

WR-
FLSA

Effect of Minimum Wage Increase on Cost of Workfare Programs

Talking Points

- There is one additional concern that we should be mindful of, as we consider what level of increase to propose in the minimum wage. As you know, Republicans made a concerted effort last year to roll back labor protections for those on workfare. Many Governors supported this effort, arguing they could not afford to pay the minimum wage for workfare jobs.
- A larger minimum wage increase will add to the pressure that Governors feel on this issue.
- So far, we have beaten back the Republicans' efforts, and persuaded Democratic Governors not to ally themselves with Republican Governors on this issue. However, some Democratic Governors remain very concerned about this issue. Their support of Republican proposals would give that effort new momentum.

Background

- In May, the Labor Department ruled that most workfare programs are subject to the Fair Labor Standards Act and other labor protections, including payment of the minimum wage.
- Governors have complained loudly that the DOL ruling severely hampers their ability to establish work programs for welfare recipients. The law requires states to put 50% of their welfare recipients to work by the year 2002, or face penalties. Welfare benefits are not high enough in some states to support payment of the minimum wage for 20 or 30 hours a week.
- DOL's ruling led the Republican leadership in Congress to seek to roll back current law labor protections for workfare jobs. We were able to hold the line and stop these efforts, but we can expect the issue to re-emerge this year.
- Any minimum wage increase will increase the number of states whose welfare benefits are not large enough to fund a minimum wage workfare job. As the size of the minimum wage increase goes up, so do the number of states with problems.

States Whose Welfare Benefits Can't Support a Minimum Wage Workfare Job		
Minimum Wage	Families of 2	Families of 3
Current Minimum Wage	8 states	No states
Increase of 50 cents (\$5.65)	15 states	1 state

Increase of \$1 (\$6.15)	21 states	2 states
Increase of \$2 (\$7.15)	36 states	9 states

States With Problems in 2001 (assumes 20 hours of work per week)			
Factors in rough food stamp cost of living increase in 2001			
	Families of 2	Families of 3 (average family size)	Families of 4
Current Minimum Wage -- \$5.15	8 states	No states (Miss.'s problem disappears by 2001 because of increase in food stamp allotment)	No states
Year 2001 minimum wage: \$6.20	24 states	4 states	No states

Recall that the number of hours of work required per week increases from 20 hours in 1997 and 1998 to 25 hours in 1999, and 30 hours in 2000 and thereafter. However, the increase from 20 to 30 hours can be in the form of training directly related to employment, so it is possible to argue that 20 hours is the more useful reference point. But below is the 30 hour chart.

States With Problems in 2001 (assumes 30 hours of work per week) --			
Factors in rough food stamp cost of living increase in 2001			
	Families of 2	Families of 3 (average family size)	Families of 4
Current Minimum Wage -- \$5.15	38 states	14 states	2 states
Year 2001 minimum wage: \$6.20	48 states	36 states	12 states



WR-FLSA

**Department Of The Treasury
Office of Tax Legislative Counsel
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220**

February 13, 1998

To: Diana Fortuna

Fax: 456-7431

Number of pages (including this coversheet):

8

From: Paul Crispino

Tel: 202/622-0224

Fax: 202/622-9260

Comments: Attached is the latest draft of the workfare notice. If you have any questions, please call me. Thanks.

NOTE: THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND/OR RESTRICTED AS TO OR EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAWS. If the recipient of this message is not the addressee (i.e. the intended recipient), you are hereby notified that you should not read this document and that any dissemination, distribution, or copying of this communication, except insofar as is necessary to deliver this document to the intended recipient, is strictly prohibited. If you have received this communication in error, please notify the sender immediately by telephone, and you will be provided further instructions about the return or destruction of this document. Thank you.

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Draft Date: 02/13/98

Control Number: RR-109108-97

Part III - Administrative, Procedural, and Miscellaneous

Treatment of Certain Payments Received as Temporary Assistance
for Needy Families (TANF)

Notice 98-

PURPOSE

This notice addresses the federal income and employment tax consequences of payments received by individuals with respect to certain work activities performed in state programs under part A of title IV of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (August 22, 1996) (TANF payments). The notice sets forth certain conditions under which TANF payments will not be treated as income, earned income, or wages for federal income and employment tax purposes. The Treasury Department and the Internal Revenue Service intend to issue regulations that will address the federal income and employment tax consequences of TANF payments. The regulations to be issued will be effective as of the date of this notice. Pending issuance of these regulations, the provisions of this notice apply.

SCOPE

This notice addresses only the treatment of TANF payments under certain income and employment tax provisions of the

Internal Revenue Code. No implication is intended as to the treatment or effect of such payments or as to whether an employment relationship exists under any other provision of law, including the Fair Labor Standards Act and other federal and state employment laws.

BACKGROUND

Congress reformed the welfare system through the enactment of PRWORA, which replaced Aid to Families with Dependent Children (AFDC) with Temporary Assistance for Needy Families. AFDC required recipients to perform some work activities in order to continue to receive public assistance. TANF provides states with more flexibility than they had under AFDC to determine basic eligibility rules and benefit amounts. TANF also requires that specified percentages of recipients engaged in work activities and imposes penalties on the states for non-compliance with that requirement.

For purposes of TANF, the term "work activities" is defined under §407(d) of the Social Security Act as:

- (1) unsubsidized employment;
- (2) subsidized private sector employment;
- (3) subsidized public sector employment;
- (4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- (5) on-the-job training;
- (6) job search and job readiness assistance;

- (7) community service programs;
- (8) vocational educational training (not to exceed 12 months with respect to any individual);
- (9) job skills training directly related to employment;
- (10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
- (11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and
- (12) the provision of child care services to an individual who is participating in a community service program.

42 U.S.C. § 607(d).

TREATMENT OF TANF PAYMENTS

A. In General.

Generally, the federal income and employment tax consequences of TANF payments are determined under the following analysis.

Disbursements by a governmental unit that are made to an individual under a legislatively provided social benefit program for the promotion of the general welfare, and that are not made basically for services rendered, are excludable from the individual's gross income and are not treated as wages for employment tax purposes, even if the recipient is required to perform certain activities to remain eligible for such payments.

Similarly, payments made other than as employee compensation or as earnings from self-employment are not earned income for Earned Income Tax Credit (EIC) purposes. If, however, taking into account all the facts and circumstances, such payments by a governmental unit are basically compensation for services rendered, then the payments are includible in the individual's gross income and are treated as wages for employment tax purposes. Similarly, payments made as employee compensation or as earnings from self-employment generally are treated as earned income for EIC purposes (but see § 32(c)(2)(B)(v) of the Internal Revenue Code, discussed below).

Section 32(c)(2)(B)(v) (as added by § 1085(c) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (August 5, 1997), and effective for taxable years beginning after December 31, 1997) provides that earned income for EIC purposes does not include amounts received for "service performed in work activities as defined in paragraph (4) or (7) of section 407(d) of the Social Security Act to which the taxpayer is assigned under any State program under part A of title IV of such Act, but only to the extent such amount is subsidized under such State program."

B. Application of facts and circumstances analysis to certain TANF payments.

Due to the flexibility TANF affords states to determine basic eligibility rules and benefit amounts, TANF payments may be made both for the promotion of the general welfare and as compensation for services. In these cases, it is extremely

difficult to characterize the basic purpose of the payments. It is also not practically feasible to determine the relative proportion each purpose represents of the payment.

In many cases, however, TANF payments are received in lieu of (and generally in amounts no greater than) payments the individual formerly received or would have received under AFDC based upon the individual's personal and family subsistence requirements. In these cases, the primary measure of the amount received is the personal or family need of the individual recipient rather than the value of any services performed, and thus, the payments are more in the nature of a payment for the promotion of the general welfare than a payment for services rendered. These cases typically share, and can be identified by, common characteristics.

Accordingly, in cases where the following three conditions are satisfied, TANF payments will not be includible in an individual's gross income, treated as earned income for EIC purposes, or treated as wages for employment tax purposes (the federal income and employment tax treatment of TANF payment that do not satisfy each of the following three conditions is determined under the general analysis described in paragraph (A) above):

- (1) The only payments received by the individual with respect to the work activity are received directly from the state or local welfare agency (for this purpose, an entity with which a state or local welfare agency contracts to administer the state

DRAFT

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TANF program on behalf of the state will be treated as the state or local welfare agency);

(2) The only payments received by the individual with respect to the work activity are funded entirely under TANF (including any payments with respect to qualified state expenditures (as defined in § 409(a)(7)(B)(i) of the Social Security Act)) and the Food Stamp Act of 1977; and

(3) The number of hours the individual may engage in the work activity is limited by federal or state welfare laws or the size of the individual's payment divided by the federal or state minimum wage.

REQUEST FOR COMMENTS

The Treasury Department and the Service invite comments on this notice and on the future regulations. In particular, comments are requested on the three conditions set forth in the "Treatment of Workfare Payments" section of this notice. Written comments should be submitted by April 1, 1998. An original and eight copies of written comments should be sent to:

Internal Revenue Service
Attn: CC:DOM:CORP:R
Room 5228 (IT&A:Br2)
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044.

Alaska - Chose to set hours
per fed/state welfare law
(No grant/min wage → 401 hours)

Alabama - Chose to set by either
a) fed or state welfare laws
(would have to pay min wage)
b) grant/min wage → would not meet
participation rate

or hand delivered between the hours of 8 a.m. and 5 p.m. to:

Courier's Desk

DRAFT

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Internal Revenue Service

Attn: CC:DOM:CORP:R (Notice 98-___)

Room 5228 (IT&A:Br2)

1111 Constitution Avenue, NW

Washington, D.C.

Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to:

http://www.irs.ustreas.gov/prod/tax_regs/comments.html (the IRS internet site). All comments will be available for public inspection and copying in their entirety.

FURTHER INFORMATION

For further information, contact Mr. Edwin B. Cleverdon at (202) 622-4920 regarding the income tax issues in this notice and Ms. Jean Casey at (202) 622-6060 regarding the EIC and employment tax issues in this notice (not toll-free calls).

the daily report to POTUS
through COS office. Chie
has a copy and he would
need to work with
correspondence to
answer when he returns.

Thanks,
Zuni

WR FUSA

THE WHITE HOUSE

8/19/97

Elena -

Attached is a copy of
the letter Cooper is
sending to all dem
guys. I think we need
to see what happens and
not intervene - unless you
think Bruce is
misrepresented here re:
his intentions. Let me
know.

Also - FYI - is a copy
of a letter from Putak
to POTUS on my
Medicaid veto. We
are putting this in



STATE OF DELAWARE
OFFICE OF THE GOVERNOR

THOMAS R. CARPER
GOVERNOR

8/18/97

Keelissa/Emily
Sample letter sent

Dem

Goals -
Pls call
me -
also

Emily B. -
waiting is
fine with me.
(Trace is not
mirrored.)
Elean

August 13, 1997

- Kate Whelan

The Honorable Pedro J. Rossello
La Fortaleza, Box 82
Governor's Office
San Juan, Puerto Rico 00901

Cynthia/Diana -

EX: How are we doing in figuring
out what we think should count
- What non-work activities we
would allow and when; whether to

Dear Governor Rossello:

~~Pedro~~

As you may be aware, a handful of individual governors, including Governor Chiles and myself, pushed hard last month for targeted relief from the application of certain labor and tax laws to our state-run community work experience programs. While we agree with the President that people in these positions should be paid the minimum wage, we are very concerned about the possible application of payroll taxes and the impact the minimum wage calculation will have on our ability to meet federally mandated work requirements. Despite our intensive efforts, we were unable to broker a last minute deal between conferees before the budget negotiations were finalized.

Elean
cc: Bruce

For many states with community work experience programs, having to apply payroll taxes to the welfare benefit will pose a financial burden, as well as an administrative burden, on those states and on nonprofits that offer work experience positions. In Delaware, for example, we estimate that the cost to the state for FICA and payroll tax contributions alone would be \$1.7 million annually with full implementation of our workfare program. In addition, many states will find it difficult to meet the federally mandated work requirements if they are not permitted to count other activities. It should be noted that states that are sanctioned not only will lose a percentage of their TANF grant, but will be required to make up the difference with state funds. In Delaware, state law requires that we pay community work experience participants the minimum wage; however, we are fortunate to have a waiver - along with several other states - that allows work experience participants to engage in job search to meet work requirements. This is an option that should be afforded to all states.

