning the role of a state agency in implementing the welfare program, paying out the benefits, and, where relevant, employing welfare recipients, would apply to a county or local government agency, where that agency, not the state, implements welfare, pays out the benefits and employs welfare recipients.

2. Indian Tribes may choose to run their own Tribal TANF programs separate from the state. While these programs must incorporate time limits and work requirements, participation rates are determined

on a case-by-case basis according to economic need.

3. The FLSA establishes federal minimum wage, overtime pay (for hours worked over 40 in a workweek), child labor, and recordkeeping requirements. The law affects full-time and part-time workers in the private sector and in federal, state and local government. For the FLSA to apply, there must be an employment relationship between an employer and an employee. To "employ" under the FLSA means to "suffer or permit to work." This is a broader definition of employment than exists under the traditional common law. To determine if there is an employment relationship for purposes of the FLSA, one must consider all the circumstances, including the economic realities of the workplace relationship.
