

# Fair Labor Standards Act (FLSA) and School-to-Work Opportunities

From its inception in the 1930's, the federal Fair Labor Standards Act has protected the rights, safety and well-being of most workers in the United States including youth. With the passage of the School-to-Work Opportunities Act in 1994, questions have arisen concerning whether a student's work-based learning experience is covered under the Fair Labor Standards Act.

School-to-Work initiatives cover a wide range of activities, some of which are subject to FLSA and some of which are not. FLSA specifies particular limits on the employment of minors under the age of 18. Participation in School-to-Work initiatives carries no additional compliance obligations under FLSA; working with School-to-Work students is just like working with other minors.

## **What is Work-Based Learning under School-to-Work?**

Work-based learning - a learning experience for a student at an employer's worksite - is one of the three core elements of School-to-Work systems, along with school-based learning and connecting activities. It includes work experience (both paid and unpaid), workplace mentoring, and broad instruction, to the extent practicable, in all aspects of an industry.

## **What does the Fair Labor Standards Act cover?**

FLSA covers wages, hours and overtime, compliance with child labor laws and record keeping requirements. Generally, FLSA applies to students in PAID work experience.

## **When are Work-Based Learning experiences not subject to FLSA?**

Activities such as workplace mentoring, job shadowing, field trips, career awareness and unpaid "volunteer" work experience are not subject to FLSA.

## **What are the FLSA requirements?**

Students in a paid work experience must receive at least the federal minimum wage per hour. They must be paid overtime pay of 1.5 times the agreed rate of pay for all time in excess of 40 hours per week. Employers must keep adequate records and comply with child labor laws.

## **What are the elements of a worksite learning experience?**

A School-to-Work learning experience at an employer's worksite:

- Is a planned program of job training and work experience for the student
- Encompasses a sequence of activities that build one upon the other
- Is structured to expose the student to all aspects of an industry
- Provides for real or simulated tasks or assignments.

## **When is a work-based learning work experience not employment?**

A student enrolled in a School-to-Work work-based learning work experience would not be considered an employee for FLSA purposes if ALL of the following criteria were met:

- The student receives ongoing instruction at the employer's worksite and receives close on-site supervision throughout the learning experience; and
- The placement of the student at worksite during the learning experience does not result in the displacement of any regular employee - i.e.; the presence of the student at the worksite cannot result in an employee being laid off, cannot result in an employee working fewer hours than he or she would otherwise work; and
- The student is not entitled to a job at the completion of the learning experience; and
- The employer, student, and parent or guardian understand that the student is not entitled to wages or other compensation for the time spent in the learning experience.

## **What does it mean if a work-based experience is not subject to FLSA?**

It means that a student is not an employee, wages are not paid, and Federal child labor laws do not apply.

Payment of a stipend is optional and is generally limited to reimbursement for expenses such as books, tuition, or tools.

While federal child labor laws do not apply if there is not an employment relationship, School-to-Work systems are encouraged to adhere to child labor laws with regard to hazardous working conditions.