At our recent NGA meeting, we had the opportunity to address the broader issue in two forums: in a governors-only work session on Tuesday, and at the closing Executive Committee meeting. In addition, I personally raised this issue there with the President, as I know others did, and received an indication that there might be room for a remedy, particularly in the area of the application of tax laws to work experience programs. In subsequent telephone discussions with Bruce Reed, White House domestic policy adviser, and key conferees Representatives E. Clay Shaw and Sandy Levin, we came very close to reaching agreement on a targeted exemption that would have provided states with relief from FICA, FUTA, and EITC for work experience placements. However, those last minute negotiations ultimately failed because of concerns that the Republican leadership raised over one of two additional provisions that Democratic conferees wanted included in exchange for the tax law exemptions. A provision, acceptable to the Republicans, would have capped at 25 percent the amount of the new \$3 billion welfare-to-work grant that could be used for workfare placements. A second unacceptable provision called for specific legal remedies for gender discrimination to all TANF and welfare-to-work grant recipients. Although we ultimately were unable to get a remedy, reflective of the concerns of most governors, included in the budget reconciliation bill, we did receive assurances from Representative Shaw and Bruce Reed to address the issue again when Congress returns in September.

Given this potential opportunity, Governor Voinovich and I suggested at the Executive Committee meeting on July 30, that NGA go to work now to develop a consensus and attempt to adopt an interim policy on this issue. As a starting point, I suggest that we try to reach consensus on the following points as a basis for such a policy:

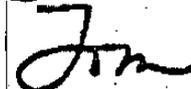
- **Support the Department of Labor's finding with respect to the application of the minimum wage to work experience placements. States would not be allowed to require work experience participants to "work" beyond the hours determined by the minimum wage calculation. This was the policy under the Community Work Experience Program (JOBS Title) of the Family Support Act. Specify that the maximum hours of participation in work experience and community service will be determined by dividing benefits by the minimum wage. The benefit calculation will include cash assistance and food stamps. *Currently, only states that operate a simplified food stamp program can count food stamps as part of the calculation.***
- **Allow states to combine activities to meet the hourly participation requirements. States would be allowed to combine hours from job search and job readiness activities, basic skills education, vocational educational training, job skills training, and high school or GED completion to meet the work requirement.**

- Clarify that individuals engaged in work experience and community service are not employees and payment is not compensation for services performed. This was the policy under the Community Work Experience Program (JOBS Title) of the Family Support Act. This approach would exempt individuals engaged in work experience from FICA and FUTA. *The budget reconciliation tax bill made work experience participants ineligible to receive the EITC.*

I realize that this is a tough, potentially divisive issue. It is nonetheless one that we need to work hard to resolve in order to maximize the number of welfare recipients who will be able to participate in community work programs, while reducing the likelihood that states will be penalized for failing to meet work participation requirements. I need your help to develop an approach that will address the concerns of all states. I will phone you by August 22 to ask you whether the three broad points outlined above are acceptable to you and your state. In the interim, I encourage you to discuss the implications for your state of this new federal policy, as well as the alternative outlined above, so that our conversation will be most productive.

Pedro, I need your help in figuring out a solution here. Thanks!

Sincerely,



Thomas R. Carper
Governor

DRAFT 9/9 8:00 p.m.

House Ways and Means Welfare Proposal
(based on 9/8 verbal reports)

WR-FLSA

Talking Points

- The proposal would undermine welfare reform by weakening the welfare law's work requirements.
- Welfare recipients could be required to work just a few hours a week, instead of the 20 hours now required and 30 hour required by the year 2000.
- The proposal would create a loophole making publicly-run workfare programs more attractive than private jobs. Welfare recipients in workfare wouldn't have to do real work for 20 or 30 hours a week -- many of those hours could be filled with non-work activities such as job search, job readiness, and vocational education.
- Welfare recipients receiving child support payments would be able to work even fewer hours, because those support payments retained by the state to repay taxpayers for welfare costs could not be used for salaries for workfare participants. A \$100 child support payment retained by the state could lower the work requirement by nearly 20 hours per month.
- States say they need flexibility to make welfare reform work. We say they already have it. Because they receive a welfare block grant with few restrictions, states can shift the \$3 to \$4 billion a year savings from falling welfare caseloads into workfare programs and still come out ahead. At the same time, states can count both TANF and food stamp benefits as wages. With this flexibility, states that choose to put people in workfare rather than private sector jobs will be able pay the minimum wage for 20 to 30 hours a week.

Options

Option #1: Retain the tough but fair work rates in current law.

Option #2: Retain the tough but fair work rates in current law, but do not allow states to use child support they retain as payment for wages (states would have to fill the gap with other funds).

Option #3: Retain current law for work up to 20 hours a week (only a minimum of 20 hours of work as now defined would count); allow additional

job search, etc., for hours of work above 20 hours per week. States could count child support payments to pay wages for up to 20 hours per week.

Current Law

What Counts as Work

The following are the work activities always permitted under the welfare law:

1. Unsubsidized employment
2. Subsidized private sector employment
3. Subsidized public sector employment
4. Work experience
5. On-the-job training
6. The first 6 weeks of job search and job readiness assistance
7. Community service programs
8. The first 12 months of vocational educational training
9. Providing child care for someone in a community service program

The following are additional work activities that can be counted from 20 to 30 hours a week:

1. Job skills training directly related to employment;
2. For those with no high school diploma, high school attendance, GED study, or education directly related to employment

Questions

1. What is the practical difference between a subsidized public sector job and work experience? Between these and community service programs? Is there a grey area between them? What are some examples of subsidized public sector jobs?
2. Are any states creating "private sector work experience," or private workfare? We have heard reports that Ohio is doing so. How does money flow in such a situation? Who pays the worker? Whom does the state pay? Whom does the company pay?

How does this differ from subsidized private employment? Subsidized public employment?

If workfare is exempted from FICA, would that create an incentive for business to shift to private workfare instead of subsidized/unsubsidized jobs?

3. What is the difference between work experience and community service programs? What are real life examples of the differences?

4. Do some of these shifting realities make it advisable that we define some of these terms in the regulation? Does HHS's draft reg address these questions in any way?

Child Support Enforcement

The proposed child support provision coupled with the proposal's "maximum hours" provision would weaken the welfare law's work rates even further. For example, let's consider a welfare recipient receiving \$300 a month in TANF, \$100 a month in food stamps, and \$50 a month in child support which the state "retains" to offset welfare costs.

Under current law that welfare recipient would have to work the minimum 80 hours a month. If the state put that person in workfare slot at the minimum wage, the state would have to contribute an additional \$12 a month in welfare funds to pay the minimum wage for those 80 hours. Under the proposed provision requiring only as much work as the benefit level divided by the minimum wage (the so-called "maximum hours" policy), the person would have to work only 78 hours a month. And if, in addition, the state was required to subtract retained child support payments, the welfare recipient would have to work only 68 hours a month (see chart A below).

Advocates say that custodial parents shouldn't have to "work off their child support." This argument assumes that a parent on welfare is entitled to all her child support; in fact, there's a long history of the government requiring families to give up that right in order to receive welfare. It is true that if the "maximum hours" policy were put into effect but the child support change was not made, a woman getting the same amount of child support would have to work more hours if the state retained the payment than if it passed through the payment but reduced the welfare grant to compensate (compare columns 1 and 3 of Chart C to the same columns on Chart D). However, that "inequity" can be solved by sticking to current 20 hour a week work rates. Another valid but rarely heard argument is that allowing states to count child support as wages would undermine the principle of the minimum wage.

Chart A: Work Effects of Child Support Policies

If state retains \$50 child support payments	Current Law	Maximum Hours Policy but no Child Support Change	Maximum Hours Policy and Child Support Change
Monthly TANF benefit	\$300	\$300	\$300
Adjustment for Child Support	\$0	\$0	\$(50)
Net Benefit Counted for Work	\$300	\$300	\$250
Food Stamps	\$100	\$100	\$100
Total	\$400	\$400	\$350

Hours per month of work	80 hours (State must pay \$5.15 x 80 or \$412)	78 hours (\$400/ \$5.15)	68 hours (\$350/ \$5.15)
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Chart B: Work Required Under Current Law--20 hours Per Week Requirement in Workfare for parents receiving \$50/ month in child support payments

	State Retains Child Support Payments	State Retains, adds to Benefit	State Passes through Child Support Payments but reduces benefit	State Passes Through
Monthly TANF benefit	\$300	\$300	\$300	\$300
Adjustment for Child Support	\$0	\$50	\$(50)	\$50
Net Benefit Counted for Work	\$300	\$350	\$250	\$300
Food Stamps	\$100	\$100	\$100	\$100
Total	\$400	\$450	\$350	\$400
Amount Needed to Pay \$5.15/hour for 80 hours/month	\$412	\$412	\$412	\$412
Excess amount (Shortfall)	(12)	38	(62)	(12)
Hours per month of work required	80	80	80	80

**Chart C: Work Required if "Maximum Hours" of Work Required in Workfare
Depends on Benefit/Minimum Wage and No Child Support Change
for parents receiving \$50/month in child support payments**

	State Retains Child Support Payments	State Retains, adds to Benefit	State Passes through Child Support Payments but reduces benefit	State Passes Through
Monthly TANF benefit	\$300	\$300	\$300	\$300
Adjustment for Child Support	\$0	\$50	(\$50)	\$50
Net Benefit Counted for Work	\$300	\$350	\$250	\$300
Food Stamps	\$100	\$100	\$100	\$100
Total	\$400	\$450	\$350	\$400
Divided by Minimum Wage	\$5.15	\$5.15	\$5.15	\$5.15
Maximum number of hours per month of work required	78 hours	87 hours	68 hours	78 hours

Chart D: Work Required if "Maximum Hours" of Work Required in Workfare Depends on Benefit/Minimum Wage and Child Support Change for parents receiving \$50/ month in child support payments

	State Retains Child Support Payments	State Retains, adds to Benefit	State Passes through Child Support Payments but reduces benefit	State Passes Through
Monthly TANF benefit	\$300	\$300	\$300	\$300
Adjustment for Child Support	(\$50)	\$50	(\$50)	\$50
Net Benefit Counted for Work	\$250	\$350	\$250	\$300
Food Stamps	\$100	\$100	\$100	\$100
Total	\$350	\$450	\$350	\$400
Divided by Minimum Wage	\$5.15	\$5.15	\$5.15	\$5.15
Maximum number of hours per month required of work required	68 hours	87 hours	68 hours	78 hours

Options for Reaction to Shaw Minimum Wage/Workfare Proposal

WR-FLSA

1. Oppose proposal without offering an alternative:
 - Stress weakening of work requirements, with examples
 - Point out that proposal raises serious questions about labor protections (without offering potential fixes)
 - Continue to state our openness to FICA/FUTA exemption

2. Oppose proposal; offer an alternative
 - 4 alternatives (see below)
 - Call Democratic Governors asap to try to prevent defections to Shaw

3. Support or do not object to proposal; offer a number of technical suggestions ASAP via Tanner
 - Offer DOL fixes to ensure no negative implications for labor protections
 - Ensure narrow definition of community service; rule out private sector workfare
 - Other technical fixes

Description of W&M compromise:

1. Defines maximum hours of work experience/community services, including private sector workfare (TANF + food stamps - child support collected).
2. If maximum hours calculation above falls short of law's work requirements, allows states to use any other work activity to reach work requirements -- job search, vocational education, training directly related to employment, and education for those without a high school diploma. The current 6-week limit on job search and 12-month limit on voc ed would be lifted for this purpose.
3. Exempts work experience and community service from FICA and FUTA. (Defines those two work activities so broadly that it raises concern that it could encompass unsubsidized or subsidized jobs.)
4. Stated intent is to preserve employee status, but DOL feels legislative language does not make this clear. They are drafting potential fixes to this problems in case we want them. Allows payment for work experience/community service to be paid by welfare office instead of "employer."

Four Possible Alternatives

Alternative 1:

- Agree only to FICA/FUTA exemption and allowing welfare office to make payment instead of employer (close to our July offer).

Alternative 2:

- No agreement to maximum hours calculation.
- Give **all** states more flexibility in work activities over 20 hours per week (30 hours for two parent families). Current law already allows greater flexibility over 20 hours (30 hours) by permitting job skills training directly related to employment and education for those without a high school diploma. We would go beyond that by permitting job search/job readiness beyond the 6 weeks currently allowed.
- Exempt work experience/community service from FICA/FUTA, but stipulate that this does not apply to private sector workfare and that private sector employers must pay FICA/FUTA on portion of wages they pay.
- Do not weaken May Department of Labor ruling on employee status/worker protections; make it an option for wage to continue to come from welfare

office, not employer.

Alternative 3:

- Similar to Alternative 2, but work off of Ways and Means "maximum hours" structure. (This approach was suggested by Stenholm.) No change below 20 hours (or 30 for two parent families), but for those states whose benefits can't support the required number of hours above 20 (or 30) hours, permit job search/job placement with no 6 week limit. This alternative would not permit vocational education in excess of 12 months above 20 (or 30) hours per week as would the Ways and Means proposal.
- Exempt work experience/community service from FICA/FUTA, but stipulate that this does not apply to private sector workfare and that private sector employers must pay FICA/FUTA on portion of wages they pay.
- Do not weaken May Department of Labor ruling on employee status/worker protections; make it an option for wage to continue to come from welfare office, not employer.

