To be Argued by:
SAIMA AKHTAR
(Time Requested: 30 Minutes)

APL-2025-00099
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Appellate Division–Third Department Case No. CV-23-0334

Court of Appeals

of the

State of New York

In the Matter of DANNY ANDERSEN, LYNDA J. OHLSSON and TARRENCE ASH, on behalf of themselves and on behalf of all individuals similarly situated,

Petitioners-Plaintiffs-Appellants,

– against –

MICHAEL P. HEIN, as Commissioner of the New York State Office of Temporary and Disability Assistance,

Respondent-Defendant-Respondent,

(For Continuation of Caption See Inside Cover)

BRIEF FOR PETITIONERS-PLAINTIFFS-APPELLANTS

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– and –

FRANCES PIERRE, as Commissioner of the Suffolk County Department of Social Services, and THALIA WRIGHT, as Commissioner of the Monroe County Department of Human Services,

Respondents-Defendants.

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I. PRELIMINARY STATEMENT

The purpose of the federal Fair Labor Standards Act ("FLSA") (29 USC §§ 201, 203 *et seq.*) is "to aid the unprotected, unorganized and lowest paid of the nation's working population; that is, those employees who lack[ed] sufficient bargaining power to secure for themselves a minimum subsistence wage" (*Brooklyn Sav. Bank v O'Neil*, 324 US 697, 707 n 18 [1945], *reh denied* 325 US 893, 2005 [1945] [citations omitted]). It is difficult to identify workers with less bargaining power than those forced to labor in exchange for subsistence benefits from the government.

New York State requires people who receive public assistance to engage in work activities, including the Work Experience Program ("WEP"), as a condition of receiving benefits. At the same time, the State treats public assistance as a debt, which it later recoups if the former recipient receives a financial "windfall," such as an inheritance or lottery winnings. But as this Court has long recognized, the State's recoupment practices from former WEP workers must comply with the FLSA.

In 2015, this Court held that Walter Carver, a former public assistance recipient and WEP worker, was an employee protected by the FLSA; the benefits he received "were 'compensation,' given in exchange for his work" and therefore,

the State could not recoup the value of the benefits it had paid him from his lottery prize (*Matter of Carver v State of New York*, 26 NY3d 272, 276, 281 [2015]).

Respondent-Defendant-Appellee, Commissioner of the New York State Office of Temporary and Disability Assistance ("Respondent"), concedes that WEP work is covered by the FLSA and must be compensated accordingly (*Matter of Andersen v Hein*, 230 AD3d 880, 881 [2024]). Respondent applies the holding of *Carver* in all circumstances except when recouping Safety Net Assistance ("SNA") from retroactive awards of Supplemental Security Income ("SSI") (NY Off of Temporary and Disability Assistance ["OTDA"] General Information System Message 20 TA/DC079, *Using Work Experience Program [WEP] Participation as a Temporary Assistance [TA] Recovery Source* [Aug. 10, 2020]) (R294-95).

Petitioners-Plaintiffs-Appellants Tarrence Ash and Lynda Ohlsson ("Petitioners") together worked over 800 hours in exchange for public assistance while their SSI applications were pending. Once approved, Respondent recouped the full value of the SNA benefits they received from their retroactive SSI awards without providing a minimum wage credit for their WEP labor. Petitioners challenged this practice as unlawful under FLSA.

In adjudicating this single issue, the Third Department correctly acknowledged that the FLSA applies to WEP labor (*Andersen* at 882). However, it carved out an unwarranted and unlawful exception. Finding a "tight connection

between interim assistance and SSI" without explaining how such relationship allows Respondent to gut FLSA protections, the Third Department held that the Respondent could recover the full amount of SNA without accounting for the value of WEP labor performed (*id.*). This is an error of law with no basis in the FLSA, *Carver*, or other controlling precedent. Petitioners respectfully ask this Court to overturn the Third Department's decision and hold that SSI recipients are entitled to the full value of their labor under the FLSA.

II. QUESTION PRESENTED

Question: Must the Respondent, Commissioner of the Office of Temporary and Disability Assistance, comply with the FLSA and *Matter of Carver v State of New York* (26 NY3d 272, 276 [2015]), by crediting the value of work performed when requesting Interim Assistance Reimbursement ("IAR") on behalf of a Safety Net Assistance ("SNA") recipient who was required to perform work in a work experience program ("WEP") and subsequently found eligible for Supplemental Security Income ("SSI")?

Answer: Yes. The Respondent must provide the minimum wage credit for WEP work performed when calculating the amount of recoverable interim assistance. Failure to provide the minimum wage credit violates the FLSA and conflicts with this Court's decision in *Carver*.

III. JURISDICTIONAL STATEMENT

The Court has jurisdiction over this appeal under CPLR 5602 (a) (1) (i) because the action originated in the Supreme Court, and the order of the Appellate Division finally determines the action and is not appealable as of right. Leave to appeal was granted by order of this Court on May 20, 2025 (R492).

IV. STATEMENT OF THE CASE

A. STATUTORY AND REGULATORY BACKGROUND

1. Safety Net Assistance and the Work Experience Program

In New York, low-income adults without dependent children are eligible for Safety Net Assistance ("SNA"), which is administered by local social services districts ("Local Districts")[1] under Respondent's supervision. SNA benefits are funded out of state and county finances (Social Services Law ["SSL"] §§ 153, 157 *et seq.*).

All recipients of SNA must meet certain eligibility criteria (SSL § 158) and are generally required to participate in work activities as a condition of eligibility (*see* SSL §§ 332, 336). As relevant here, WEP is one such activity. In return for SNA, WEP participants "work for a federal office or agency, county, city, village or

[1] The Respondent supervises the administration of public assistance programs in New York State through social services districts which administer the "policies and principles upon which public assistance, services and care shall be provided" (SSL § 17 [a], [b]). All five boroughs of the City of New York constitute one social services district. Outside the City of New York, each county constitutes its own social services district (SSL § 61).

town or for the state or in the operation of or in an activity of a nonprofit agency or institution" (SSL § 336-c [1] [b]). Respondent determines the number of WEP work hours based on a calculation that divides the value of their benefits by the minimum wage rate (SSL § 336-c [2] [b]).

Receipt of SNA can create a debt that is recoverable pursuant to various statutory provisions if the recipient subsequently receives certain types of funds, including inheritances (SSL § 105), personal injury awards (SSL § 104-b), insurance proceeds (SSL § 105), lottery winnings (SSL § 131-r), and—as relevant here—retroactive SSI awards (SSL §§ 211 [5], 158 [2]).

2. <u>Supplemental Security Income (SSI)</u>

SSI is a federal program administered by the Social Security Administration ("SSA") designed to provide cash assistance to low-income persons who are aged, blind, or disabled (42 USC §§ 1381, 1381a, 1382 [a]). SSI applicants "sometimes experience delays of several months or even years before their entitlement to benefits is determined" (*Rodriguez v Perales,* 86 NY2d 361, 363 [1995]). For example, Petitioner Ohlsson relied on SNA benefits for 23 months while her SSI application was pending (R168). If an SSI application is granted, the recipient is entitled to a lump sum payment from the SSA for the period between the date they applied for SSI and the date when SSI is awarded ("retroactive award"). If an

individual receives SNA benefits while their SSI application is pending, their retroactive award may cover a time period during which they received SNA.

As relevant here, some SNA recipients participate in WEP while their SSI applications are pending (R104-108). When this happens, the retroactive SSI award may cover a time period during which the recipient received SNA as compensation for their WEP labor.

