

DSS ADMINISTRATIVE LETTER NO. ECONOMIC AND FAMILY SERVICES 4-08

Work First Program

TO: County Directors of Social Services

ATTENTION: Work First Program Administrators, Managers and Supervisors

DATE: December 10, 2008

SUBJECT: Clarification of Fair Labor Standards Act Calculation Work Experience and Community Service Hours

EFFECTIVE DATE: Immediately Upon Receipt

Background

On March 20, 2008, the Division issued Administrative Letter, FSCW 06-08 with guidance about using the Fair Labor Standards Act in calculating the maximum number of hours that a Work First participant can engage in Work Experience and/or Community Service activities. Subsequently, Section 118 of the Work First Manual was updated effective October 1, 2008, to be in compliance with the TANF Final Rule along with the approved Work Verification Plan for North Carolina. There have been a number of questions regarding the Fair Labor Standards Act (FLSA) policy, deeming and "net Child Support" since the issuance of the Administrative Letter and subsequent manual material. This letter is to clarify policy related to the use of the (FLSA) calculation for determining the maximum number of hours that a Work First Participant can participate in Work Experience and/or Community Service activities each month. Clarification is also provided regarding deeming and "net Child Support" issues related to Work Experience and Community Service activities.

FLSA Law and Policy

Federal law requires that the minimum wage rules of the Fair Labor Standards Act (FLSA) apply to Work Experience (AW) and Community Service (CS) participants. Because of the FLSA regulations, combined AW and CS activities should not exceed the maximum number of hours per month as determined by the FLSA formula, unless the employer is exempt from FLSA by the Department of Labor (DOL). It is very rare that any of the AW or CS providers would be exempt, based on guidance by DOL.

There has been confusion on the part of some counties that the FLSA formula is intended to be a minimum number of hours that the participant can participate in AW and/or CS. That is not the case. The **maximum** number of hours (not to exceed 40 hours per week) that a participant may be assigned to AW and/or CS per month is determined by dividing the amount of the Work First Family Assistance (prior to any sanction) plus their Food and Nutrition Services Benefits, net (minus) Child Support, by the state or federal minimum wage, whichever is greater. ***The participant cannot volunteer additional hours beyond the hours calculated.***

The Fair Labor Standards Act does ***not permit*** the participant to complete more hours than allowed by the formula, even if the participant agrees to the additional hours. **Hours completed in AW and/or CS in excess of the calculated hours are not allowable.** This is a critical compliance requirement, and the Work First caseworker must thoroughly explain this limitation to both the participant and the AW or CS provider to ensure compliance.

The daily attendance reports provided to the AW or CS provider and participant to document hours of participation must include a note of the maximum number of hours allowed by the FLSA requirement so that both the participant and the provider remain aware of that limitation. The maximum number of hours should also be reflected on the Mutual Responsibility Agreement (MRA) and the participant clearly informed that they may not engage in more than those hours in AW and/or CS activities. They may engage in additional hours in other activities, however, and may be required to do so as a part of their MRA.

Minimum Wage Used in the FLSA Calculation

North Carolina's Work First Program will use the state or federal minimum wage, whichever is higher, in the FLSA formula to calculate the maximum number of hours for a participant. As of July 24, 2008, both the state and federal were set at \$6.55 per hour.

Child Support and the FLSA Calculation

Child Support is a legal obligation for the absent parent and the custodial parent. Child Support income should not be considered in the minimum wage calculation under FLSA. This restriction in the calculation involves amount of Child Support that is ordered by the court and assigned to the Department of Health and Human Services (DHHS), as required by Section 116.

Net Child Support means that the amount of Child Support assigned to the DHHS is subtracted from the total of the Work First Family Assistance and Food and Nutrition Services benefits before dividing by the minimum wage.

The FLSA Calculation

If only one adult in the Work First and Food and Nutrition Services case is assigned to complete the AW and/or CS hours, the entire household's Work First and Food and Nutrition Services benefits can be used to determine the number of hours the individual can participate in these activities. However, if there is another Work First or Food and Nutrition Services adult in the household who needs to complete hours, the Work First and Food and Nutrition Services benefits must be divided between both individuals. The county must determine how to divide the allowable number of hours using the Work First and Food and Nutrition Services benefit amounts between or among the affected individuals. This will require coordination in the county, particularly when the Food and Nutrition Services case is handled by a different worker than the Work First case. Counties may wish to make this decision in part based on how many hours in addition to AW and/or CS each adult needs in order to meet his or her overall work requirement.