Alternative 4:

- Ways and Means "maximum hours" structure for hours above and below 20 hours, but permit only two additional work activities: (1) job search/job placement in excess of 6 weeks; and (2) job skills training directly related to employment. This alternative would not permit vocational education in excess of 12 months above 20 (or 30) hours per week as would the Ways and Means proposal.
- Exempt work experience/community service from FICA/FUTA, but stipulate that this does not apply to private sector workfare and that private sector employers must pay FICA/FUTA on portion of wages they pay.
- Do not weaken May Department of Labor ruling on employee status/worker protections; make it an option for wage to continue to come from welfare office, not employer.

Other Possible Things to Demand in Exchange

- **Waivers:**
 - Do not allow prior law waiver exemptions to count as work in the numerator (i.e., drug treatment, education, job search) even if a state continues its waiver. (Alternatively: do not count as work unless a state is continuing research group policies in order to complete an impact evaluation of a waiver demonstration.)
 - The five year time limit starts when state joins TANF, not at the end of the waiver period, as even if the state previously had a time limit of a different length under a waiver.

- Bifurcation -- clarify that state programs must meet same work requirements as federal dollars (this is a very big item)
- Job search limit of 6 weeks is lifetime, not annual (HHS draft reg calls it annual).

Copied
Ibarra
Cos
Reed
Rehm
Podesta

THE WHITE HOUSE
WASHINGTON

WR-FLSA

THE PRESIDENT HAS SEEN
8-17-97

August 15, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: Mickey Ibarra *MJ*

SUBJECT: Office of Intergovernmental Affairs Weekly Report -- August 11 - 15, 1997

CC: The Vice President

I. PRESIDENTIAL PRIORITIES

Balanced Budget

- IGA staff facilitated communication for Alaska officials with White House staff regarding their Federal Medicaid Assistance Percentage contained in the Balanced Budget Act. This communication culminated in a phone conversation between you and Governor Tony Knowles (D-AK) on Saturday, August 9, 1997. The Governor has expressed a great deal of relief and gratitude for your decision not to exercise your line-item veto authority on this matter.
- The New York Medicaid provider tax exemption veto caused considerable concern among state and local officials. IGA staff assisted in responding to the concerns expressed along with OMB staff.

Welfare Reform

- Staff support was provided by IGA to assist with the August 12, 1997 welfare-to-work event in St. Louis. Mayor Clarence Harmon (D-St. Louis) and Governor Mel Carnahan (D-MO) were very pleased with the event.

Climate Change

We are actively involved in the climate change work group and in the effort to build support among elected officials for the climate change concerns. We have written and will execute a plan to provide information, conduct briefings, and mobilize supporters to build awareness of this issue across the country.

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We'll need them

Millennium

In support of today's Millennium announcement hosted by you and the First Lady, we reached out to our nation's states, counties, and cities through the bipartisan intergovernmental organizations. In attendance were elected officials or organizational representatives from the U.S. Conference of Mayors, National Governors' Association, National Association of Counties, National League of Cities, National Conference of State Legislatures, and Council of State Governments. By their attendance, they signify a partnering with us in order to celebrate the upcoming Millennium.

II. INTERGOVERNMENTAL CONSTITUENCIES

Governors

Governor Zell Miller (D-GA) submitted a formal recommendation of Linda Breathitt to serve as a Commissioner at the Federal Energy Chair of the Kentucky Public Service Commission. Ms. Breathitt is the immediate past president of the Southeastern Association of Regulatory Utility Commissioners, a member of the Harvard Electricity Policy Group, and the Electricity Committee of the National Association of Regulatory Utility Commissioners.

Governor John Engler (R-MI) wrote recently to express "deep concern" regarding the possibility of the Administration's abandonment of the quest for an Open Skies policy with Japan. We are coordinating a response with Correspondence, in consultation with NSC and Legislative Affairs.

Governors George Allen (R-VA), Terry Branstad (R-IA), and Jim Edgar (R-IL) have all expressed in writing their concerns regarding the UPS strike and have asked you to do all within your power to see that this dispute is resolved as soon as possible.

Governors Tony Knowles (D-AK) and Thomas Carper (D-DE) have indicated their support for your national standards and testing program for reading and mathematics.

Mayors

We participated in the August 12, 1997 event hosted by the National Conference of Democratic Mayors, which was well-received. The combination of substantive policy briefings and the evening events was very successful. You continue to build solid relationships with the mayors, which is helpful in our continuing partnership with them on your initiatives.

Mayor Bill Campbell (D-Atlanta) is very concerned about the possible relocation of the Immigration and Naturalization Service's Atlanta-area district office outside the city limits in the northern metropolitan suburbs. The Mayor is requesting that the INS continue to be located inside the central business district in an area known as Grant Park.

*Bob...
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*Reilly
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This location would be adjacent to the Empowerment Zone and could be a catalyst for future revitalization in the area. It is also consistent with your efforts to use resources of the federal government to enhance inner cities whenever possible.

Indian Country

- Unfortunately, there is very disturbing news from the Cherokee Nation situation. We had hoped that the Chief would re-open the Courthouse he had ordered closed and the Justices that had been removed. On Wednesday, August 13, the marshals that he had fired several months ago attempted to re-open the Courthouse. Chief Byrd and others resisted, resulting in a physical struggle.

*Podesta
Ashton
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BS*

The Justice Department is considering, along with the Interior Department, sending in federal law enforcement officials. Interior is currently resisting this course, but the situation has worsened and Justice officials believe that they must take action. We assume a conversation will take place between Attorney General Reno and Secretary Babbitt. John Podesta has been briefed on this development.

- A large amount of correspondence regarding the Senate Interior Appropriations bill has been received. As reported, there are sections in the bill which are very harmful to Indian Country. Both the Attorney General and Secretary Babbitt will recommend a veto if we cannot defeat these sections. We support that recommendation.

Insular Affairs

- World War II Memorial: The American Battle Monuments Commission agreed that the World War II Memorial should not suggest that only veterans from states are being honored. We raised the issue -- created by the design then under consideration that involved columns associated with states -- after being altered to it by a Puerto Rico Senate leader.
- Puerto Rico: A major poll put Commonwealth support at 45%, statehood at 36%, and independence at 4% (compared with 43%, 39%, and 4% respectively in May). The results did not, however, diminish the priority that statehood party leaders Governor Pedro Rossello (D) and Congressman Carlos Romero-Barcelo (D) are placing on the legislation to provide for Puerto Ricans to choose and a process for implementing a majority choice.

*hope
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GTM*

Governor Pedro Rossello has invited the First Lady to Puerto Rico on January 5, 1998. You may recall that two years ago she accepted an invitation to this same event and had to cancel. The invitation has not been accepted, and the First Lady's Office and Political Affairs are working with us to navigate the politics with the hope that we may accept.

III. OTHER ISSUES

THE PRESIDENT HAS SEEN
8-17-97

Eastern Region Outreach Meeting

- Four of the participants in the outreach meeting held on Thursday, August 14, were state and local elected officials. Senator Ray Lesniak (D-NJ) assured us that he would take your suggestion and go back to New Jersey and investigate the possibilities of the Piscataway School Board taking a different position than they currently hold. Also, Speaker Sheldon Silver (D-NY), Speaker Elizabeth Mitchell (D-ME), and Council President Street (D-Philadelphia) were pleased with their involvement in this session.

Oklahoma City Memorial Ceremony

- IGA coordinated the August 13, 1997 ceremony which acknowledged and celebrated the winning design for the Oklahoma City memorial in remembrance of the victims and survivors of the Alfred P. Murrah Federal Building bombing. In attendance was Governor Frank Keating (R-OK), Mayor Ronald Norick, Councilman Mark Schwartz (D-Oklahoma City; President of the National League of Cities) and Robert Johnson, Chair of the Memorial Foundation, along with survivors and victims' family members.

Fair Labor Standards Act

We have continued to work with several governors who are advocating for changes to the current application of the Fair Labor Standards Act to welfare reform. The governors, lead by Tom Carper (D-DE), George Voinovich (R-OK), and Lawton Chiles (D-FL), continue to promote a "compromise" on the subject. We are examining whether the exemption of selected taxes is a viable option for us. Governor Tommy Thompson (R-WI) has requested a call from you on this subject; we have submitted a call request to your office.

g
Not a bad idea



American Law Division

Congressional Research Service • The Library of Congress • Washington, D.C. 20540-7410

MEMORANDUM

April 16, 1997

SUBJECT: Fair Labor Standards Act Coverage of Workfare Participants

AUTHOR: Vince Treacy
Legislative Attorney

Introduction

The imposition of mandatory work requirements by the 1996 Welfare Reform Act has presented a question concerning the applicability of wage and hour standards to individuals receiving assistance. The Act replaces the aid for families with dependent children (AFDC) program with a new system of block grants to states for Temporary Assistance for Needy Families (TANF). Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, §103, 110 Stat. 2105, Aug. 22, 1996.

The new program requires states to place some recipients in work activities. To be counted as engaged in work, the recipient must engage in unsubsidized employment, subsidized public or private employment, work experience, on-the-job training, job search and job readiness assistance, community service programs, vocational educational training, job skills training or education directly related to employment, satisfactory attendance at secondary school, or provision of child care services to an individual who is participating in a community service program. 42 U.S.C. § 407(d)(Supp.1997). In general, recipients who are required to engage in work activities in exchange for benefits are often called workfare participants.

With the new TANF program slated to go into mandatory effect on July 1, 1997, the question of application of the Fair Labor Standards Act (FLSA) to workfare participants has arisen. The Clinton administration has indicated that welfare recipients who must participate in local workfare programs to receive benefits should be covered by the FLSA. Administration advisor Gene Sperling said on March 17, 1997, that the White House is continuing to review federal labor law to determine whether welfare recipients who must work for their benefits are covered by the law. *Daily Labor Report*, Mar. 18, 1997.

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Employees under FLSA

The Fair Labor Standards Act requires all covered employers to pay covered employees the requisite minimum wage, as well as one-and-one-half times their regular rate of pay for overtime hours in excess of 40 in a workweek. The Act also prohibits oppressive child labor, requires equal pay for equal work by men and women, prohibits retaliation against employees for filing complaints, and requires all covered employers to maintain employment records. 29 U.S.C. §§ 201-219.

Under the FLSA, the term "employee" is expressly defined as "any individual employed by an employer." 29 U.S.C. § 203(e)(1). The term "employ" means "to suffer or permit to work." 29 U.S.C. § 203(g). An "employer" includes "any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency. . . ." 29 U.S.C. § 203(d)(emphasis supplied). The statutory definition is "broad and comprehensive in order to accomplish the remedial purposes of the Act." *Secretary of Labor v. Lauritzen*, 835 F.2d 1529, 1534 (7th Cir. 1987).

The Supreme Court has held that, in defining the term "employee," Congress ordinarily means an agency law definition unless it clearly states otherwise. In the FLSA, however, Congress defined the term "employ" as "to suffer or permit to work." The Court found that the "striking breadth" of this definition has stretched the meaning of "employee" under the FLSA to cover some parties who might not qualify as employees under many other statutes by virtue of the strict application of agency law principles. *Nationwide Mutual Insurance Co. v. Darden*, 501 U.S. 318 (1992).

Moreover, under the *Chevron* doctrine of judicial deferral to an agency's interpretation of a statute which it administers and enforces, the courts have given great weight to Department of Labor interpretations under the FLSA. *Auer v. Robbins*, 117 S. Ct. 906, citing *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984). The Department of Labor may provide guidance to employers and employees concerning application of FLSA standards to workfare programs, but Congress has not required it to provide guidance for the TANF program. In 1985, by contrast, Congress directed the Department to issue regulations covering public sector volunteers within four months. Pub. L. No. 99-150, § 4(b), 29 U.S.C. § 203 note, 99 Stat. 790, Nov. 19, 1985.

As interpreted by the Department of Labor and the courts, the word "employee" is not defined in terms of conventional dictionary definitions, nor in terms of the common law concept of employee, but rather on the basis of the underlying economic realities of the relationship between the individual and the employer. *Goldberg v. Whitaker House Coop.*, 366 U.S. 28 (1961). The Department therefore determines employee status not upon isolated factors, or upon single characteristics or technical concepts, but under the circumstances of the whole activity, including the economic reality. An employee generally is one who "follows the usual path of an employee" and is dependent on the

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business which he serves. U.S. Dep't of Labor, *Employment Relationship Under the Fair Labor Standards Act, Wage and Hour (WHD) Division Publication No. 1297 at 3 (1980) [hereinafter "WH Pub. 1297"]*.

