WR - Non-Displacement

POSSIBLE ALTERNATIVE APPEALS OF STATE GRIEVANCE PROCEDURE DETERMINATIONS

One of the serious deficiencies in the House bill worker protections is the absence of an appeal from determinations of the State grievance procedure. Under JTPA and predecessor job training programs and the JOBS program, regular employees alleging violation of the nondisplacement provisions and participants alleging violations of specific worker protections had the right to appeal adverse decisions rendered under the State grievance procedures to the Secretary of Labor. To ensure impartiality and protect the rights of grievants, it is essential that there be an impartial review of the State grievance procedure decisions. Although Federal review remains the preference, there may be two alternatives at the State level for appeals that warrant consideration.

o First, the bill could require the State to provide grievants the right to appeal an adverse decision, or the right to appeal if a decision is not issued within a 60-day period, to an agency independent of the agency administering the TANF grant and the agency administering the grievance procedure. While such an agency could still be subject to the influence of the Governor it would at least be somewhat insulated from the administering agency. Examples of agencies that could be designated by the State include the State Labor Department or the Equal Opportunity Agency.

o Second, the bill could require that the State provide the grievant the right to appeal an adverse decision, or to appeal if a timely decision is not issued, to the "impartial tribunals" established to hear appeals relating to claims under the State unemployment compensation laws. Under the UI program appeal referees hear appeals from decisions of claims examiners. The referees' decision may be appealed to an Appeals Board established at the State level for such purposes. Finally, the Appeals Board decision may then be appealed to State court. One option is to incorporate one or more of these levels of review to worker protection claims under TANF. There could still be some question in certain States regarding the impartiality of these procedures since we understand in many cases Appeal Board members are political appointees. In addition, the deciding officials may not have significant expertise in some of the worker protection issues. However, this is an established procedure for reviewing claims from individuals regarding certain employment-related matters. To ensure that these responsibilities do not adversely affect processing of UI appeals, the costs attributable to review of the TANF worker protection claims should be paid by the TANF agency or other non-UI sources.

REMEDIES FOR VIOLATIONS OF HEALTH AND SAFETY AND CERTAIN NONDISCRIMINATION PROTECTIONS FOR PARTICIPANTS

While it is essential that employee status be preserved for working welfare recipients under TANF to ensure employment laws are applicable, it is also essential that participants in work activities who may not be held to be employees under certain statutes also receive comparable protections. Under the House and Senate bills, such participants are to receive the protections of health and safety standards. However, the remedies specified in the bills do not specifically address abatement of substandard conditions that is an essential feature of the OSH Act. To ensure such a remedy is available, the current clause in both bills that authorizes the use of "other equitable relief" should be amended to add the phrase ", including abatement of unsafe or unhealthy conditions."

In addition, while TANF provides certain civil rights protections to non-employee participants, including title VI of the Civil Rights Act, it does not include provisions barring discrimination based on gender (including sexual harassment) or religion. The House bill does include a provision barring gender discrimination under TANF but does not include specific nondiscrimination remedies. We urge the House provision be incorporated and expanded to include religious discrimination, and that a clause be added in the remedies section providing that in cases where these nondiscrimination protections are violated, the remedies available under title VI of the Civil Rights Act shall be applicable.

WR - Displacement

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o Second, the bill could require that the State provide the grievant the right to appeal an adverse decision, or to appeal if a timely decision is not issued, to the "impartial tribunals" established to hear appeals relating to claims under the State unemployment compensation laws. Under the UI program appeal referees hear appeals from decisions of claims examiners. The referees' decision may be appealed to an Appeals Board established at the State level for such purposes. Finally, the Appeals Board decision may then be appealed to State court. One option is to incorporate one or more of these levels of review to worker protection claims under TANF. There could still be some question in certain States regarding the impartiality of these procedures since we understand in many cases Appeal Board members are political appointees. In addition, the deciding officials may not have significant expertise in some of the worker protection issues. However, this is an established procedure for reviewing claims from individuals regarding certain employment-related matters. To ensure that these responsibilities do not adversely affect processing of UI appeals, the costs attributable to review of the TANF worker protection claims should be paid by the TANF agency or other non-UI sources. (plug in existing system under UI)