3. The Interim Assistance Reimbursement Process

Under certain circumstances, the State may recoup the SNA provided during the pendency of an SSI application from a recipient's retroactive award. To do this, the State must enter into an agreement with the SSA and obtain a signed authorization from the SSI applicant (42 USC § 1383 [g]). New York has such an agreement (the "OTDA-SSA Agreement") (R317-363). In the OTDA-SSA Agreement, Interim Assistance is defined as assistance provided by the State "wholly from state or local funds" (R324, Article IV [D]). In New York, state and locally funded assistance is called "Safety Net Assistance." Thus, Interim Assistance and SNA are two names for the same governmental benefit (*see* SSL § 158 [2]).

Under the OTDA-SSA Agreement, the reimbursement process works as follows:

First, the SSA advises the State of the monthly amount of SSI benefits awarded and the period of eligibility (R324-25, Article V [A]; SSL § 211 [5]). Next, the State has 25 days to provide the SSA with a dollar amount representing the amount of SNA issued to the recipient during the period of eligibility ("IAR amount") (R324-25, Article IV [D], Article V [A]). In New York, the Local Districts, operating as agents of the State (SSL § 65; *see Matter of Beaudoin v Toia*, 45 NY2d 343 [1978]), calculate the IAR amount and report it to the SSA (OTDA General Information System Message 18 TA/DC026, *Social Services Districts [districts] Interim Assistance Reimbursement [IAR] Responsibilities* [Aug. 17, 2018] [Addenda A-1] [noting that the Local Districts are responsible for correctly calculating the IAR amount and timely submitting to the SSA]). Respondent has promulgated regulatory standards and guidance governing the process (*see* OTDA Admin Directive 08-ADM-11 [Addenda A-3-A-7]). Respondent has directed the Local Districts to report the full amount of SNA issued without providing any credit for WEP work performed in exchange for that SNA (GIS 18 TA/DC026 [Addenda A-2] ["The amount in the 'TOTAL Interim Assistance' field . . . is always the grand total of IA provided to the recipient for the entire IA period."]).

Finally, when the SSA receives the IAR amount from the Local District, it electronically transmits the IAR amount to the Local District, which directs a

portion of the payment to the State. The SSA subsequently issues any remaining balance of the retroactive award directly to the SSI recipient (*see generally* OTDA Admin Directive 09-ADM-18 [Addenda A-9]).

B. PETITIONERS' FACTS

Petitioner Lynda Ohlsson worked over 280 hours at two different WEP work assignments as a condition of receiving SNA while she was waiting for a decision from the SSA on her application for SSI. The federal minimum wage in effect at the time was $7.25 an hour (29 USC § 206 [a]), making the value of her work $2,030. The Suffolk County Department of Social Services ("SCDSS") assigned Petitioner Ohlsson to work at two food pantries cleaning kitchens, bathrooms, and offices; unloading vehicles and carrying donations inside; moving food with older "use-by" dates to the front of the shelves; putting food away in the cabinets; and making meals for families (R121, 155-163).

In January 2017, the SSA determined that Petitioner Ohlsson was disabled and that her period of disability commenced from April 2015 (R106). The SSA awarded her SSI benefits retroactive to April 2015 in the amount of $488.67 per month (*id.*). SCDSS, the Local District administering Petitioner Ohlsson's SNA, received a check from the SSA in the amount of $10,753.40, representing the amount of SSI benefits that Petitioner Ohlsson had been entitled to receive for the period of May 2015 through March 2017 (*id.*). The Local District notified

Petitioner Ohlsson that it had provided her with $8,750.25 in SNA during the months covered by her retroactive SSI payments and was retaining that amount—$8,750.25—from the SSA funds to repay the value of the SNA Petitioner Ohlsson had received as "interim assistance," even though Ms. Ohlsson performed WEP while she received SNA (*id.*; R168).[2] In calculating the amount to be recovered, the Local District failed to give Petitioner Ohlsson credit for the value of her WEP labor (*id.*).

Petitioner Tarrence Ash was required to work at a charity in Rochester, New York for a total of 535.5 hours at the minimum wage rate as a condition of receiving his SNA benefits (R107, 171-176). At $7.25 an hour, the federal minimum wage in effect at the time (29 USC § 206 [a]), the value of this work was $3,882.38. Petitioner Ash unloaded the contents of trucks—between fifty to one hundred 25-pound bags of donated clothing per day—and even heavier containers of food and hygiene supplies (R107). He also weighed bags of donations and sorted clothes (*id*.).

In April 2018, the SSA determined that Petitioner Ash was disabled commencing from August 2017 and awarded him SSI benefits in the amount of

[2] At a fair hearing held on January 10, 2018, SCDSS amended its IA notice, reducing the claimed amount to $7,766.25 as a result of reconciling its records to reflect a corrected amount of rental assistance provided to Ms. Ohlsson (R118-19). This adjustment was not related to crediting the value of Ms. Ohlsson's work. In Ms. Ohlsson's fair hearing decision, the Respondent upheld the determination of SCDSS not to credit the value of that work (R125).

$750 per month, retroactive to September 2017 (R108). In or about April 2018, Monroe County Department of Human Services, the Local District administering Petitioner Ash's SNA case, received a check from the SSA in the amount of $5,940, representing the amount of SSI benefits that Petitioner Ash had been entitled to receive for the period of September 2017 to April 2018 (*id*.). The Local District notified Petitioner Ash that it had provided him with $3,520 in SNA during the months covered by his retroactive SSI payments and was retaining that amount—$3,520—from the SSA funds to repay the value of the SNA Petitioner Ash had received as "interim assistance" (*id.*; R178). In calculating the amount to be recovered, the Local District failed to give Petitioner Ash credit for the value of his WEP labor (*id.*).

Petitioners Ohlsson and Ash were paid minimum wages, issued in the form of the SNA benefits that they received—the number of hours they were assigned to work was determined by dividing the minimum wage rate into the amount of their benefits (SSL § 336-c [2] [b]). The Local Districts determined work schedules and maintained employment records for both Petitioners Ohlsson and Ash, including time records Petitioners Ohlsson and Ash submitted periodically reflecting the number of hours worked each day (R155-163; 171-176). The Social Services Law provides that their benefits could be terminated—the equivalent of being fired—if they failed to report for work (SSL § 342 [3]).

C. PROCEDURAL HISTORY

In 2017, Plaintiff Andersen commenced this class action in Supreme Court, Albany County because Respondent refused to credit the value of WEP when calculating public assistance debt, in contravention of this Court's holding in *Carver*, 26 NY3d at 283.

At the time of filing, Plaintiff Andersen faced recovery of his public assistance debt from the equity on his Suffolk County home based on a lien taken pursuant to SSL § 106. Subsequently, the Complaint was twice amended to add Petitioners Ohlsson and Ash, who each faced recovery of public assistance debt from a retroactive SSI lump sum payment. The plight of Petitioners Ohlsson and Ash specifically forms the basis of this appeal.

Following extensive negotiation, the parties substantially resolved many aspects of the litigation by way of a settlement agreement. Respondent agreed to calculate a minimum wage credit based on the hours worked in WEP to offset public assistance debt for most class members: those with recoveries from real property liens and mortgages, inheritances, personal injury awards, and lottery winnings (R294-95). This policy change was part of the 2022 Supreme Court Stipulation and Order (R467, 475). Additionally, SSL § 106, authorizing recovery of public assistance debt through the use of real property liens and mortgages, was repealed by Chapter 56 of the Laws of 2022, making the issue of mortgage liens

moot by the time the trial court approved the Stipulation and Order. Nevertheless, Respondent continues to deny the WEP minimum wage credit when recovering public assistance debt from retroactive SSI benefits in the IAR process. The parties agreed to adjudicate this single, remaining issue before the Supreme Court through a Motion for Declaratory Judgment (R473).