In the Department's view, the FLSA applies if (1) an employment relationship exists and (2) the employer or the employee is covered under the FLSA. "As a general rule of thumb, if you pay wages or compensation, you create an employment relationship." An employment relationship "does not depend on the level of performance or whether the work is of some educational and/or therapeutic benefit." U.S. Dep't of Labor, *School-to-Work [STW] Opportunities and the Fair Labor Standards Act: Work-Based Learning and the Fair Labor Standards Act at 5 (1995) [hereinafter "STW Guide"]*.

The performance of work is one factor in establishing an employment relationship. In addition, there must be compensation, benefit to the employer, duration, and stability of relationship. Employment thus occurs when the employer (1) has power to hire and fire the employees; (2) supervises and controls employee work schedules or conditions of employment; (3) determines the rate and method of employment; and, (4) maintains employment records. *Henthorn v. Department of Navy*, 29 F.3d 682, 684 (D.C. Cir. 1994); *Bonnette v. California Health & Welfare Agency*, 704 F.2d 1465, 1470 (9th Cir. 1983). The factors should not be "blindly applied" since this is not a "mechanical determination." The factors provide a "useful framework" but are not "etched in stone." The ultimate determination must be based on "the circumstances of the whole activity." 704 F.2d at 1470.

Non-employees under FLSA

The FLSA definition of "employee" is broad, but its scope is limited by several exceptions and exemptions. In general, the courts have found that non-employment relationships, in which work is performed by an individual for an entity, can be exempt from the FLSA where the individual rendering the services has the status of trainee, School-to-Work participant, volunteer, patient worker, recipient of rehabilitation services, workfare benefit recipient, independent contractor, prisoner, or religious person. WH Pub. 1297 (1980). In many of the recognized non-employment relationships, the lesser benefit to the employing entity is incidental to the *primary benefit* to the alleged employee.

Trainees. In *Walling v. Portland Terminal*, several trainees had worked for a railroad employer for one week in a brakeman training program which benefitted their own interests. The Supreme Court held that they were not employees under the FLSA, ruling that an individual who, without promise or expectation of compensation, but solely for his personal purpose or pleasure, worked on activities carried on by other persons either for their pleasure or profit, is not an employee. *Walling v. Portland Terminal* 330 U.S. 148, 151 (1947).

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Guidelines developed by the Labor Department have long excluded student trainees from FLSA coverage. The six requirements must all be present: (1) training is similar to that given in a vocational school; (2) training is for the benefit of the trainees or students; (3) trainees or students do not displace regular employees, but work under their close supervision; (4) the employer derives no immediate advantage, and its operations on occasion may actually be impeded; (5) trainees or students are not necessarily entitled to a job at the conclusion of training; and (6) trainees and students understand they are not entitled to wages for their time in training. WH Pub. 1297 at 4-5.

School-to-Work. The School-to-Work (STW) Opportunities Act of 1994 established a program for work-based learning experiences for students. In its guidance under that Act, the Labor Department provided that a student is *not* to be considered an employee if *all* four of the following criteria are met:

(1) the student receives ongoing instruction at the employer's worksite and receives close on-site supervision throughout the learning experience, with the result that any productive work that the student would perform would be offset by the burden to the employer from the training and supervision provided; and,

(2) the placement of the student at a 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 the employer not hiring an employee it would otherwise hire, and cannot result in an employee working fewer hours than he or she would otherwise work; and,

(3) the student is not entitled to a job at the completion of the learning experience--but this does not mean that employers are to be discouraged from offering employment to students who successfully complete the training; and

(4) 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--although the student may be paid a stipend for expenses such as books or tools. STW Guide at 3-4.

Volunteer. The term "employee" does not include a volunteer. In the public sector, a volunteer is an individual who performs a service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation. 29 C.F.R. § 553.101(a)(1996). In the private sector, individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious, or humanitarian objectives, not as employees and without contemplation of pay, are not considered employees of the religious, charitable and similar nonprofit corporations which receive their services. WH Pub. 1297 at 6-7; *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 303 n.25 (1985).

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Patient worker. Under Labor Department regulations, a patient worker is a worker with a disability who is employed by a hospital or institution providing residential care. There is an employment relationship if the work performed is of any consequential economic benefit to the institution. Consequential economic benefit means work of the type normally performed by workers without disabilities. A patient does not become an employee if he or she merely performs personal housekeeping chores, such as maintaining his or her quarters, and receives a token remuneration for those services. 29 C.F.R. § 525.4 (1996).

Recipient of rehabilitation services. In *Williams v. Strickland*, 87 F.3d 1064 (9th Cir. 1996), the court held that a participant in a Salvation Army rehabilitation program was not an "employee" under the FLSA because he "had neither an express nor an implied agreement for compensation with the Salvation Army. The participant had entered a six-month program offering room, board, work therapy, and counseling. The admission statement stipulated that he was "a beneficiary not an employee" of the program. He engaged in work therapy on a full-time basis in exchange for food, clothing, shelter, and a small stipend. The court found that under the economic realities of the situation, the claimant was not an employee, since he did not have an express agreement for compensation, and he did not apply to the personnel department but rather was admitted to the rehabilitation program. His "relationship with the Salvation Army was solely rehabilitative." 87 F.3d at 1067.

The dissenting opinion maintained that the rehabilitative motive did not preclude an employment relationship, since the participant argued that his work significantly improved the value of repaired furniture, resulting in profits to the employer. The dissent found a material dispute of fact over the question whether his labor was purely rehabilitative and served only his own interest, and produced no economic benefit to the Salvation Army. 87 F.3d at 1069.

Workfare benefit recipients. At least one court decision, *Johns v. Stewart*, 578 F.3d 1544 (10th Cir. 1995), has denied coverage of workfare benefit recipients under the FLSA. In Utah, the State had voluntarily established a program to help tide over individuals who were waiting for approval of their applications for Supplemental Social Security (SSI) benefits for blind, disabled, or elderly persons with very low income. The two emergency assistance programs provided temporary cash assistance for the basic needs of applicants awaiting qualification for SSI. Participants completed a self-sufficiency plan with a case worker. The plans included rehabilitative activities as well as job search and job training activities. Participants received a monthly stipend, but were required to reimburse the state from their retroactive SSI benefits. In a lawsuit, the participants raised the charge, among others, that their benefits were less than required by the minimum wage requirement of the FLSA.

The Tenth Circuit held that workfare recipients were not covered by FLSA. In the court's view, the narrow focus on the work component of the program failed to take into consideration the circumstances of the whole activity, since the work component was just one requirement of the comprehensive assistance programs. Recipients were also required to meet a needs test; be unemployable,

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marginally employable, or 60 years of age or older; have no dependent children and be able to perform a work project; and agree to participate in adult education, training, skills development, and job search activities. The court found that participation in work projects was simply one component of the comprehensive assistance plans, and that the overall relationship was one of assistance, not employment.

The court further found that participants were completely unlike state employees in every respect, since they applied for assistance, not for jobs; they received financial assistance checks, not state payroll checks; state and federal taxes were not withheld; and no sick or annual leave was accrued. While participants performed the same functions as some regular employees, they did not receive the same salary, safe working conditions, job security, career development, social security, pension, collective bargaining, or grievance procedures as regular employees. Focusing on the circumstances of the whole activity and applying the economic reality test, the court held the participants were not employees of the State Department of Human Services for purposes of the FLSA. 57 F.3d at 1558-59.

Independent contractor. As interpreted by the Labor Department, an independent contractor is one "who is engaged in a business of his own." Six factors are considered significant, although no single one is regarded as controlling:

- (1) the extent to which the services in question are an integral part of the employer's business;
- (2) the permanency of the relationship;
- (3) the amount of investment in facilities and equipment by the alleged independent contractor;
- (4) the nature and degree of control by the principal;
- (5) the alleged contractor's opportunity for profit or loss; and
- (6) the amount of initiative, judgment, or foresight in open market competition with others required for success by the claimed independent contractor. WH Pub. 1297 at 9.

Prisoners. Prisoners, under rulings by the federal courts of appeal, are not employees under the FLSA. See, e.g., *Henthorn v. Dep't of Navy*, 29 F.3d 682 (D.C. Cir. 1994).

Religious persons. "Persons such as nuns, monks, priests, lay brothers, ministers, deacons, and other members of religious orders who serve pursuant to their religious obligations in schools, hospitals and other institutions operated by the church or religious order are not considered to be 'employees' within the meaning of the Act." WH Pub. 1297 at 6-7. This does not prevent the establishment of an employer-employee relationship between the religious, charitable or nonprofit agency and the persons who perform work for it. *Dole v. Shenandoah Baptist Church*, 899 F.2d 1389 (4th Cir. 1990), cert. denied, 498 U.S. 846; accord, *DeArment v. Harvey*, 932 F.2d 721 (8th Cir. 1991).

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Analysis

The statutory definition of "employee" is basically circular: an employee is any individual employed by an employer, and to employ is to suffer or permit to work. Administrative and judicial determinations down through the years have expanded upon the statutory definition. In addition, several general rules of construction and principles of interpretation have guided the Department and the courts in applying the statute.

¶ The FLSA is to be construed broadly in order to effectuate its remedial purpose.

¶ The FLSA definition of "employee" is one of the broadest in the law, and its breadth covers some individuals who might not qualify as such under a strict application of traditional agency law principles. *Nationwide Mutual Ins. Co v. Darden*, 501 U.S. 318 (1992).

¶ Exemptions and exceptions are to be construed narrowly in keeping with the remedial purpose of the Act.

¶ Individuals and employers may not waive FLSA protections by express or implied agreement. *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 302 (1985).

¶ Courts must assign weight to Department of Labor interpretations under the *Chevron* doctrine of judicial deferral to an agency's interpretation of a statute which it administers and enforces.

In the absence of an amendment to the law, state agencies must structure work activity programs in light of existing FLSA coverage. At the outset, programs should be designated as employment-based or non-employment-based. Employment based programs must comply with all FLSA requirements, unless the Department of Labor rules otherwise. Non-employment programs should be structured to meet existing FLSA exemptions.

Many of the "work activities" mandated under TANF may well fall within existing exceptions to the FLSA. Section 407(d) lists several activities which seem clearly outside the concept of "employment relationship" under the FLSA. These would include job search and job readiness assistance, vocational educational training for up to 12 months, job skills training directly related to employment, education directly related to employment, and satisfactory attendance at secondary school or course of study leading to an equivalency certificate. 42 U.S.C. § 407(d)(6),(8),(9),(10), & (11). None of these educational or training activities would ordinarily involve performance of services for compensation.

Some activities, such as work experience and on-the-job training, could be considered to be either training or employment, depending on the circumstances. 42 U.S.C. § 407(d)(4)&(5). In these activities, the participants and employers would need to meet *all* the criteria established for trainees and student learners. Job training programs, for example, should adhere to the guidance for the exemption of training and School-to-Work programs.



STATE OF DELAWARE
OFFICE OF THE GOVERNOR

*cc Bruce Reed,
Elena Kagan
Aynthia Rice
Diana Fortuna
return to me
Emily*

THOMAS R. CARPER
GOVERNOR

July 18, 1997

The Honorable William V. Roth
104 Hart Senate Office Building
Washington, D.C. 20510

WR - WSA

Dear Senator Roth: *Bill*

I would like to take this opportunity to make you aware of my support for congressional efforts to address a problem that Delaware, and many other states, will soon face in our welfare-to-work efforts.

One of the highest priorities in my administration has been the development and implementation of "A Better Chance" (ABC), our plan, approved unanimously by the state legislature, to transform the current welfare system into a system that creates positive incentives for welfare recipients to obtain paid employment. The key principles that form the basis of ABC are that work should pay more than welfare and that welfare should be transitional, not a way of life. ABC recipients are expected to find paid jobs, stay employed, and achieve long term economic self sufficiency. Under ABC, priority is always given to placing individuals into paid work over placement in work experience.

To date, we've been extremely successful. We've nearly tripled the number of ABC recipients who are working, and we've placed hundreds of ABC recipients in full-time jobs.

However, our experience has shown us that there are some welfare recipients that are unable to gain employment readily. Under these circumstances, we believe that it is critical to these individuals that they gain the skills necessary for obtaining paid employment. In Delaware, the purpose of work experience is to improve the employability of individuals not otherwise able to obtain employment by providing work experience and training to assist them to move promptly into paid public or private sector employment.

The Honorable William V. Roth
July 18, 1997
Page Two

In Delaware, individuals in work experience continue to receive a welfare check and state law requires that these individuals can participate in work experience for the number of hours equal to the welfare grant divided by the minimum wage. In addition, participants are required to engage in job search to ensure that they move quickly into gainful employment. In our state, we are committed to providing work experience participants with comparable health, safety, and anti-discrimination protections as to individuals working in paid employment.

