

FAIR LABOR STANDARDS ACT

Students must either be classified as trainees or as employees in these community experiences. When they are considered employees, they are entitled to wages, benefits and insurance coverage. When they are considered trainees, they are not entitled to any payment for services.

According to the Fair Labor Standards Act (FLSA), there are at least six criteria that should be considered to determine if a worker is an employee or trainee. If all of the following criteria are not met, the worker should be considered a trainee:

- the student receives ongoing instruction at the employer's work site and receives close on-site supervision throughout the learning experience;
- the training is for the benefit of the trainees;
- the trainee does not displace regular employees, but works under their close observation;
- the employer that provides the training derives no immediate advantage from the activities of the trainee; and on occasion his/her operations may actually be impeded;
- the trainee is not necessarily entitled to a job at the conclusion of the training period;
- the employer and the trainee understand that the trainee is not entitled to wages for the time spent in training.

Guidelines

Where ALL of the following criteria are met, the U.S. Department of Labor Guidelines will NOT assert an employment relationship for purposes of the Fair Labor Standards Act:

- Participation will be youth with physical and/or mental disabilities for whom competitive employment at or above the minimum-wage level is not immediately obtainable and who, because of their disability, will need intensive ongoing support to perform in a work setting.
- Participation will be for vocational exploration, assessment, or training in a community-based placement worksite under the general supervision of public school personnel.
- Community-based placements will be clearly defined components of individual education programs developed and designed for the benefit of each student. The statement of needed transition services established for the exploration, assessment, training, or cooperative vocational education component will be included in the student's Individualized Education Plan (IEP).
- Information contained in a student's IEP will not have to be made available; however, documentation as to the student's enrollment in the community-based placement program will be made available to the Department of Labor. The student and the parent or guardian of each student must be fully informed of the IEP and community-based placement component and have indicated voluntary participation with the understanding that participation in such a component does not entitle the student-participant to wages.
- The activities of the students at the community-based placement site do not result in an immediate advantage to the business.

The Department of Labor will look at several factors:

There has been no displacement of employees, vacant positions have not been filled, employees have not been relieved of assigned duties, and the students are not performing services that, although not

1. ordinarily performed by employees, clearly are of benefit to the business.
 2. The students are under continued and direct supervision by either representative of the school or by employees of the business.
 3. Such placements are made according to the requirements of the student's IEP and not to meet the labor needs of the business.
 4. The periods of time spent by the students at any one site or in any clearly distinguishable job classification are specifically limited by the IEP.
- While the existence of an employment relationship will not be determined exclusively on the basis of the number of hours, as a general rule, each component will not exceed the following limitation during any one school year:
Vocational exploration 5 hours per job
Vocational assessment 90 hours per job
Vocational training 120 hours per job

One hundred and twenty (120) hours are arbitrary classification based strictly on the cumulative time involved. Thus, vocational exploration, assessment, and training are not distinct components of the community based on-site activities. It should be noted however, that once the individual has been involved for 215 hours in a particular occupational category, that a critical analysis be made under the other criteria (particularly from the perspective as to whether the business is gaining an immediate economic advantage from the activities of the program participant) to determine whether the individual is now an employee.

VOCATIONAL TRAINING & WORK EVALUATION COVERAGE (con't)

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1. The contracting parties are subject to the definitions found in NDCC § 65-07.1-01. Benefits received by an employee involved in a vocational training or work evaluation program are not wages or salaries.

2. The insured and its participants are subject under the terms of this contract to NDCC § 65-07.1-02 which states:

Any employer or workstation, as defined in this chapter, shall not be liable to respond to damages at common law or by statute for injuries to or the death of any employee, as defined in this chapter, whenever the employer has complied with the provisions of this chapter and during the period for which premiums, as set by WSI, have been paid. Any employee who elects, before injury or death, not to come under the provision of this chapter may do so by notifying WSI, employer, and workstation of such election in writing.

3. The insured agrees that any participant's name that has been submitted for coverage either in this application and contract or at any other time has been made aware of the provisions of § 65-07.1-02.

4. The insured shall notify WSI by mail or facsimile of any changes or additions to information included in the application. Individuals not identified as participants in the application or subsequent writing provided to WSI prior to the date of injury are not eligible for coverage under the terms of this contract.

5. The term of this contract is for a period of one year from the date of acceptance by WSI and is automatically renewable by payment of the annual premium.

6. This contract remains in force until terminated by either party by written notice to the other party.

7. WSI may terminate this contract if:

1. WSI notifies the insured of its intent to decline renewal of the contract pursuant to § 65-07-02 or
2. WSI discovers that the information supplied by the insured is incomplete, misleading or fraudulent. In that event, WSI may immediately terminate this contract by informing the insured
3. The premium is not paid in full within (30) days of the effective date of coverage specified in this contract. No claim for injury under this agreement made during the contract period will be honored if the premium has not been paid.

8. Premium for each participant shall be computed at the rate in which each participant is engaged and shall be based on a reasonable weekly wage determined by WSI. Workers compensation coverage is effective on the date of acceptance by WSI. Coverage shall be cancelled if premium is not paid within thirty (30) days of the effective date of coverage.

9. All claims filed under this contract are subject to Title 65 of the North Dakota Century Code.

10. All medical, surgical and hospital benefits and appropriate supplies available to any proper claimant under Title 65 of the North Dakota Century Code shall be provided by WSI for injury or death when such occurs in the course of the work described in the application for coverage.

11. The coverage provided by this contract shall not include:

- a. medical, compensation, permanent partial or death benefits for heart attacks or strokes.
- b. attorney fees as allowed under §65-02-08.
- c. disability or rehabilitation benefits in any form.

I understand WSI may request additional information in reviewing this contract and application. I understand it is the responsibility of the organization and its agents to inform WSI by mail or by facsimile of any additions or changes to the information contained in this application and contract. Lastly, I understand that only those participants listed in this application prior to injury are covered by this contract.

I certify that I am an approved agent for the above-named organization. I further certify that I have read and understand the provisions of this contract. I understand that this contract is not in force until approved by WSI and the Premium has been paid.

Peggy Strand
Authorized Agent

9-26-06
Date

AST Multidistrict
Institution Name

COPY

Carleen Buckholz
Workforce Safety & Insurance

10-6-06
Date of acceptance by WSI
Effective date of Coverage