On October 26, 2022, the Supreme Court (Weinstein, J.) issued a Decision and Order in favor of the Petitioners on the Declaratory Judgment motion (R43). The Supreme Court (Weinstein, J.) subsequently issued a Judgment on the same issue, entered on December 23, 2022, which correctly held that "IAR is subject to the Fair Labor Standards Act in accordance with *Matter of Carver* . . . and must reflect the value of any participation by a public assistance recipient in a WEP activity during the IAR period" (R7).

On January 26, 2023, Respondent filed a Notice of Appeal (R4). By Memorandum and Order of August 8, 2024, the Appellate Division reversed the Decision and Order of the Supreme Court (*Andersen*, 230 AD3d 880, 884 [3d Dept 2024]). Notice of Entry of the Appellate Division Memorandum and Order was filed in NYSCEF on August 15, 2024 (R493).

Petitioners served their Motion for Leave to Appeal to the Court of Appeals upon counsel for the Respondent by regular mail within 30 days after August 15, 2024, and service was timely made pursuant to CPLR 5513 (b). No motion for

leave to appeal was made to the Appellate Division. On May 20, 2025, this Court granted the Petitioners' motion for leave to appeal (R492).

V. ARGUMENT

A. THIS COURT'S SEMINAL DECISION IN *MATTER OF CARVER*

In 2015, this Court held that Walter Carver, a SNA recipient who was required to work as a condition of receiving such assistance, was an "employee" protected by the FLSA and that the value of that work must be credited against the public assistance debt (*Carver*, 26 NY3d at 275-276, 281, 284).

In 2007, Mr. Carver won a $10,000 lottery prize (*Carver* at 276). The State sought to recoup $5,000 from Mr. Carver's lottery winnings pursuant to SSL § 131-r, to recover some portion of the cost of the SNA he had received between 1997 and 2000[3] (*id.*). The City of New York required Mr. Carver to participate in a work activity as a condition of receiving SNA (SSL § 336-c), and the Local District assigned Mr. Carver to WEP in order to meet his work requirement (*Carver* at 276). As a WEP participant, and as a condition of receiving SNA benefits, Mr. Carver sorted mail in the mailroom at the Coney Island Hospital and spent several years cleaning the Staten Island Ferry terminal for 35 hours a week (*id*.).

[3] SSL 131-r authorizes the recovery of SNA provided within the ten years prior to the receipt of a lottery prize. Because Mr. Carver was no longer in receipt of SNA after 2000, the recovery period was limited to this time frame.

Mr. Carver challenged the State's recovery of his lottery prize, contending that permitting the State to recover the funds would deprive him of the wages he earned, in violation of the FLSA (*id*. at 276-77). This Court ultimately held that Mr. Carver's participation in WEP made him an "employee" entitled to the FLSA's minimum wage protections (*id.*; *id.* at 284-85).

In reaching this determination, this Court acknowledged that it was being "confronted with an issue of federal law" (*id.* at 283) and adopted the FLSA "economic reality test" as the appropriate standard for determining whether the FLSA protections applied to Mr. Carver (*id.* at 279 [citations omitted]). This Court evaluated Mr. Carver's case under FLSA by determining whether "the alleged employer (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records" (*id.* [internal quotation marks and citations omitted]; *see also id*. at 280 ["we must apply the economic reality test and, under that test, the City should be considered Carver's employer."]).

In applying the test, this Court stated that "the overarching concern is whether the alleged employer possessed the power to control the workers in question, with an eye to the 'economic reality' presented by the facts of each case" (*id.* at 279 [internal quotation marks and citations omitted]). Relying heavily on

Tony and Susan Alamo Found. v Secretary of Labor, 471 US 290 [1985], this Court noted that Mr. Carver performed similar tasks to salaried employees and relied on his compensation in the form of benefits (*Carver* at 281). As a result of its analysis of the economic reality of the situation, this Court determined that Mr. Carver, a WEP worker, was an "employee" under the FLSA and thus entitled to the FLSA's minimum wage protections (*id.* at 281, 283).

Because WEP participants are FLSA "employees," and SSL § 336-c (2) (b) requires WEP hours to be based upon a minimum wage calculation, Mr. Carver's circumstances compelled this Court to reach "the conclusion that he is entitled to minimum wage" (*Carver*, 26 NY3d at 284-85). As a result, "the State cannot retroactively deprive [Mr. Carver] of a minimum wage by recouping the funds through his lottery prize" (*id.* at 284). To do so would deprive Mr. Carver of the wages he had earned and was entitled to keep.

B. THE DECISION BELOW CONFLICTS WITH *CARVER* AND VIOLATES THE FAIR LABOR STANDARDS ACT

The Third Department acknowledged that Respondent "does not seriously dispute that FLSA applies to unpaid work performed by interim assistance recipients and acknowledges that those recipients have 'a right to receive the value, at minimum wage, of WEP activity performed'" (*Andersen* at 881). Further, the Third Department noted that *Carver* holds that "an individual who performs unpaid

work under a WEP 'in exchange for cash public assistance . . . is protected by the federal minimum wage provisions of the Fair Labor Standards Act (FLSA)'" (*id.* at 880, citing *Carver* at 275-76). Nevertheless, the Third Department concluded that Respondent's failure to provide a minimum wage credit when recouping SNA from Petitioners' retroactive SSI awards did not deprive them of their wages (*Andersen* at 883).

The Third Department incorrectly identified the dispositive issue as "whether SSI benefits are similarly unrelated to interim assistance benefits so that any effort to recoup work-related interim assistance benefits from them constitutes an illegal deprivation of wages under FLSA and *Carver*" (*id.* at 882). The Appellate Division invented an entirely unsupported theory that the holding in *Carver* depended on Mr. Carver's lottery prize being an "unrelated asset" (*id.*) to his SNA. No language in *Carve*r supports such a concept. The relationship between SNA and SSI is irrelevant to the FLSA protections to which WEP workers are entitled by the nature of their work.

Relying on *Rodriguez v Perales,* 86 NY2d 361, 365 (1995), the Appellate Division mistakenly presumed that Congress's motivation for authorizing the IAR process bears on the FLSA analysis this case advances (*Andersen* at 882-83). It does not. This Court's conclusion in *Rodriguez* that the purpose of IAR is to "furnish financial assistance to needy individuals awaiting disposition of their

applications for SSI benefits" (86 NY2d at 365) does not speak to whether those individuals are protected by the FLSA when they are required to work in exchange for SNA. Neither the federal statutes authorizing the IAR process nor the *Rodriguez* decision address FLSA protections for WEP workers or the specific reimbursement issue in this case.

The Appellate Division's result directly conflicts with *Carver* and is contrary to analogous federal case law (*United States v City of New York,* 359 F3d 83, 96-97 [2d Cir 2004] [finding WEP workers to be employees for purposes of Title VII]; *Stone v McGowan,* 308 F Supp 2d 79, 86 [ND NY 2004] [denying State's motion to dismiss FLSA claim on behalf of WEP recipient]; *Elwell v Weiss*, 2007 WL 2994308, *6 [WD NY Sept. 29, 2006, No. 03-CV-6121]). Moreover, the court's analysis illegally excludes disabled WEP workers from FLSA wage protections available to all other WEP workers. By creating an analytic framework wholly irrelevant to the FLSA, the Appellate Division deviates from the well-established federal legal framework which guided this Court in its determination that Mr. Carver's work in WEP was subject to the minimum wage protections of the FLSA (*Carver* at 276, 284-85). This is reversible error.