However, with the application of current labor and tax laws to work experience, we estimate that welfare recipients' benefits could be reduced by 6.2% for FICA and 1.45% for Medicare per client per month and the state of Delaware would incur a cost of \$145,000 per month. This results, for Delaware, in an additional annual welfare cost of \$1.74 million for FICA and Medicare contributions alone. Additionally, there are significant administrative costs associated with implementing and maintaining a payroll system for welfare benefits.

I am concerned that the financial costs to the state and the administrative burden associated with the application of labor and tax laws to welfare work experience placements will hinder our ability to require workfare for all welfare recipients. As you consider the important issues on the application of labor and tax laws to work experience, I urge you to ensure that any final proposal will not jeopardize ABC's ability to successfully move welfare recipients into the workforce.

Your leadership in this area is very much appreciated, and I thank you once again for the opportunity to share my thoughts with you. Please feel free to contact me if you have any questions.

Sincerely,



Thomas R. Carper
Governor

cc: Senator Lott
Senator Moynihan
Senator Domenici
Senator Daschle
Representative Shaw
Representative Kasich
Representative Archer
Representative Gingrich
Representative Gephardt
Representative Spratt

From DOL: Compromise
portions in FLRA
issue. Discussed at
meeting on Thursday
even.



Senate Provision Only

- Senate provision, modified
1. House provisions on minimum wage/maximum hours.
 2. Strongest enforcement of minimum wage.
 3. Specific language maintaining protection of WWRs in WE/CS under federal and state laws.

- House provision, plus
1. Appeal from grievance process to Secretary of Labor;
 2. Specific language giving all WWRs protection under state laws.
 3. Specific language giving WWRs outside WE/CS protection under federal and state laws.
 4. Add protection against religion discrimination

- House provisions, plus
- 1a. Appeal from grievance process to state court; or
 - 1b. No grievance process, replaced with binding arbitration;
 2. Specific language giving all WWRs protection under state laws.
 3. Specific language giving WWRs outside WE/CS protection under federal and state laws;
 4. Add protection against religion discrimination

House Provision Only

WRFLRA

Spectrum of Employment Protections: Explanation

Senate Minimum Wage Provisions. The Senate bill does not modify current law with respect to applying the minimum wage and other worker protections to working welfare recipients. Under this option, the House would conform to the Senate's position on this issue. As a result, working welfare recipients would be treated like other workers with regard to employment status. The Fair Labor Standards Act and other employment laws would apply as described in DOL's May guidelines.

Limit Effect of House Provisions Regarding Community Service and Work Experience to FLSA Applicability. Treat welfare recipients in community service and work experience like other workers except with respect to coverage of the Fair Labor Standards Act. Instead, the House maximum hours (minimum wage) provision would apply. While welfare recipients in community service and work experience would not be treated as employees for FLSA purposes they would not be precluded from employment status for other laws. As employees, they would be covered by employment protections like OSHA, employment discrimination laws, workers compensation, and collective bargaining laws. This option requires the addition of an enforcement mechanism for the maximum hours (minimum wage) provision which is not provided in the House bill.

House Version with Senate Grievance Procedure (Appeal to Secretary of Labor) to Enforce Minimum Wage and Other Labor Protections. Welfare recipients in community work would not be considered employees for federal laws. (However, additional language is added to prevent them from being denied employee status for state laws like workers compensation.) Uses minimum wage and labor protections enforcement model similar to that used under prior welfare law and included in the Senate bill. The Senate grievance procedure which provides for an appeal to the Secretary of Labor would be substituted for the House procedure (which does not provide for any appeal) and would also be applied to the minimum wage requirement. This option also adds protection against religion discrimination, which is not available to working welfare recipients who are not employees under the current House bill.

House Version with Appeal to State Court. This option is the same as above except that the appeal from the grievance procedure would be to State Court rather than to Secretary of Labor.

House Version with Arbitration Instead of Grievance Procedure. This option is the same as above except that it replaces the grievance procedure (and proposed appeal) with arbitration system.

NONDISPLACEMENT RECOMMENDATIONS

Protections to be Added:

1. **General Prohibition Against Displacement:** The final House-passed language is seriously deficient in dropping the general prohibition against displacement (including partial displacement by reducing hours of work) of any individual who is an employee at the time the participant comes on board ("as of the date of employment"). At a minimum, the language from the Senate-passed version should be inserted in the conference agreement before the House-passed language allowing an adult recipient to fill a vacant employment position.
2. **Promotional Opportunities:** The conference agreement should include the Senate prohibition against creating a job in a promotional line infringing upon the promotional opportunities of regularly employed individuals. Welfare-to-work activities should not facilitate the creation of subsidized job positions at the expense of promotional opportunities for regular employees.
3. **Contracts for Services and Collective Bargaining Agreements:** The Senate language on existing contracts for services and collective bargaining agreements is preferable, because the terms "impair" and "inconsistent" connote situations where parties other than the direct parties to a contract or agreement may be trying to undertake an activity which modifies, whether directly or indirectly, the contract or agreement. Employer and labor consultation and concurrence in any such implicit modification should be required and will clearly be more conducive to better employer-employee relations.
4. **Comparable Wages:** The conference agreement should insert legislative language on comparable benefits, included in the workforce development legislation from the Education and Workforce Committee passed by the House. This language requires that individuals in on-the-job training or individuals employed in work activities shall be compensated at the same rates and provided benefits and working conditions, at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work, but in no event less than the higher of the Federal or State or local minimum wage.

SANCTION PROVISION IN THE SENATE BILL

ELIMINATE SECTION 5823 OF SENATE BILL. This language allows states to impose monetary sanctions on working welfare participants even if doing so would mean they receive less than the minimum wage for their work. It allows working welfare recipients to be paid a subminimum wage. As a result, it undermines the minimum wage -- and the basic premise that people should get paid for work performed. Furthermore, the sanction can be imposed even if the sanction is for the behavior of another family member. We support both the sanctions provisions in welfare reform and the payment of the minimum wage to welfare recipients when they work -- but both must work in harmony if we are to achieve real and lasting welfare reform.

E. CLAY SHAW, JR., FLORIDA, CHAIRMAN
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COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

SUBCOMMITTEE ON HUMAN RESOURCES

May 16, 1997

~~Handwritten signature~~
cc: CR
+ return

The Honorable William Clinton
The White House
Washington, DC 20500

Dear Mr. President:

As the nation moves forward on implementing the new welfare reform law, I am writing to express my concerns about the position your Administration has taken on the minimum wage and work requirements for welfare recipients.

This interpretation, unless fixed, will result in many states taking part in the sort of "race to the bottom" we all oppose.

As my comments in this morning's New York Times reflect, the interpretation that most welfare recipients in work programs should be covered by minimum wage laws is a serious setback for state efforts to move recipients into jobs and eventually independence from welfare. In effect, this interpretation would force states to adopt methods—including shortening welfare time limits—that will cut the caseload and thus satisfy "work" participation requirements without helping families on welfare find and keep jobs.

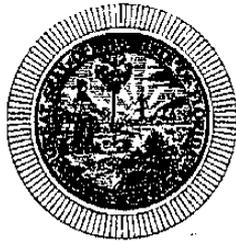
The negative consequences of this decision will be especially severe in low-benefit states, which would have to choose between raising welfare benefits dramatically or limiting participation in work. Thus states could either spend far more state funds or be condemned to failing the welfare work requirements, resulting in the loss of millions of dollars in federal aid. As Governor Carper of Delaware stated, this is an untenable position for the states.

If your Administration thinks your hands are tied by the current labor laws and wants Congress to fix them, I stand ready to help. I have been impressed by the cooperation your Administration has shown to make welfare reform work. I trust you will be equally willing to assist in making it clear that states are not hindered by bureaucratic mandates from achieving the central goal of welfare reform—moving families into work.

I look forward to your response.

Sincerely,


E. Clay Shaw, Jr.
Chairman



WR-FLSA

THE GOVERNOR OF THE STATE OF FLORIDA

LAWTON GHILES

July 14, 1997

Representative E. Clay Shaw, Jr.
United States House of Representatives
2408 Rayburn House Office Building
Washington, DC 20515

Dear Clay:

We have initiated an aggressive welfare reform program in Florida that is designed to reverse the incentives and penalties formerly associated with welfare to emphasize and reward work. This effort is in serious jeopardy if we don't secure your assistance in recognizing and allowing legitimate work experience programs - i.e., training programs - to be an essential component of this work emphasis.

Specifically, I am asking that you maintain the House position that is being tagged as "the minimum wage provision," but in reality goes to the heart of the concept of work experience programs which are key in preparing people for real and steady employment.

I have listened to the debate for months on the application of the Fair Labor Standards Act and other labor laws to community work experience programs. It is my opinion that the compromise in the House bill has met the legitimate concerns expressed during this debate. It provides for minimum wage equity, as does Florida's welfare program, and affords necessary worker protections - including non-displacement, health and safety, non-discrimination and grievance procedures provisions.

While maintaining the integrity of the minimum wage standards in establishing the hours of work experience for an individual who is in need of training in order to develop employability skills, the House bill provides a **vital interpretation**: that benefits an individual receives while involved in a training program - including cash and food stamps - are assistance and are not to be considered compensation or salary.

Representative E. Clay Shaw, Jr.

July 14, 1997

Page Two

Without the distinction that cash and food stamp benefits are not to be treated as earnings, dollar for dollar commitments will be required by both the recipient and the State to meet "payroll" taxes. This inappropriate treatment of these benefits as earnings would force us to reduce welfare payments in order to withhold the employee portion of these FICA taxes as required by law. This increased fiscal burden would undermine the viability of the work experience option for Florida's most vulnerable citizens and the hope of moving people out of poverty and into real work.

The new welfare law stipulates that eighty percent of the welfare population has only six weeks of job search as a permissible activity before they must be in a job or some type of work experience in preparation for employment. By essentially eliminating our ability to provide work experience programs, you will be limiting our options for work participation to only a job. This will destroy welfare reform and our efforts to train inexperienced people in preparation for work.

Requiring participants who have barriers to employment to pay taxes on training programs penalizes their participation and efforts toward self-sufficiency. In addition, many of the potential sponsors identified who would offer this vital training have told us they will be forced to withdraw faced with potential tax consequences and associated liabilities.

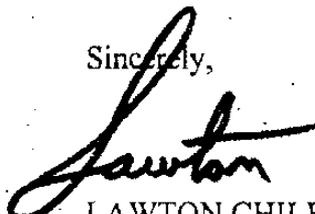
Our welfare program is designed to have approximately 40,000 of Florida's residents in work experience programs by year's end. These mothers will not be able to achieve employment without the opportunity to enter into a work experience program. And, without the option of this program the state will not achieve the participation rates required by law. We all lose, and reform fails.

The important issues around application of the FLSA have been resolved in the House compromise. I hope the conferees recognize this achievement and retain the critical language necessary for states to continue building on the early successes of welfare reform.

I appreciate your efforts to make reform work and hope that work experience will continue to be a vital link.

With kind regards, I am

Sincerely,



LAWTON CHILES

Frank Cowan
Assistant to the President

7/10/97

John:

The attached letter was sent to the President today and sets forth our unions' major concerns in the reconciliation bills.

Frank

Attachment

CC: Elena
Kagan
Ron Klain



Peruce, Dyuthia, Diana
+ return

WR - FUSA

July 10, 1997

Dear Mr. President:

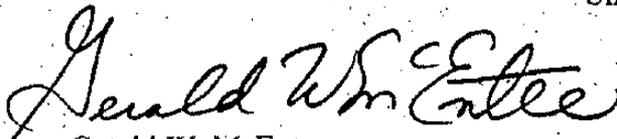
We want to thank you for your strong opposition to congressional attempts to use the balanced budget bill to overturn your administration's policies on privatizing the Food Stamp and Medicaid programs and on applying the Fair Labor Standards Act and other worker protections laws to workfare workers.

As a result of our mutual efforts, the Senate now has clear record rejecting all privatization provisions. We believe that the Senate's action provides a solid basis from which to resist provisions in the House bill which would allow all states to privatize food stamps and Medicaid operations.

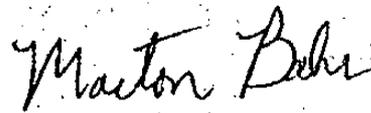
In addition, we are making important progress protecting working people on and off welfare. We have strongly defended your administration's ruling that workfare workers should have the same rights and protections as other workers. Moreover, we have been pleased at the progress made in moving the welfare-to-work program through the legislative process and are seeking to ensure that it will be used to create real jobs at livable wages rather than workfare. Finally, we have seen significant Congressional support for incorporating effective nondisplacement protections in the conference agreement so that working people do not end up paying for welfare reform with a loss in jobs and income.

We now are at a critical juncture in the deliberations on the conference agreement. We believe your continued strong leadership is essential to achieving a favorable outcome on all these critically important issues.