but no expertise

WR-FLSA

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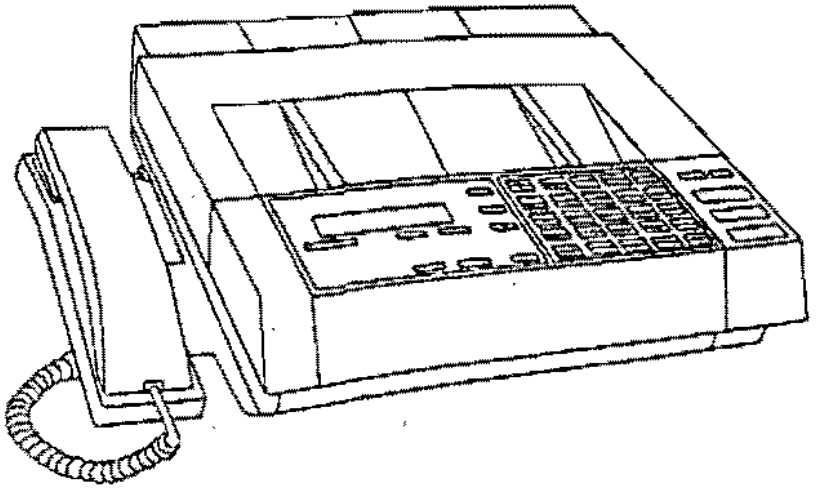
U.S. Department of Labor

Office of the Assistant
Secretary for Policy
Washington D.C. 20210

FAX COVER SHEET



DATE: 7/15/97

TO: Cynthia Rice
Seth Harris

FAX NO: 456-2878

COMPANY:

PHONE NO: 456-5595

FROM: Pamela Hayes

PHONE NO: 219-6181

FAX NO: (202) 219-6924

NUMBER OF PAGES INCLUDING COVER: 6

MESSAGE: Please deliver to Seth Harris who is attending "Weekly Welfare Strategy" mtg with Bruce Reed at 4 p.m.

WR - $3B Jobs

OPTIONS FOR AMENDMENTS TO NICKLES

1. State can sanction but recipients must receive minimum wage. [FLSA permits recipients who are not employees of States to voluntarily agree to deductions of sanctions, as in paragraph 2.]

2. Sanction that cuts into the minimum wage may be done through fines, with a choice of options for payment, including voluntary deductions from pay.

3. Sanction must be after TANF procedures conducted. Procedures may not be before agency employing participant.

4. State can sanction through fines (as in paragraph 2), with protections of requirement that TANF procedures not be before agency employing participant.

Section 5822(a)(2) is amended by changing the title to read "Application of Minimum Wage Requirements with Respect to Individual Sanctions," by changing the period at the end of the section to a comma, and by adding the following language to the end of new section 408(c):

> "provided that nothing in this paragraph shall be construed to affect an employer's obligation to pay such individual at least the minimum wage for each hour worked."

Section 5822(a)(2) is amended by changing the title to "Payment of Sanctions by Individuals Covered by the Fair Labor Standards Act," by changing the period at the end of the section to a comma, and by adding the following to the end of new section 408(c):

> "provided that any penalty that would result in payment of less than the minimum wage for each hour worked is imposed by the State as a fine, which the participant may satisfy by choosing among different payment options offered by the State, including voluntary deduction from the participant's pay."

Section 5622(a)(2) is amended by changing the title to "Payment of Sanctions by Individuals Covered by the Fair Labor Standards Act," and by adding the following language to the end of new section 408(c):

> "Such a penalty may result in less than the payment of the minimum wage for each hour worked where the penalty is imposed by order of the State issued after a hearing, as required by section 402(a)(1)(B)(iii), which shall be before an officer who is not employed by an agency employing the participant."

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WR-FLSA

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What DOL asked for

After procedures — there may permit. (invol. deduction)

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procedures but then just fine, not deduction - between Option 2 + 3