1. **FLSA Wages Must Be Paid "Free and Clear"**

FLSA rights cannot be abridged by contract or otherwise waived because this would nullify the purposes of the statute and thwart the legislative policies it

was designed to effectuate (*Barrentine v Arkansas–Best Freight Sys., Inc.*, 450 US 728, 740 [1981]; *see also Brooklyn Sav. Bank* at 707 ["No one can doubt but that to allow waiver of statutory wages by agreement would nullify the purposes of the Act."]).

Once work has been performed, it is never acceptable for an employer to recoup minimum wages from employees. Wages "cannot be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally or 'free and clear'" (29 CFR 531.35). "The wage requirements of the Act will not be met where the employee 'kicks-back' directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee" (*id.*). Under the FLSA, it is "unlawful for an employer to require an employee to return wages already delivered to the employee" (*Stein v HHGREGG, Inc.*, 873 F3d 523, 531 [6th Cir 2017] [internal quotations omitted]; *see also Perez v Westchester Foreign Autos, Inc.*, 2013 WL 749497, *9 [SD NY Feb. 28, 2013, No. 11 Civ. 6019 (ER)]). Accordingly, the FLSA minimum wage value of Petitioners' WEP wages must be paid to them "finally and unconditionally" in accordance with 29 CFR 531.35.

Respondent's policy upheld by the Third Department violates the FLSA's "free and clear" regulation. Simply stated, the FLSA-protected wages of Petitioners Ohlsson, Ash, and others like them are not given "free and clear" if the

State can take them back from a retroactive SSI award. To ensure that WEP workers receive minimum wage, the value of their work must be subtracted from the total amount of SNA benefits provided when calculating the amount of any public assistance debt owed. In this case, as in Mr. Carver's, the failure to account for WEP work in the IAR process retroactively deprived Petitioners of their FLSA minimum wages.

2. Employee Repayment of FLSA Wages to an Employer is an Illegal Kickback Prohibited under the FLSA

It is similarly well-established that an employer's FLSA minimum wage responsibilities will not be met where an employee subsequently pays "directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee" (*Mayhue's Super Liquor Stores, Inc. v Hodgson*, 464 F2d 1196, 1199 [5th Cir 1972], quoting 29 CFR 531.35, *cert denied* 409 US 1108 [1973]). This is considered an illegal "kickback" of employee wages to the employer (*id.*). In *Mayhue's Super Liquor Stores, Inc.*, the employer required employees, as a condition of employment, to sign agreements providing that the employees would make "voluntary" repayments of any cash register shortages (464 F2d at 1197). The court found this repayment agreement to be an illegal wage kickback scheme and "nothing more than an agreement to waive the minimum wage requirements of the Fair Labor Standards

Act" (*id.* at 1199; *see also Rivera v Peri & Sons Farms, Inc*., 735 F3d 892, 897 [9th Cir 2013], citing 29 CFR 531.35 ["An employer has not satisfied the minimum wage requirement unless the compensation is 'free and clear,' meaning the employee has not kicked back part of the compensation to the employer"]). As a result, "employers may not require that their employees give any money back to them, such that an employees' resulting compensation falls below the minimum wage" (*Jin M. Cao v Wu Liang Ye Lexington Rest., Inc.*, 2010 WL 4159391, *3 [SD NY, Sept. 30, 2010, No. 08 Civ. 3725 (DC)]), and for these reasons "any money an employee kicks back directly or indirectly to the employer or another person for the employer's benefit must be excluded from calculating the employee's actual wages" (*Teoba v Trugreen Landcare LLC*, 769 F Supp 2d 175, 184 n 4 [WD NY 2011] [internal quotation marks and citation omitted]; *see also Tecocoatzi-Ortiz v Just Salad LLC*, 2022 WL 596831, *12 [SD NY, Feb. 25, 2022, No. 18-cv-7342 (JGK)], quoting *Salazar-Martinez v Fowler Bros., Inc.*, 781 F Supp 2d 183, 191 n 5 [WD NY 2011]).

In its declaratory judgment decision, the Supreme Court correctly observed that "OTDA cites nothing in the FLSA, *Carver* or the Social Security Act for the proposition that so long as it pays minimum wage for WEP work *at the time* IA is first provided, it can take that money back later, and still comply with the requirements of the FLSA" (R48 [emphasis in original]; *see Elwell,* 2007 WL

2994308, *6). It is a fundamental tenet of the FLSA that an employer is legally required to pay an employee at least the minimum wage for all work already performed (29 USC §§ 206 [a], 203 [m]; *see, e.g.*, *Citicorp Indus. Credit, Inc. v Brock*, 483 US 27, 33 [1987]; *Patel v Quality Inn S.*, 846 F2d 700, 705 [11th Cir 1988]).

The decision below runs afoul of the FLSA's kickback regulation. The Third Department concluded that "state and local agencies would be made whole from SSI benefits retroactively awarded to cover the period that interim assistance was being paid" (*Andersen* at 883) and inexplicably found that this does not deprive Petitioners of their previously earned minimum wages. Both statements cannot be true. Under the Third Department's faulty logic, Respondent and the Local Districts are "made whole" when they instruct the SSA to issue the value of the Petitioners' WEP labor to themselves instead of to Petitioners. This is not only bad math, but it is incompatible with the FLSA's prohibition on requiring employees to give back money that would leave them with less than a minimum wage. It is precisely because the State has unlawfully arranged to "'reimburse itself for FLSA wages previously earned by an employee out of an award the employee receives under a separate and distinct disability entitlement'" (*Andersen* at 883, quoting *Elwell*, 2007 WL 2994308, *6), that the Appellate Division's decision must be reversed.

3. SSI Recipients Will Not Be "Double Dipping" if They Are Allowed to Keep Their FLSA Minimum Wages "Free and Clear"

Contrary to the opinion of the Third Department, crediting the value of work against SNA recovery from class members when they receive SSI does not result in "double dipping" by Petitioners Ohlsson, Ash, and similarly situated others. When Petitioners Ohlsson and Ash performed WEP labor, each worked in exchange for the SNA they received. As a result, their SNA benefits were earned as wages and lost their character as public assistance (*Carver* at 281 ["Carver's benefits were 'compensation,' given in exchange for his work—even if some of those benefits were not paid in cash"]; *see also Tony and Susan Alamo Found.* at 301).

This notion of "double dipping" was directly addressed—and rejected—in *Elwell v Weiss*, 2007 WL 2994308:

> "This Court does not agree that plaintiff is trying to 'double dip.' The fact that the Social Security Administration found plaintiff to be disabled and therefore legally entitled to retroactive SSI benefits does not operate to relieve an employer from paying minimum wage for work performed during the period of time the SSI application was pending. Nor should an employer be able to reimburse itself for FLSA wages previously earned by an employee out of an award the employee receives under a separate and distinct disability entitlement." *Elwell* at *6.

The Third Department's decision wrongly authorizes double recovery from Petitioners Ohlsson and Ash. By unlawfully clawing back from Petitioners' retroactive SSI awards the wages previously paid to Petitioners, Respondent

received ***both*** the entire value of Petitioners' labor ***and*** the full value of their SNA benefits. As a result, Petitioner Ohlsson and Petitioner Ash were forced to work for free in violation of the FLSA.