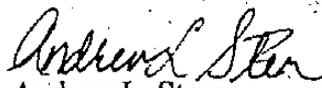
Sincerely,



Gerald W. McEntee
International President



Morton Bahr
President
Communications Workers of
America



Andrew L. Stern
President
Service Employees
International Union

cc: Cynthia/Dana/Bruce
+ return



WR - FLSA

MEMORANDUM

To: Erskine Bowles,
Chief of Staff to the President

From: Judith L. Lichtman, Joan Entmacher, and Jocelyn Frye ^{sf}

Date: June 27, 1997

Re: Comments on Budget Reconciliation Bill

The Women's Legal Defense Fund is seriously concerned that the budget reconciliation bill ("the bill" or "the House bill") passed by the House erodes basic employment protections for welfare recipients who participate in workfare programs. Although the final House provisions are better than earlier proposals, which would have denied all worker protections to workers in workfare jobs, they still fail to provide effective protection against unfair treatment.

1. INADEQUATE WORKER PROTECTIONS

a. Lack of Strong Enforcement Mechanisms

The bill's worker protection section includes some provisions concerning nondisplacement, health and safety, and nondiscrimination. These provisions, however, will provide few real protections if enforcement mechanisms fail to ensure that states comply with the law. Strong enforcement mechanisms encourage states to follow the law carefully and create programs that operate fairly. And, effective enforcement tools help to ensure that individuals and/or key federal agencies can challenge possible violations of the law through a fair process.

The only mechanism that appears to be available to enforce this section is a new grievance procedure to be created by each state. While workfare participants will be limited to an untested state grievance procedure to pursue valid complaints, other workers who perform the same work will be able to file complaints with the Equal Employment Opportunity Commission, the Department of Labor, the Department of Justice, or the courts. Access to the same options available to other workers will help to ensure that workfare participants have a fair opportunity to raise problems. Moreover, while the bill states that the state grievance procedure "shall include an opportunity for a hearing," it does not make clear that the hearing must meet the standards for a "fair hearing" under *Goldberg v. Kelly*, 397 U.S. 254 (1970), or that benefits cannot be

terminated prior to the hearing.¹ This is a particularly important issue for welfare recipients who might lose their benefits while they are in the process of pursuing a valid complaint.

Unlike the prior JOBS law, neither the Department of Labor nor the Department of Health and Human Services is specifically authorized to investigate complaints and take appropriate action at any point during the grievance process. It is critical that appropriate federal agencies, like the Department of Labor, have the ability to ensure that states receiving federal funds operate work programs fairly, and to take steps to remedy violations of the law when they occur.²

The bill provides only limited remedies for violations of the worker protection provisions. For example, states "shall" provide remedies; however, these remedies "may" -- but need not -- include payment of lost wages or benefits, or other appropriate equitable relief. When violations occur, however, welfare participants should have access to the same remedies as other workers, including damages where appropriate. Moreover, federal agencies should be authorized to suspend payments to states -- and in egregious cases impose sanctions -- when they fail or refuse to comply with the law.

b. Lack of Comprehensive Prohibitions Against Discrimination, Especially Sex Discrimination

One of the serious inadequacies of the Personal Responsibility and Work Opportunity Reconciliation Act ("the new welfare law") is its failure to specifically address sex discrimination. The House bill includes language (also included in the Education and the Workforce Committee's mark) that states, "In addition to the protections provided under the provisions law specified in section 408(c), an individual may not be discriminated against with respect to participation in work activities by reason of gender." While the bill now acknowledges the need to prohibit sex discrimination, this language alone may do little to provide women with real remedies for sex discrimination.

¹ In *Goldberg*, the Supreme Court held that the procedural due process requirements of the 14th amendment required that welfare recipients have an opportunity for a fair hearing before their benefits could be terminated. The dispute resolution procedures in the prior JOBS law stated, in part, "in no event shall aid to families with dependent children be suspended, reduced, discontinued, or terminated as a result of a dispute involving an individual's participation in the program until such individual has an opportunity for a hearing that meets the standards set forth by the United States Supreme Court in *Goldberg v. Kelly*." 42 U.S.C. §682(f) (repealed by P.L. 104-193, 110 Stat. 2167).

² Indeed, even the Committee on Education and the Workforce's bill included an investigation section that specifically authorized the Secretary of Labor to investigate complaints if a party appealed.

The language in the bill is different from Title VII and Title IX³ -- and also the prior JOBS law⁴ -- and, as a result, it is unclear how it would be interpreted. There is ample case law and history on the types of discrimination covered by Title VII and Title IX, but there is no such history with this new language. For example, the Supreme Court has held that Title VII and Title IX cover sexual harassment even though that phrase is not included in the statutory language,⁵ but it is unclear whether the language in the bill would be read in the same way. Some courts, seeking to reconcile the new provision with other laws, could conclude, for example, that the provision does not reach as far as Title VII would in prohibiting employment discrimination.

While the language in the bill extends the prohibition against sex discrimination to all work activities, it could be read to suggest that it is the *only* protection available to women in any work activity, including nonworkfare jobs and private sector employment. Thus, women who are clearly employees and who work in any work activity might be limited to the narrow remedies in the bill without the protection of other basic employment laws. Further, the provision does not mention other forms of employment discrimination, such as race- or age-based discrimination, that may limit opportunities for participants in work activities. Although the nondiscrimination provision in the new welfare law⁶ might prohibit some forms of employment discrimination (*see, e.g.*, Title I of the Americans with Disabilities Act which prohibits discrimination in employment based on disability), the provision may not cover the full range of employment discrimination problems.⁷ The bill should make clear that participants who perform the work of employees, regardless of the "label" ascribed to their job, have access to the full range of antidiscrimination protections -- such as the protections afforded by Title VII, the Equal Pay Act, and the Age Discrimination in Employment Act -- that other workers have.⁸ The

³ Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment based on sex, race, color, religion, and national origin. Title IX of the Education Amendments of 1972 prohibits sex discrimination in education programs or activities receiving federal financial assistance.

⁴ The JOBS antidiscrimination provision required states, in part, to ensure that "individuals are not discriminated against on the basis of race, sex, national origin, religion, age, or handicapping condition, and all participants will have such rights as are available under any applicable Federal, State, or local law prohibiting discrimination." 42 U.S.C. §684(a)(3) (repealed by P.L. 104-193, 110 Stat. 2167).

⁵ *See Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986) (Title VII); *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992) (Title IX).

⁶ The new welfare law's nondiscrimination provision states that the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and Title VI of the Civil Rights Act of 1964 shall apply to TANF-funded programs. §408(c).

⁷ For example, in some cases, Title VI (which prohibits discrimination based on race and national origin in federally-funded programs or activities) has been found to have limited reach in the employment context, thus, race and national origin employment discrimination claims are often pursued under other laws like Title VII or §1981.

⁸ This is even more important because the bill does include a provision that expressly prohibits preemption of state nondisplacement laws. The nonpreemption provision ensures that the new welfare law will not be

prior JOBS law, for example, made clear that participants had access to other antidiscrimination remedies by stating that "participants will have such rights as are available under any applicable Federal, State, or local law prohibiting discrimination." *Supra* note 4.

c. Lack of Strong Nondisplacement Protections

Neither the bill nor the new welfare law provide adequate protections against displacement of existing employees. The prior law's provision on displacement of current workers included prohibitions against partial displacement, such as reductions in hours of nonovertime work; infringement on promotional opportunities; and assisting or tampering with union organizing. These protections are not included in the bill. Further, the language that is included in the bill may make it more difficult for individuals to challenge displacement when it occurs. The bill states that participants shall not be employed or assigned to a job where, among other things, the employer "has terminated the employment of any regular employee or otherwise caused an involuntary reduction if [sic] its workforce with the *intention* of filling the vacancy so created with the participant" (emphasis added).⁹ This new language differs significantly from the prior law which stated that participants would not be placed in jobs where the employer had terminated or "otherwise reduced its workforce with the *effect* of filling the vacancy so created with the participant."¹⁰ Requiring individuals to gather evidence of an employer's intent may make it more difficult for them to challenge improper practices.

2. LIMITING THE "EMPLOYEE STATUS" OF PARTICIPANTS

A central issue in the discussion about worker protections has been the question of whether participants should be considered employees for purposes of various employment laws. Some argue that work experience and community service programs are "training" for employment in the private sector and, thus, participants should never be considered employees.¹¹

misinterpreted to preclude workers from using state laws that provide greater nondisplacement protections. The absence of a similar safeguard for antidiscrimination laws could lead to misinterpretations about the availability of important antidiscrimination protections.

⁹ This language was also included in the worker protection amendment that modified the Welfare-to-Work Initiative adopted by the Ways and Means Committee.

¹⁰ 42 U.S.C. §684(c)(2)(B) (repealed by P.L. 104-193, 110 Stat. 2167).

¹¹ Proponents of this view cite, in support, the community work experience program ("CWEP") provisions contained in the prior JOBS law. But, arguments suggesting that the House bill merely memorializes the CWEP provisions are misleading. While CWEP permitted states to help some participants gain actual work experience, the program also emphasized training and the need to build skills to move individuals into regular public or private jobs. Compare CWEP language, 42 U.S.C. §682(f)(1)(A) (repealed by P.L. 104-193, 110 Stat. 2167) ("[I]n the extent possible, the prior training, experience, and skills of a recipient shall be used in making appropriate work experience assignments.") with the House bill (omits CWEP language). And, CWEP was part of a JOBS law that,

Such a bright line rule, however, ignores the reality of the particular work assigned to each participant and the flexibility that states now have to craft their programs.

States may use the term "work experience" to encompass a broad range of programs. Some programs may be designed to build specific skills, or train participants for certain types of jobs. But other programs may assign participants to work in regular jobs doing the same work as other workers. Rather than rely on arbitrary labels like "work experience," the work performed by participants should be evaluated in accordance with existing legal standards that are already used to evaluate whether other workers are considered to be employees. These standards look at the type of the work being performed and the surrounding circumstances (e.g., whether the employer has the right to control and direct the employee's work) rather than focusing solely on the name of the job.

The simple fact that work is being performed by a welfare recipient does not change the type of work being performed. If participants are doing the same work as other employees, they should be given the same status. Summarily stripping participants of "employee status" means that workers who happen to be welfare recipients may be denied important employment law protections, such as those secured by the Fair Labor Standards Act, Title VII, OSHA, the Age Discrimination in Employment Act, and the Family and Medical Leave Act.¹² These protections are critical for all workers to ensure that their workplaces are safe, free of discrimination, and paying fair wages. But, these protections are particularly important for welfare recipients, who are especially vulnerable because they risk losing vital benefits if they lose their jobs. Ensuring that welfare recipients are protected by basic employment laws will help to maximize their chances to leave the welfare system permanently and move to better jobs.

Please feel free to contact us if you have any questions about the concerns discussed in this memorandum.

as discussed throughout this memorandum, provided greater worker protections (such as better minimum wage, nondisplacement, and antidiscrimination protections) than the House bill. Even though the House bill now incorporates some of the CWEP language, that language cannot be read in isolation. Simply extracting segments of the old law -- some with significant modifications -- in a piecemeal fashion and incorporating them into the new welfare law does not duplicate CWEP. Nor does it ensure that participants have adequate worker protections when they go to work. Rather, the language in the bill must be understood in the context of the new welfare law which creates new rules -- and new pressures -- for states and individuals to satisfy strict work participation requirements. The incentives created by the new work requirements may drive states to place participants in any job -- including regular jobs currently being performed by other employees -- regardless of the specific needs or skills of the participant, and create a need for *stronger* worker protections. Thus, the bill, read together with the new welfare law, may encourage states to create programs different from CWEP where states can avoid providing comprehensive worker protections simply by characterizing jobs as "training," and require participants to work without protection against unfair treatment.

¹² In addition, it sets a dangerous precedent. The House just passed, as part of the tax bill, a measure that would redefine many employees as "independent contractors" -- and impair their protections under federal labor laws.

cc: Maria Echaveste
John Hilley
Bruce Reed
Elena Kagan
Janet Murguia



Cynthia A. Rice

06/24/97 02:25:01 PM

WR-FLSA

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP

cc:

Subject: Conversation on Workfare with Richard Schwartz

Bruce -- as you suggested, I had a long talk with Richard Schwartz who used to run NYC's workfare program and who is now a consultant for other local governments and some companies. Here are his views about what's important to make welfare reform work in the real world:

He thinks 20 hours of real work is enough -- that's what they did in New York (20 hpw for single parent families and 26 for two parent families). The remaining hours could be filled in w/job search and training. He says the value of workfare is it teaches people the "soft skills" like showing up every day on time and that companies like to hire people with an attendance track record. 20 hours a week is enough to accomplish this.

He thinks its fair to count Medicaid, child care, housing if necessary, although he doesn't oppose dropping them from the latest proposal.