The Work First caseworker must monitor the amount of Work First Family Assistance and Food and Nutrition Services allotment monthly, and recalculate the maximum number of hours that the participant can be assigned if benefits or Child Support amounts change.

Sample Work Experience Calculation:

A mother receives \$236 per month in Work First Family Assistance for herself and her 12 year old child. Her monthly Food and Nutrition Services benefit is \$230. Her ex-husband provides \$50 per month in Child Support that is assigned to DHHS. She now has been assigned to a Work Experience activity. Following is the calculation for the **maximum number of hours** that she can participate in that activity.

\$236.00	Monthly WFFA benefit
- \$50.00	Child Support assigned to DHHS
\$186.00	Monthly WFFA benefit net Child Support
+\$230.00	Monthly Food and Nutrition Services benefit
= \$416.00	Total Assistance to be used for the FLSA calculation

\$416 monthly assistance net Child Support divided by \$6.55 (State and Federal minimum wage as of July 24, 2008) = 63.51

Using the standard rounding methodology, she may only participate in her Work Experience activity up to 64 hours per month. The individual FLSA calculation must be documented in the case record of every participant completing hours of AW and/or CS.

Deeming Work Experience Hours:

When a participant has completed the maximum number of hours of AW and/or CS allowed under the FLSA calculation, and that number is below the core work requirements for that individual, the caseworker should "deem" that person to have completed the core hours of AW and/or CS for that month.

In the example above, the mother is limited to 64 hours per month in Work Experience. She must participate in 20 hours per week, or 87 hours per month, to meet her “core” work requirement. She is required to participate in some countable activities for 30 hours per week (131 hours per month) to meet the federal Work Participation Rate.

If this mother participates in her Work Experience activity for the full 64 hours allowed by the FLSA calculation for the month, the caseworker must “deem” her to have completed the full 87 hours required to meet her core requirements for the month. Now, she only needs to participate in some other federally countable activity for an additional 44 hours in order to meet the federal work requirement for the month (131 hours) for a single parent with a child over the age of six. The caseworker keys 87 completed hours of Work Experience for the month and documents in the case record the FLSA calculation, the actual number of hours allowed by that calculation, and the actual number of hours of participation. She indicates that the mother met her maximum number of hours for Work Experience and therefore deemed the full 87 hours for keying into EPIS. The caseworker would also key the additional hours for the other work activities to show the full participation for this mother in the month.

If the mother was scheduled to participate in the Work Experience activity and had an excused absence to take her daughter to the doctor for 2 hours, the 2 hours would be documented and counted as an excused absence for her participation in her Work Experience activity. If she participated in her Work Experience activity for 62 hours in the month, the worker must count the 62 hours plus the 2 excused absence hours for a total of 64 hours and deem her to have met the core requirement of 87 hours for the month. The caseworker would key 85 completed hours for Work Experience into EPIS and key 2 hours of excused absences for Work Experience. Then, the caseworker would key the additional completed hours for the other work activities. Use this same methodology for calculating the FLSA limits and deeming for the other categories of federal work requirements: a single parent with a child under six (87 hours per month), a two-parent family (153 hours), and a two-parent family receiving federally funded child support (240 hours).

If the individual does not actually participate in the total number of hours calculated to be in compliance with FLSA (including excused absences and holidays,) no deeming can occur. The caseworker would key only the number of actual hours of participation into EPIS. In the example above, if the mother only participated in 35 hours of Work Experience for the month and had 2 hours of excused absences, the caseworker would key 35 completed hours in EPIS of Work Experience for the month and 2 hours of excused absences for Work Experience for the month. The caseworker would also key the additional completed hours for the other activities for the month and include the appropriate documentation in the case record.

If there are further questions about this policy, please contact your Work First Representative for assistance.

Sincerely,



Dean Simpson, Chief
Economic and Family Services Section

cc: Sherry Bradsher
Hank Bowers
Sarah Barham
Sara Mims
Work First Local Support
Local Business Liaisons