To comply with the FLSA, when the State advises the SSA of the "amount of IA the state furnished to the individual . . . . during the period the individual was subsequently found eligible for SSI," pursuant to Article IV (D) of the OTDA-SSA Agreement (R324), it cannot include the SNA that was paid as wages for the work performed. The State must credit the value of those wages against any public assistance debt when it advises the SSA of the amount it is entitled to recover.

4. <u>The Appellate Division Improperly Relied on *Johns v Stewart*</u>

The Appellate Division improperly relied on the 10th Circuit decision in *Johns v Stewart* to support its holding that "interim assistance furnished" need not "exclude benefits provided to workfare participants" (*Andersen* at 883 [internal quotation marks omitted], citing *Johns v Stewart*, 57 F3d 1544, 1556 [10th Cir 1995]). This is an error of law because this Court in *Carver* "explicitly declined to follow *Johns*" (R51, n 8; *Carver* at 282). In particular, this Court noted that *Johns* was decided two years *before* the U.S. Department of Labor issued guidance on which this Court relied in rendering the *Carver* decision. "According to the DOL, '[w]elfare recipients would probably be considered employees in many, if not most, of the work activities described in the [federal public assistance law]'"

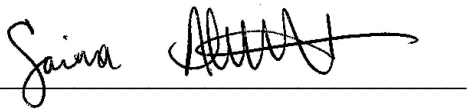
(*Carver* at 280 [citing US Dept of Labor, *How Workplace Laws Apply to Welfare Recipients* [May 22, 1997] [Addenda A-18-A-27]; *see also City of New York* at 94 ["the [DOL], the agency charged with interpreting the FLSA, has rejected the *Johns* approach"]; *Stone* at 86 [relying upon *City of New York,* the ND NY rejected defendants' argument "that WEP participants are not employees within the meaning of FLSA"]). Indeed, the Supreme Court Judgment overruled by the Third Department had correctly and clearly noted that *Johns* "has no relevance to this case" because it "was premised on the finding that the FLSA did not apply to" WEP as articulated in *Carver* (R51, n 8.)

VI. CONCLUSION

For all of the forgoing reasons, this Court should reverse the Memorandum and Order of the Third Department Appellate Division consistent with the legal requirements of the Fair Labor Standards Act and in accordance with *Carver*, 26 NY3d 272, 275-76, and remand to the Albany County Supreme Court for further proceedings consistent with Paragraphs 5-6 of the October 26, 2022, Stipulation and Order of the Albany County Supreme Court (R473).

Dated: August 20, 2025
Albany, New York

Counsel of Record:

By: 

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DISCLOSURE STATEMENT

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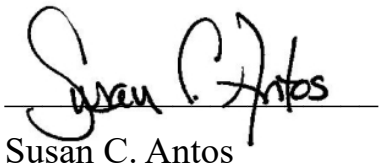
Dated: August 20, 2025



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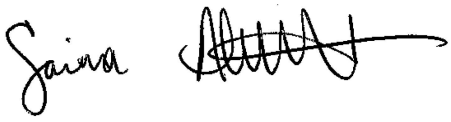

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NEW YORK STATE COURT OF APPEALS

CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.1 (j) that the foregoing brief was prepared on a computer using Microsoft Word.

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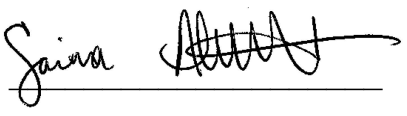
Dated: August 20, 2025

By: 

Saima Akhtar

ADDENDUM

NEW YORK STATE OF OPPORTUNITY. | Office of Temporary and Disability Assistance

DATE: August 17, 2018

TO: Subscribers

SUGGESTED DISTRIBUTION: Commissioners, TA, HEAP and SNAP Directors, Accounting Supervisors, Employment Coordinators, Staff Development Coordinators, Fair Hearing Officers

FROM: Jeffrey Gaskell, Assistant Deputy Commissioner
Employment and Income Support Programs

SUBJECT: Social Services Districts (districts) Interim Assistance Reimbursement (IAR) Responsibilities

EFFECTIVE DATE: Immediately

CONTACT PERSON: Temporary Assistance (TA) Bureau at: (518) 474-9344 or otda.sm.cees.tabureau@otda.ny.gov

The purpose of this message is to remind social services districts (districts) of the required actions that must be performed to comply with the Interim Assistance Reimbursement (IAR) agreement that the New York State (NYS) Office of Temporary and Disability Assistance (OTDA) has with the Social Security Administration (SSA).

Although there have been no policy changes in this area, districts are reminded that they must follow specific steps to ensure reimbursement by the SSA for Interim Assistance (IA) provided to recipients of Safety Net Assistance (SNA) while their Supplemental Security Income (SSI) applications are pending. Steps include but are not limited to the following:

- Obtaining a valid IAR authorization found in the LDSS-2921, LDSS-3174, LDSS-4887 or approved local equivalent.
- Ensuring that applicant/recipient signatures on scanned IAR authorizations are sufficiently readable when retrieved.
- Correctly calculating the IAR amount due to the district and timely submitting accurate information into the SSA Government-to-Government Services Online (GSO) website.
- Providing the completed LDSS-2425A: *Repayment of Interim Assistance Notice*, or approved local equivalent to the recipient. Instructions on completing the form can be found in 09 ADM-18, Attachment A. To ensure proper completion of the form, districts are reminded of the following:

    1. The numbers entered in the 'Safety Net Assistance and Other Payments furnished for basic needs calculation' chart on the LDSS-2425A must correspond with the numbers in the 'IA Payment Reported' column on the SSA GSO website. The amounts on both the LDSS-2425A and the GSO website must reflect all IA payments made for the entire IA period.

2. The amount in the 'TOTAL Interim Assistance' field on the LDSS-2425A is always the grand total of IA provided to the recipient for the entire IA period. In instances where two pages of the LDSS-2425A are required, the 'TOTAL Interim Assistance' field must be completed, and must be the same amount (the grand total of IA for the entire period), on both pages.

3. The amount in the 'Total Amount of interim assistance reimbursement received from the SSA' field on the LDSS-2425A must match the exact IAR payment amount from the SSA.

4. Provide the completed LDSS-2425A to the recipient within 10 working days of the district receiving the IAR payment from the SSA.

    a. The notice must include the Fair Hearing language.
    b. Districts must not date and/or send the notice prior to receiving the IAR payment from the SSA.

Further guidance can be found in the policy documents listed below. There is also an IAR training available on TrainingSpace.

- 08-ADM-11: *Interim Assistance Reimbursement (IAR) Consolidated Policy and Procedures*
- 09-ADM-18: *Temporary Assistance (TA) Policy Implications of Implementation of Electronic Interim Assistance Reimbursement (e-IAR)*
- 14-ADM-02: *The Use, Capture and Reporting of a SSD's Representative's Signature on Interim Assistance Reimbursement (IAR) Authorizations*

If you have any questions, please contact the TA Bureau at: (518) 474-9344 or by email: otda.sm.cees.tabureau@otda.ny.gov.