He says lots of local governments want to contract out workfare to non-profits, have them operate and supervise workfare programs (Newark, which he's now advising, is doing this). He thinks non-profits operating workfare programs should operate under the same rules as government agencies. More important, he says, is to ensure that any exemptions are only for 'workfare' defined as a program having people do work which would otherwise not get done.

He thinks strong anti-displacement language is needed, but he worries about opening up the possibility of lawsuits that could tie up welfare reform programs in the courts (he didn't have another enforcement mechanism to propose). He's more worried, by the way, about the possibilities of displacement and wage depression through the use of private sector wage subsidies than through workfare -- which is an argument for applying whatever new anti-displacement rules get through Congress to all of TANF, where more of this is likely to happen.

He strongly dislikes the idea of time-limiting workfare -- i.e., saying someone can be put in workfare for only 9 months. He thinks that workfare should be used to give someone a track record of recent job experience, and that kicking them off of workfare will make employers less likely to want to hire them.

American Federation of Labor and Congress of Industrial Organizations



815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

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MEMORANDUM

TO: Bruce Reed

FROM: Denise Mitchell

SUBJECT: FLSA Packet

DATE: June 11, 1997

Here's a copy of the editorial writer packet that went to the 100 top dailies along with a copy of the full-page ad we put in the New York Times today.

DM/am

TO: Editorial Page Editors and Writers

FROM: John J. Sweeney, AFL-CIO President
Judith Lichtman, Women's Legal Defense Fund
Sara Ríos, National Employment Law Project
Wade Henderson, Leadership Conference on Civil Rights

DATE: June 10, 1997

RE: Effort in Federal Budget Reconciliation Bill to Strip "Worker" Status
From People Who Work in State "Workfare" Programs

Ever since the U.S. Labor Department ruled last month that current law entitles people who work in state "workfare" programs to the minimum wage and other basic employment protections, some Republican members of Congress have been seeking legislative action to overturn the decision. They have included in the Budget Reconciliation Bill a provision to exclude workfare participants from the Fair Labor Standards Act (FLSA) and protections against discrimination on the job.

If they succeed, they will severely damage the federal minimum wage standard--our oldest and most fundamental protection for working families--and the repercussions will be felt not only by an estimated one million workfare participants, but by all low-income workers.

We are writing to urge you to take an editorial position against excluding workfare participants from the minimum wage, and other basic protections, and we respectfully ask you to consider the following facts.

■ **This is a back-door attack on the federal minimum wage.** The FLSA was enacted 50 years ago for the purpose of establishing a wage floor so that one worker could not be used to undercut another. This wage floor gives the working poor a chance to care for their families, contribute to their communities and lift themselves out of poverty through the dignity of work.

Workfare exemptions will severely undermine the minimum wage, and workfare participants aren't the only ones affected. Forcing low-wage workers to compete with no-wage workers will degrade the entire lower end of the labor market. America can't stand any more downward pressure on workers' living standards--particularly on those in the lowest-wage jobs.

■ **Last year, Congress passed an increase in the minimum wage--with overwhelming public support--for a reason.** Americans believe that everyone who works is entitled to a reasonable wage. Rewarding work is one of our most fundamental values. Welfare reform cannot work if we tell recipients that they must become self-supporting, job-holding citizens--but that they will receive sub-minimum wages.

■ **Excluding workfare participants would create incentives for employers to lay off hard-working employees.** The welfare reform legislation passed last year was never meant to artificially subsidize employers so they can replace existing workers with "cheaper" workers who earn substandard wages and are not covered by the protections of basic American labor law. But that's exactly what will happen if workfare participants are excluded from the FLSA.

Across the country, workfare workers and other workers are sitting beside each other doing exactly the same work. How can we justify disparate pay formulas that create a perverse incentive to fire the ones who are entitled to the federal minimum wage?

■ **States can afford to pay workfare participants the minimum wage.** Most states have surplus welfare funds--as a result of reduced caseloads--and today every state except Mississippi can afford to pay the minimum wage for workfare without any changes in grant levels or new state funding. According to the National Association of State Budget Officers, "state ending balances for fiscal 1996 and fiscal 1997 are at the highest levels since 1980."

The minimum wage applies only to people working in workfare programs, not those in job training and vocational education programs. And states have been given a great deal of flexibility when it comes to meeting the requirements of welfare reform. Workfare is one of at least a dozen options available to them [and many of these options do not fall under FLSA].

■ **Fair pay for workfare is the key to making welfare reform work.** If the point of welfare reform is to reduce dependency on the welfare system, participants must have the chance to earn enough to care for their families--and the promise that if they work hard and play by the rules, they can improve their situation. [Anything less creates disincentives for welfare recipients to move into jobs.]

At the same time, insisting that workfare participants retain their right to the minimum wage will act as an incentive for states to pursue comprehensive reforms that will move them closer to the ultimate goal: to place welfare recipients in unsubsidized private sector jobs.

■ **This proposal puts working women at risk.** Almost all workfare workers are women with children, and the majority of minimum wage and low wage workers are also women. Women at the bottom of the pay scale are the most vulnerable to exploitation and abuse and those in workfare jobs are desperate to hold on to the only source of support their families have. Declaring that certain women should earn less than the minimum wage and be fair game for discrimination and sexual harassment jeopardizes the wages, dignity and safety of all working women.

■ **All working Americans are entitled to the same basic rights.** The ruling by the Labor Department only confirmed the obvious. When workfare is work, it must be rewarded as work, and the Fair Labor Standards Act should apply. It's fundamentally wrong to say that one group of citizens does not have the same rights and is not protected by the same laws as another.

Enclosed for your review are additional materials and information on this issue of critical importance to all working Americans. We thank you for consideration. If you have any questions or require further information, please call: Lauren Asher, WLDF, 202-986-2600; Maurice Emsellem, NELP, 212-285-3025, x106; Wade Henderson, LCCR, 202-466-3311 or David Saltz, AFL-CIO, 202-637-5318.

Can States Afford to Pay the Minimum Wage to Welfare-to-Work Participants?

Some have argued that applying basic labor law protections to welfare-to-work recipients is too expensive. This argument is both false and misleading. First, the range of options available to the states and the current block grant levels combine to assure that every state can meet the laws' requirements. In fact, every state but Mississippi could afford to pay the minimum wage to all participants even if none of the education and training options, which because they are not work do not require the payment of wages, were used. Second, it is just plain wrong to argue that we can successfully encourage a transition from dependency to self-sufficiency if we do not afford program participants protections afforded to every other American worker.

STATES HAVE PROGRAM FLEXIBILITY AND BUDGET SURPLUSES

- States have 13 options for meeting work requirements, many of which are activities that would most likely NOT be covered by the FLSA coverage, such as job readiness training, or time in vocational-education, and fulfilling high school. Minimum wage standards will have no effect on the cost of these options and these programs will be more suited to the particular needs of many welfare recipients.
- Although federal requirements for hours-of-work increase over time, the range of options for meeting these work requirements also expand.
- States have significant flexibility about how to meet work requirements. They can limit the numbers of people in workfare without cutting off aid (e.g., by age of kids, opt-out of 2 month community service option, waiver from food stamp work requirement to relieve pressure of finding so many "slots").
- Some states are already very far along in meeting the initial work requirements (NY already relies heavily on vocational education; Illinois and Pennsylvania may already meet their first year work requirements without having to place more recipients).

WELFARE TO WORK CAN ONLY WORK WHEN WORK IS HONORED

- The most important goal of welfare-to-work policy -- placing former welfare recipients in unsubsidized, private sector jobs -- will be encouraged by increasing the standards required under other options. Employee protections are a positive incentive for states to pursue comprehensive reform.
- The whole point of welfare reform is reduced welfare dependency. The key to reduced dependency is living-wage work and skill development.
- Any Congressional action to reverse the Administration's position would run counter to every legislative effort to reform welfare by expanding work. Since the original Social Security Act, federal policy has acknowledged that pressure to enforce work must also include pressure to raise living standards through fair payment. Many federal programs (WPA, CWTP, CETA) required prevailing wage payments, not just minimum wage.
- If states cannot meet the competing demands of creating jobs, defending living standards, and protecting state budgets, the Department of Health and Human Services has the power to grant additional flexibility under "reasonable cause" exemptions.

BACKGROUND STATISTICS ON THE IMPACT OF MINIMUM WAGE REQUIREMENTS

- The new welfare law requires states to have 25 percent of their caseloads in work-related activities for 20 hours a week this year. Any estimates of the impact of minimum wage coverage must acknowledge that (1) not all work activities will be covered by the minimum wage, (2) not all welfare recipients have to be in work, and (3) not all recipients will be forced to work full time. These realities make detailed estimates difficult.

- The Center on Law and Social Policy has estimated that only one state (Mississippi) would be unable to conform with the welfare law's current work requirements without increasing benefit levels if food stamps are included in the calculation of earnings. This is already allowable under the Food Stamps Workfare program, a program which also includes minimum wage requirements.
- Minimum wage requirements could easily be met by employers involved in workfare programs. The median state grant of \$383 means that in more than half of the states employers would only have to pay 70 cents an hour or less to meet FLSA requirements.
- State grants under the Temporary Assistance for Needy Families program (TANF) are set at 1994 levels, but caseloads have fallen. States receive funding for 5.0 million families, but current caseloads are only 4.1 million. The difference between funding and caseloads will make it easier for states to comply.
- The Urban Institute reports that even in 1994, before the welfare law passed, 23 percent of all adults receiving welfare were engaged in work activities or training that may be allowable under TANF work requirements.

WHAT THIS MEANS FOR EMPLOYEES

- Without FLSA coverage, workers sitting right next to each other doing exactly the same tasks will see that one is getting at least the minimum wage and the other is not. Acknowledging the employee status of workfare participants is key to promoting workplace acceptance.
- If the intent of welfare reform is to get welfare recipients into the real world of work, then they should experience the real world of work; if we want them to be able to support their own families off of welfare, they should be working at jobs that pay at least the minimum wage.
- Without FLSA coverage, employers will have incentives to fill positions with much cheaper welfare recipients rather than "regular" workers, degrading the entire lower end of the labor market in the process. In Mississippi, for example, a workfare worker working the required 20 hours a week would earn the equivalent of only \$1.50 an hour for their grant.

WHAT THIS MEANS FOR EMPLOYERS

- Without FLSA coverage, employers could hire welfare recipients for free, even if their welfare grant divided by the hours worked were less than the minimum wage. With FLSA coverage, employers would have to at least chip in the extra on top of the grant subsidy to come up to the minimum wage (see estimate above).
- Employers will still enjoy heavily subsidized workers through workfare and tax breaks.
- When the public supported welfare reform, we don't believe they intended welfare reform to provide free labor for businesses.
- In some states, private businesses can get tax breaks on top of the subsidized labor so that they have heavy incentives to displace current workers or create short-term positions solely to take advantage of low-cost labor.

AFL-CIO Public Policy Department

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The Washington Post

AN INDEPENDENT NEWSPAPER

Wages of Welfare Reform

THE PRESIDENT was right to order that welfare recipients put to work under the terms of last year's welfare bill be paid the minimum wage. The objecting governors and other critics are likewise right when they say that his decision will throw the bill even further out of whack than it already was. What the president basically proved in doing the right thing on the wage was how great a mistake he made in caving in to election-year pressures, some of them of his own making, and signing the bill to begin with.

The problem with the welfare part of this legislation—as distinct from the gratuitous cuts that it also imposed in other programs for the poor—is the mismatch that exists between its commands and the resources it provides to carry them out. The basic command is that welfare recipients work, but that's not something that can be achieved by the snap of a finger or the waving of a wand or it would have happened long ago. A lot of welfare recipients aren't capable of holding down jobs without an enormous amount of support. Nor, in many cases, are there jobs enough in the private sector to accommodate them even if they could hold them down.

The cost to the states of putting to work as many recipients as the bill requires was already going to be greater over time than the fixed funding in the bill. The minimum wage decision will only add to the cost; hence the squawk from the governors. But it's not the decision that was wrong. Welfare recipients put to work are no less entitled to the protections of the wage and hour laws than other

workers. To pay them less would also be to undercut the wages of other workers with whom they will now compete for low-paying jobs. That was a major part of the argument organized labor used in pushing for the order. Wages in that part of the economy are already too low to support a family, and income inequality in the country generally is too great.

The law requires that increasing percentages of welfare recipients work each year. States that fail to meet the targets risk loss of some of their federal funds. The number of hours a recipient must work to qualify also increases. Twenty hours a week will be enough at first, but eventually that will rise to 30. For now, the way the president's order is written, most states will be able to put recipients to work themselves, or pay private employers to do so, for about the amount of a monthly welfare check. But over time that will cease to be true; a welfare check that will pay for 20 hours at the minimum wage won't cover 30.