David A. Paterson
Governor

NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NY 12243-0001

David A. Hansell
Commissioner

Administrative Directive

Section 1

Transmittal:	08-ADM-11
To:	Local District Commissioners
Issuing Division/Office:	Center for Employment and Economic Supports
Date:	December 23, 2008
Subject:	Interim Assistance Reimbursement (IAR) Consolidated Policy and Procedures
Suggested Distribution:	Accounting Supervisors Child Assistance Program Coordinators Employment Coordinators Fair Hearing Officers Food Stamp Directors Medical Assistance Directors Staff Development Coordinators Temporary Assistance Directors TOP Coordinators
Contact Person(s):	Temporary Assistance Questions Contact Temporary Assistance Bureau at 1-800-343-8859, extension 4-9344. Fiscal Questions: Regions 1 - 4: James Carroll (518) 474-7549 E-mail address: James. Carroll@otda.state.ny.us Region 5: Michael Borenstein (631) 854-9704 E-mail address: Michael.Borenstein@otda.state.ny.us Region 6: Marian Borenstein (212) 961-8250 E-mail address: Marian.Borenstein@otda.state.ny.us Medicaid – Upstate Local District Liaison at (518) 474-8887, Medicaid New York City Liaison at (212) 417- 4500
	Attachment A: Definitions

	Attachment B: Frequently Asked Questions
Attachment Available On – Line:	Yes

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
08 ADM-06 08 ADM-05 07 ADM-06 07 LCM-04 04 ADM-05 99 ADM-07 99 LCM-20 94 ADM-01 94 ADM-10 93 INF-12 89 ADM-02 88 LCM-16	97 LCM-14 93 INF-12 91 LCM-50 90 INF-28 81 ADM-59 74 ADM-176	Part 353 Part 358 Part 359 Part 370.5 Part 371 Part 360	SSL 158 SSL 211	TA Energy Manual Section IV TASB Chapter 10	

Table of Contents

The forgoing pages of 08 ADM-11 are referenced in the brief.

The entire document can be read in its entirety at:

https://otda.ny.gov/policy/directives/2009/ADM/09-ADM-18.pdf

NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NY 12243-0001

David A. Paterson
GOVERNOR

Administrative Directive

Section 1

Transmittal:	09-ADM-18
To:	Local District Commissioners
Issuing Division/Office:	Center for Employment and Economic Supports
Date:	October 23, 2009
Subject:	Temporary Assistance (TA) Policy Implications of Implementation of Electronic Interim Assistance Reimbursement (e-IAR)
Suggested Distribution:	Temporary Assistance Directors Food Stamp Directors Medicaid Directors Staff Development Coordinators Child Support Enforcement Coordinators Finance Staff Fair Hearing Officers
Contact Person(s):	Temporary Assistance Program Questions should be directed to: Center for Employment and Economic Supports (CEES) Bureau of Temporary Assistance at (518) 474-9344 New York City representatives at (212) 417-4500 Legal questions should be directed to: Arieh Mezoff at (518) 473-7322 or Arieh. Mezoff@ otda.state.ny.us. Fiscal questions should be directed to: Regions 1-4: James Carroll at 1-800-343-8859 ext. 4-7549 or (518) 474-7549 James.Carroll@otda.state.ny.us. Region 5: Michael Borenstein (631) 854-9704 Michael.Borenstein@otda.state.ny.us. Region 6 : Marian Borenstein (212) 961-8250 Marian.Borenstein@otda.state.ny.us. CentraPort questions should be directed to:

	Janet Krak (518) 473-9779 Janet.Krak@otda.state.ny.us. ListServe questions should be directed to: Office for Technology Customer Relations Helpdesk 1-866-789-4638. Office for Technology Customer Relations Helpdesk: 1-866-789-4638
Attachments:	Attachment A – LDSS- 2425 "Repayment of Interim Assistance Notice" Instructions
Attachment Available On – Line:	yes

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
08 ADM-06 08 ADM-05 99 ADM-07 94 ADM-01 93 INF-12 89 ADM-02 88 LCM-16		Part 353		TA Source Book Chapter 9, Section O Chapter 10, Section L	

Section 2

I. Summary

The purpose of this Administrative Directive (ADM) is to advise Social Services Districts (SSDs) of the impact of the statewide implementation of the Electronic Interim Assistance Reimbursement (e-IAR) process on Temporary Assistance (TA) Interim Assistance (IA) policy as now required by the Social Security Administration (SSA).

E-IAR is a new project designed, implemented and mandated by the SSA to automate the current Interim Assistance Reimbursement (IAR) paper check process by utilizing a SSA secure website known as Government-to-Government Services Online (GSO). The computerized process allows the SSA to automatically determine the IAR payment due a SSD based on the SSD workers' reported IA payment information inputted into and transmitted through the secure website. In addition, the new system will retain an electronic record of SSA's determination for review; automate the SSA notices process with a comprehensive e-mail alert system; and, automatically notify SSD workers via e-mail of the reimbursement determination and payment.

The e-IAR process does not change SSD notification requirements; the actions needed to obtain IAR authorization; the way the SSD determines the IA period; or, how the manner in which the SSD calculates the IAR amount.

As will be discussed more fully below, there is little program impact as the result of the anticipated e-IAR implementation. This ADM outlines highlights of the TA program implications.

II. Background

Section 1631 (g) of the Social Security Act provides that a state may enter into an agreement with the SSA to have the SSA transmit an individual's IAR payment directly to the SSD as reimbursement for IA provided to a Supplemental Security Income (SSI) applicant while a decision upon his/her SSI application is pending. Since 1974, the Office of Temporary and Disability Assistance (OTDA) has had an agreement in effect with the SSA that identifies the required conditions and responsibilities allowing SSA to withhold a SSI recipient's initial, or post eligibility SSI payment, and forward it to a SSD as reimbursement for IA. In light of SSA's transition to an automated process, SSA and OTDA are currently reviewing the existing agreement to determine if amendments are necessary.

Under the current process, once a current or former TA recipient is determined eligible to receive SSI, the SSA notifies the SSD of the individual's initial or post eligibility retroactive SSI amount and the date of initial and ongoing SSI eligibility. The SSD then informs the SSA of the amount of IA paid during the pendency of the SSI application, by manually completing SSA form SSA-8125, "Supplemental Security Income - Notice of Interim Assistance Reimbursement" (SSA-8125). This form is then mailed or faxed by the SSD to the local SSA field office. SSA processes the information and either mails the SSD a check representing the SSI recipient's entire retroactive amount, or mails a check to the SSD that represents the amount of IAR due to the SSD. In addition, the SSD is monthly required to complete form OTDA-3073 "Transmittal of SSA-8125s", and batch and mail the form with supporting SSA-8125s to the Center for Employment and Economic Supports (CEES).

The e-IAR process is a new project designed, implemented and mandated by the SSA to automate the current IAR paper check process by utilizing a SSA secure website known as Government-to-Government Services Online (GSO). The SSA computerized process allows the SSA to determine the payment due to a SSD automatically based on the SSD workers' reported IA payment information inputted into and transmitted through the GSO website. In addition, the system will retain an electronic record of this determination for review; automate the SSA notice processes with a comprehensive e-mail alert system; and, will automatically notify SSD workers via e-mail of the reimbursement determination and payment.

The SSA expects to implement e-IAR throughout the United States in phases beginning in the end of 2009 through 2010. Once the system is in place for SSDs to transmit the IA data electronically, SSA will proceed to the next step entailing a system to transmit payments to SSDs via direct deposit. Once that is in place, SSA will make all IAR payments using the Automated Clearing House (ACH) eliminating the use of paper checks entirely for reimbursement of all IAR.

Note: As explained in 08 ADM-06, in order for the worker to use the GSO Website, a user account is required. This requires that each individual who will use the system must have a Personal Identification Number (PIN) and password issued and maintained by the SSA.

III. Program Implications

The SSA's mandated change from paper to an automated e-IAR process does not change the actions needed to obtain IAR authorization, the determination of the interim assistance period, calculation of IAR, or notification requirements.

Once SSA implements the e-IAR system, the SSA will notify a SSD that a TA recipient is eligible to receive an initial SSI benefit by sending an e-mail notification to designated SSD staff. Within ten (10) working days of receiving the notification, authorized SSD staff should log onto the GSO website using a SSA-issued PIN, Password, and State Data Exchange (SDX) Grant Reimbursement (GR) Code. SSD staff must insert the required IA data on the appropriate screen. This data is expected to be similar to the data that is currently being used to complete the "State's Account of Reimbursement Claimed" section of the paper SSA-8125.

If the SSD fails to access the GSO website and transmit the required IA data within 10 working days following the initial e-mail notification, the SSD will have an additional fifteen (15) working days to provide the required information. If the SSD fails to access the GSO and transmit the required IA data within a maximum of twenty-five (25) working days from the date the SSD received the initial e-mail notification, SSA will automatically send the entire initial SSI payment directly to the recipient in accordance with their regulations. In such case, the SSD will not receive any IAR. SSDs can request that the individual repay IA but there is no legal authority to require repayment.

Note: SSDs are already required to comply within these timeframes under the SSA installment payment method.

Once the SSA receives the required IA data they will calculate the amount of IAR due to the SSD and send any reimbursement due the SSD by a paper check. After the system is in place for SSA to transmit the IA data electronically, SSA will proceed to the next step establishing the payments to SSDs via direct deposit. Once established, SSA will make IAR payments using the Automated Clearing House (ACH) eliminating the use of paper checks entirely for reimbursement of all IAR.

Generally speaking, there is little TA program impact as the result of the anticipated e-IAR implementation. Outlined below are highlights of program implications.

1. SSDs will no longer be required to disburse an individual's initial SSI payment in accordance with the SSA's direct payment method. Therefore, SSDs will no longer receive a TA recipient's entire initial or post eligibility SSI payment by check, calculate and retain the IAR amount, and disburse any remaining balance to the TA recipient within ten working days of receiving the individual's initial direct SSI payment from the SSA.

(a) The SSD IAR reporting timeframes. In all circumstances, when the SSD receives an e-mail notification from SSA that IA data is required the SSDs must provide SSA with the information within a maximum of 25 working days from the date the SSD received the e-mail notification. Ideally, SSDs should provide SSA with the required IA data within 10 working days of receiving an e-mail notification. If SSDs fail to comply within the 10 working day timeframe, an additional 15 working days will be provided. If the SSD fails to provide the SSA with required IA data within a maximum of 25 working days from the date the SSD received an e-mail notification, the system will automatically send the entire initial SSI payment directly to the recipient in accordance with SSA rules and the SSD will not receive any IAR.

Once SSA implements the e-IAR system, the SSA will notify a SSD that a TA recipient is eligible to receive an initial SSI benefit by sending an e-mail notification to designated SSD staff. Within ten (10) working days of receiving the notification, authorized SSD staff should log onto the GSO website using a SSA-issued PIN, Password, and State Data Exchange (SDX) Grant Reimbursement (GR) Code. SSD staff must insert the required IA data on the appropriate screen. This data is expected to be similar to the data that is currently being used to complete the "State's Account of Reimbursement Claimed" section of the paper SSA-8125.

If the SSD fails to access the GSO website and transmit the required IA data within 10 working days following the initial e-mail notification, the SSD will have an additional fifteen (15) working days to provide the required information. If the SSD fails to access the GSO and transmit the required IA data within a maximum of twenty-five (25) working days from the date the SSD received the initial e-mail notification, SSA will automatically send the entire initial SSI payment directly to the recipient in accordance with their regulations. In such case, the SSD will not receive any IAR. SSDs can request that the individual repay IA but there is no legal authority to require repayment.

Note: SSDs are already required to comply within these timeframes under the SSA installment payment method.

Once the SSA receives the required IA data they will calculate the amount of IAR due to the SSD and send any reimbursement due the SSD by a paper check. After the system is in place for SSA to transmit the IA data electronically, SSA will proceed to the next step establishing the payments to SSDs via direct deposit. Once established, SSA will make IAR payments using the Automated Clearing House (ACH) eliminating the use of paper checks entirely for reimbursement of all IAR.

Generally speaking, there is little TA program impact as the result of the anticipated e-IAR implementation. Outlined below are highlights of program implications.

1. SSDs will no longer be required to disburse an individual's initial SSI payment in accordance with the SSA's direct payment method. Therefore, SSDs will no longer receive a TA recipient's entire initial or post eligibility SSI payment by check, calculate and retain the IAR amount, and disburse any remaining balance to the TA recipient within ten working days of receiving the individual's initial direct SSI payment from the SSA.

(a) <u>The SSD IAR reporting timeframes</u>. In all circumstances, when the SSD receives an e-mail notification from SSA that IA data is required the SSDs <u>must</u> provide SSA with the information within a maximum of 25 working days from the date the SSD received the e-mail notification. Ideally, SSDs should provide SSA with the required IA data within 10 working days of receiving an e-mail notification. If SSDs fail to comply within the 10 working day timeframe, an additional 15 working days will be provided. If the SSD fails to provide the SSA with required IA data within a maximum of 25 working days from the date the SSD received an e-mail notification, the system will automatically send the entire initial SSI payment directly to the recipient in accordance with SSA rules and the SSD will not receive any IAR.

2. SSDs will no longer receive a reminder from SSA if they fail to provide IAR data to the SSA within required timeframes. SSDs will receive only one e-mail notification that IA data is required to be sent to the SSA via the GSO. If the SSD fails to provide the SSA with the required IA data within a maximum of 25 working days from the date the SSD received e-mail notification, the system will automatically send the initial SSI payment directly to the recipient in accordance with SSA rules and the SSD will not receive any IAR.

3. SSA will no longer require SSDs to complete and return the SSA-8125 form, or the SSA-8125-F6 "IAR Payment Pending Case State Due Payment" form. The SSA will receive all required data via the GSO website. In addition, SSDs will no longer be required to monthly batch and mail completed SSA-8125s or SSA-8125-F6s to CEES.

4. SSDs will no longer be required to manually complete and submit the OTDA–3073 "Transmittal of SSA-8125s" to CEES on a monthly basis because the SSA will receive all required data via the GSO website. Once e-IAR is implemented in NYS, the OTDA-3073 will be obsolete and must not be used.

5. SSDs will report IA statistical data electronically to CEES via e-Reporting found on CentraPort. The instructions for e-Reporting are found in section VI.A of this ADM.

6. The LDSS-2425 "Repayment of Interim Assistance Notice" (LDSS-2425) has been revised to delete reference to the direct payment method because when the automated system is operational SSDs will no longer be required to disburse an individual's initial SSI payment in accordance with the SSA's direct payment method. SSD must continue to provide each TA recipient whose initial SSI payment was transmitted to the SSD for IAR with a LDSS-2425 within **10 working** days of the SSD receiving the IAR payment from the SSA.

7. The SSD must determine if, during the IA period, multiple SSDs provided IA to the same individual. If so, the SSDs must follow the instructions in section V.A.4 of this ADM.

8. SSDs must continue to maintain accurate accounting records for each individual the SSD receives IAR for from SSA (but the data elements have changed). These records **must** at a minimum include the following information:

    a. The amount of the IAR payment received from SSA
    b. The amount of IA paid to the individual
    c. The date the IAR payment was received by the SSD from SSA
    d. Documentation to support the amount of IA recovered

    The records must be available for inspection by OTDA and by SSA.

9. SSDs must continue to immediately reevaluated and take appropriate action including, if necessary, reducing or discontinuing assistance when the SSDs are notified of an individual's eligibility for SSI. SSDs may continue to use electronic or non-electronic

notification from the SSA as documentation that a TA applicant or recipient has been determined eligible for SSI.

10. SSDs must continue to provide an adequate notice when an individual's SSI income changes a TA recipient's grant amount or results in ineligibility for TA.

11. SSDs must continue to maintain all IAR case processing records, such as SSA forms, application/recertification forms, and SNA payment records, for at least six years. The SSA will not maintain a database of information provided by the SSD to the SSA via the GSO website; therefore, SSDs inquiry capabilities will be limited by SSA user rules. The SSA will inform the users of the GSO website of such user rules prior to implementation.

III. Required Action

A. Actions Which Social Services Districts Must Perform when E -IAR is implemented by SSA:

1. SSDs must continue to calculate the amount of IAR due the SSD in accordance with the instructions provided in 08 ADM-11, Section V.C. This includes that any interim assistance payments issued via the Benefit Issuance Control System (BICS) with check date(s) that fall within the IA period must be used to calculate the IAR due to the SSD.

2. The SSD must discontinue using the paper IAR processes as soon as e-IAR is operational. SSDs do not have the option of continuing the paper check process. For more information, see 08 ADM-06.

3. When the SSD receives an e-mail notification from SSA that IA data is required, SSDs must provide SSA with the information within a maximum of 25 working days from the date the SSD received the initial e-mail notification. SSDs should provide SSA with the required IA data within 10 working days of receiving an e-mail notification. If SSDs fail to comply with the 10 working day time frame an additional 15 working days will be provided. If the SSD fails to provide the SSA with required IA within a maximum of 25 working days from the date the SSD received the initial e-mail notification to provide IA data, the system will automatically send the entire initial SSI payment directly to the recipient in accordance with SSA regulations and the SSD will not receive any IAR.

4. SSD must report IA data to CEES via the e-Reporting "Monthly IAR E-Report". CEES must collect reporting data that is necessary for statistical recordkeeping. Instructions on how to access and use the "Monthly E-IAR E-Report" are found in section VI.A of this ADM.

5. When more than one SSD provided IA during the IA period, the SSA must send the IAR e-mail notification and any IAR to the SSD that has a valid IAR authorization in SSA's computer file. Therefore, the SSA will distribute an SSI recipient's entire IAR reimbursement to only one SSD and that SSD must calculate and distribute any other SSD's share of the IAR amount. The SSD that receives the SSA e-mail notification must research and review the individual's SSI eligibility period to determine if the SSI recipient was eligible to receive SSI benefits prior to, or beyond, the time the district provided IA. If so, the SSD must review WMS inquiry to determine if any other SSD is entitled to IAR.

For example, if an SSD received an SSA e-mail notification for an individual who lived in their district and the individual received Safety Net Assistance (SNA) benefits for two months but the initial SSI eligibility period is for 12 months, the SSD must review WMS to determine if any other SSD issued IA to the recipient during the SSI eligibility period.

The SSD that receives the SSA e-mail notification is the SSD that must provide the required IA data to the SSA for all SSD(s) that provided IA to the recipient during the IA period. Accordingly, the original district must contact the other SSD(s) and instruct them to provide the total IA amount paid during the IA time period in enough time to meet the prescribed SSA reporting time frame. If the original district fails to research and/or notify other SSD(s) that IA information is needed to correctly calculate the amount of IAR to be requested from the SSA, the other SSD(s) will not receive any IAR and will not have any recourse from the original SSD or the TA recipient to collect IA. If the SSD requesting the information does not receive the information from the other SSD(s) in enough time to process the IA data, the SSD(s) that failed to comply with the prescribed timeframe will not receive their share of IAR.

Note: To determine the IAR contact for a SSD, the original district may contact the TA/IM director of any other SSD that must provide IAR data. A SSD's TA/IM director contact information is available on CentraPort.

When the first SSD receives the required information from the other SSD(s), the first SSD must, in the time periods prescribed:

a. Calculate the total amount of IA the TA recipient received from all SSD(s) during the IA period.
b. Calculate the amount of IAR each SSD is to receive.
c. Timely access the e-IAR SSA website and input all required IAR data.
d. Disburse the IAR received by the SSA to all SSD(s) that are due IAR by sending a check in the amount each district is due with a copy of a completed LDSS-2425 "Repayment of Interim Assistance Notice".
e. Complete and send one LDSS-2425 to the TA recipient designating how the SSD calculated IAR. The "remarks" section of the form can be used to notify the recipient of the name of any other SSD(s) that provided IA, the IA period that any other SSD(s) provided IA, and the amount of IA provided by other SSD(s).

Note: Each SSD is responsible to include all IAR amounts received from another SSD(s) in its calculations when completing the "Monthly IAR E-Report".

6. Within **10 working** days of the SSD receiving the IAR payment directly from the SSA, the SSD must provide an LDSS-2425 "Repayment of Interim Assistance Notice", to every TA recipient whose initial SSI payment was used to reimburse a SSD for IA paid to the individual. The purpose of this notice is to notify the TA recipient of the following:

a. Initial date of eligibility for SSI
b. The period of time that IA was provided
c. The total amount of IA provided
d. Monthly accounting of IA benefits paid

e. The total amount of IAR received from the SSA
f. Date SSD received IAR from the SSA
g. The recipient's right to a fair hearing

The revised LDSS-2425 "Repayment of Interim Assistance Notice" deletes any reference to the direct payment method. Instructions for completing the form are found in Attachment A of this ADM. This notice is available using Intelligent Auto Fill (IAF).

7. Once e-IAR is operational, SSDs will receive all IAR payments directly from the SSA. Consequently, question 4 on page 34, found in the LDSS-4148B "Book 2 What You Should Know about Social Services Programs" is obsolete. To communicate the correct information to TA applicants and recipients, the following questions and answers have been developed.

a. Q. How is interim assistance repaid to the Local Department of Social Services District?

A. The Social Security Administration (SSA) will reimburse the interim assistance owed directly to the SSD from any retroactive SSI benefits you are eligible to receive.

b. Q. How will I receive any balance from my retroactive SSI payment?

A. After the SSA reimburses the SSD for interim assistance owed, any balance from your retroactive SSI payment you are due will be distributed directly from the SSA according to their rules. For questions about how or when you will receive any balance from your retroactive SSI payment, contact your local SSA office or call 1-800-772-1213.

As soon as e-IAR is implemented in New York State (NYS) the above questions and answers will be added to the LDSS- 4148(D) "New Information about Temporary Assistance and Food Stamps" that SSDs must distribute at application and recertification.

SSDs will be notified of the revised 4148(D) with the required IAR information by an Informational Letter (INF).

8. SSDs must contact Naomi Diamond, SSA field representative, when a SSD employee with access to the GSO website has left the SSD's employment. Ms. Diamond can be contacted via e-mail at Naomi.Diamond@ssa.gov, or by mail at:

Social Security Administration
Center for Programs Support
26 Federal Plaza, Room 4060
New York, New York 10278
ATT: Naomi Diamond

The forgoing pages of 09 ADM-18 are referenced in the brief.

The entire document can be read in its entirety at

https://otda.ny.gov/policy/directives/2009/ADM/09-ADM-18.pdf

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Labor Protections and Welfare Reform

May 22, 1997

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)

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380 Westminster Mail Room 346
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ph.: (401) 528-4431
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300 East 8th Street
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WEST

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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

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

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

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)

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

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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.