The state will have to come up with the difference. Or it will have to start lopping people off the rolls for other reasons. The bill gives states power to do that, too, and that's what welfare advocacy groups fear may happen in states whose low benefits won't cover all the hours the bill requires. Back to the mismatch: The bill requires more than it pays for. As with the other flaws in this misbegotten legislation, sooner or later this one needs to be fixed, or a lot of vulnerable people including children badly in need of help are going to end up harmed instead.

France Reaps Its Reward

FOR SOME time now, a debate has raged about the efficacy of linking trade and politics in relations with China. Some say you can use one to achieve results in the other; others argue that business is business and let's keep human rights out of it. An event in Beijing on Thursday should settle the matter: You can use trade to influence political relationships.

Unfortunately, the example at hand involves China's using trade to get its way, not the other way around. A month ago, France helped make sure that the United Nations Human Rights Commission wouldn't even discuss China's dismal hu-

man rights, China notes France has made a wise decision," President Jiang Zemin said, according to a spokesman. Of course, there's no need for Americans to get too high and mighty about such French behavior. This country, too, has made its opportunistic deals.

Nevertheless we were reading about Mr. Chirac's salute to China—which "will be one of the top nations of the world," and which "must be one of our main partners"—at the same time we happened to be reading about Wei Jingsheng. Mr. Wei is a brave dissident, one of thousands in Chinese jails for peacefully expressing views unacceptable

Paid in full

There's a strange double standard applied to people on welfare. They are considered second-class citizens, even when it comes to work.

The effort to force people off welfare through a host of reforms has gained momentum, and recipients are being given time limits and other requirements aimed at getting them trained and working.

But some people want more. They think that welfare recipients who go to work shouldn't be paid the minimum wage.

That doesn't make sense, and the White House knows it. It agreed that most of the recipients being placed in work programs should be covered by the minimum wage law.

That didn't sit well with governors of both parties or the authors of the welfare reform law, who said the move would vastly increase the cost of running work programs and leave most states unable to enroll the required number of recipients. They'd rather pay them less than what is already a low wage.

Previous welfare laws explicitly outlined when minimum wage laws applied, but the new legislation does not. That left the door

open to interpretation.

Labor leaders insisted that welfare recipients are covered by the Fair Labor Standards Act, which requires the minimum wage in most cases, and after months of study, the White House agreed.

Public employee unions have opposed welfare programs in part because of concerns about worker displacement. The fear was that local governments would be less likely to hire union members to sweep streets if welfare participants could be forced to do the same work at much lower rates.

Paying the minimum wage to welfare participants should not be an issue. If the goal is to get them into the workforce and keep them there, it makes sense that they should not be paid second-class wages. Those who believe that the minimum wage somehow subverts welfare reform ought to reassess their position.

At a time when the safety net is threatened, it is particularly foolish to eliminate a class of nonworking poor only to create a class of serfs.

Newsday

EDITORIALS

"Where there is no vision, the people perish."

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CAROL R. RICHARDS, Deputy Editor of the Editorial Pages

Workfare Wages

Paying minimum wage makes sense; welfare clients already get that much in grants.

During the supercharged debate over welfare reform, the politicians said time and again that the point was to end dependency and instill in recipients respect for the value of work. Now the White House has agreed with the U.S. Labor Department that welfare beneficiaries in work programs are perform-

ing a service in exchange for income — so by definition, they are covered by the Fair Labor Standards Act and must be paid the minimum wage. That is as it should be.

The governors who lobbied so hard for welfare revision boasted that they could move welfare recipients into private-sector

jobs. To the extent they succeed, a debate over paying minimum wage is moot: Private employers must pay it. Besides, those in education and training programs would be exempted.

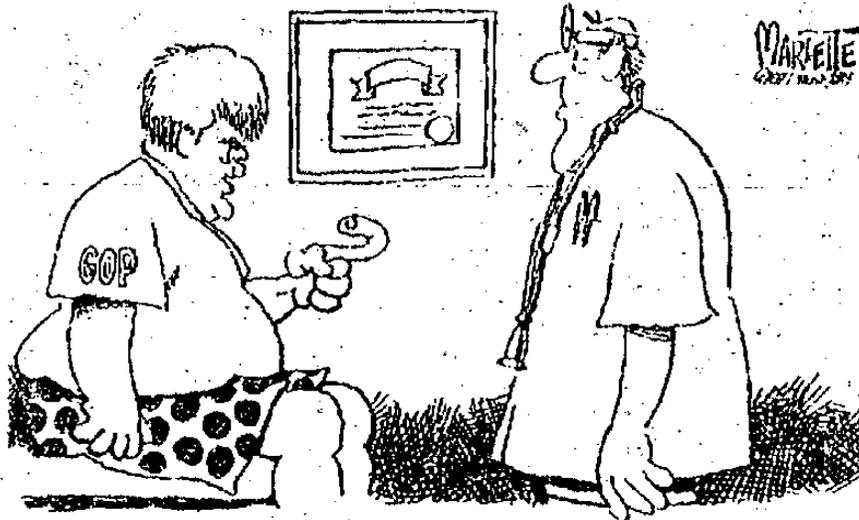
The controversy prizes over what to do about recipients who are working for local or state governments, performing tasks like cleaning parks or providing clerical help.

The governors and others who complain about costs have a weak case: The minimum wage is itself so low that in all the states but Mississippi, welfare benefits plus food stamps already equal or exceed what the minimum wage would pay a welfare worker for the required 20-hour week. Costs will rise over time as more hours of work are required, and after the minimum wage rises to \$5.15 in October. Even then, however, a 20-hour-a-week welfare worker would be paid \$9,034 a year — \$4,000 less than the poverty level for a family of three.

The issue does get more complicated when other ramifications are explored. The Treasury Department, for example, is researching whether there are implications for payment of Social Security and unemployment taxes. None of these intricacies was thought through in the political rush to enact welfare revision last year. Now they must be.

Paying the minimum wage is the right thing to do economically and philosophically. There already is enough downward pressure on wages among those on the lowest rungs without creating a new pool of subminimum workers to pull wage rates down further. And besides, if government wants welfare recipients to start thinking and acting like workers, it must treat them as workers, too.

MARLETTE'S VIEW



"IT HAPPENS EVERY TIME I POINT AT THE DEMOCRATS!"

Vallone's NYPD Audit Board Deserves Support

Who's going to watch the officers who watch the officers? In 1994, the Mollen commission

board all his own — composed solely of his appointees — and he beat Vallone in court

about Vallone's new proposal, they haven't yet cut loose with the heavy-duty bombast

Today's debate: WELFARE REFORM

Rush to workfare costs jobs of working poor

OUR VIEW Welfare laws need to be fine-tuned; they're hurting those most vulnerable to job loss.

Schools in Baltimore are bringing in welfare recipients to do janitorial work at \$1.50 an hour, less than one-third the minimum wage, rather than renew contracts with agencies that supplied custodians at \$6 an hour. The new workers continue to receive federally financed welfare benefits, at no cost to the schools.

It's a sweet deal for the money-short schools and useful work experience for people who soon must get off welfare. But what about those janitors who were displaced? How many are unemployed and candidates for the welfare rolls?

As Washington and the states push welfare recipients to work, they've created a way for employers, public and private, to replace regular employees with cheaper labor. The losers are folks who had stayed off welfare with low-income work. They're vulnerable to reduced hours, disappearing jobs and lesser wages and benefits.

A Jersey City, N.J., hospital is cutting full-time aides while hiring people on welfare as "volunteers" to do the same work.

In Nassau County, N.Y., a custodian laid off in 1992 and ultimately forced onto welfare returned to the same job last year — but as a welfare "trainee" at lower pay, no benefits and no vacation.

No one has yet quantified the problem. But the vulnerable population is large: 38 million working poor who at \$7.50 an hour or less often have no health insurance. And even with the economy thriving, most states are short of the low-wage, low-skill jobs that the working poor hold and welfare recipients need. Yet welfare reform requires that by the turn of the century, nearly 50% of all adults getting welfare assistance — 4 million people — must spend at least 30 hours a week in some sort of work.

The law bars employers from firing existing workers to hire welfare recipients whose compensation is subsidized by the state. But its intent can be defeated by re-

The job gap

State studies document the challenge of placing welfare recipients in jobs:

California: More than 1 million people have to be moved into a job market where 2 million people not on welfare are already looking for work and another half-million part-timers want more work. State's economy is growing by only 300,000 jobs a year.

New York: 1.2 million potential job seekers, including adults on welfare, for 242,000 job openings.

Maryland: Of 44,000 new jobs created in 1994, more than 38,000 were high technology or professional work requiring college degree or better. Yet work must be found for 79,000 welfare recipients.

Minnesota: Ratio of job seekers to job openings is 2.7-1; for jobs with a "livable wage," 6-1.

ducing hours, wages or benefits for existing workers or terminating outside contracts; workfare recipients can then fill vacancies.

Backers of the 1996 welfare reform minimize the problem. They fear a backlash could reverse momentum running their way. On the other side, unions trumpet scare stories, not research. But anecdotal evidence is accumulating. In addition to subtle and overt job displacement, employers from Salt Lake City to Richmond, Va., report the flow of welfare recipients into the workforce is helping keep pay rates down.

And when the inevitable economic slowdown arrives, with shrinkage in low-income jobs, the situation is likely to resemble a nasty game of musical chairs with far more players than wage-paying seats.

Welfare reform was long overdue. But the 1996 law, driven by simplistic budget-cutting politics, did little to spur the job growth needed to deal with underlying poverty and lack of opportunity. President Clinton wants to spend \$3 billion for job-training grants and tax breaks to employers who hire welfare recipients. First, some spadework is needed. Moving welfare recipients to work is a fine objective. But throwing the working poor out on the street is an unacceptable price.

Reform that risks throwing the working poor out of work and onto the welfare rolls is not worthy of the name.

The Philadelphia Inquirer

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A14

Wednesday, April 2, 1997

EDITORIALS

Money for hire

Use Pa.'s surplus to create public-service jobs.

Mayor Rendell commiserated Monday with other mayors over the burdens of the new welfare law. He urged a federal jobs program for the millions nationwide who will be forced off the rolls.

Mr. Rendell is right. It was irresponsible of Congress to pass, and President Clinton to sign, a welfare plan that did little to create jobs for folks who'll lose their benefits.

Some states aren't in good shape to bankroll a jobs program.

In New Jersey, for example, Gov. Whitman already is resorting to budget gimmickry to close a deficit and to fund the state pension system. But in Pennsylvania, which expects a surplus of more than \$300 million when the budget year ends June 30, a jobs initiative is doable.

A coalition of labor unions, community groups and religious organizations has come together to support a \$135 million jobs plan by State Sen. Vincent J. Hughes (D., Phila.).

In Republican-dominated Harrisburg, this Democratic plan is going nowhere fast. But it could spur debate and prepare the ground for a bipartisan jobs bill.

Sen. Hughes' bill would create 10,000 full-time jobs statewide, ranging from boarding up abandoned

homes to cleaning up parks. The workers would get \$6 an hour, or the "prevailing wage," if that's higher.

The pay would be set substantially above the minimum wage — \$4.75 an hour — partly to calm concerns that such a jobs program would push down the wages of other low-paid workers. That's no small issue — given the widening gap between low-income and high-earning Americans.

Still, there are compelling arguments for putting these public-service jobs at or close to the minimum wage. Such jobs are a first step out of dependency for people who can't find work in the private sector. Why should government, acting as the employer of last resort, pay more than private companies offer their least-skilled employees?

This level of pay would give welfare recipients an incentive to strive toward better jobs, in turn opening up slots for other low-skilled people. Also, since money for a jobs program isn't unlimited, keeping pay low allows more jobs to be created.

"Most workers in the inner city are ready, willing, able and anxious to hold a steady job," wrote sociologist William Julius Wilson last year. Yes. And government must do more to help prove him right.

What They're Saying . . .

"As employers, Lutheran Services in America organizations face the same issues that every non-profit and corporate employer in America does by having to work within a budget and provide services to its clientele. But, we also believe that workfare recipients perform important work that should be valued fairly and covered by the Fair Labor Standards Act. We in Lutheran Services America challenge other employers to join us to be involved and become responsible in the opportunities we give workers."

-- Rev. Faye R. Coddling
Lutheran Services in America,
employer at nursing homes and child care centers

"The National Association of Service and Conservation Corps' 120 member corps across the country historically have employed welfare recipients to perform work for the benefit of their communities. Traditionally, Youth Corps have paid at least the minimum wage to everyone who has worked for them, regardless of their status as recipients of public benefits. We applaud the Clinton Administration for reaffirming this policy for all employers."

-- Kathleen Selz, President
National Association of Service and Conservation Corps

"If our commitment to help those struggling to escape poverty is real, then we must be vigilant in ensuring that the protections so critical to the success of other workers are also available to welfare recipients. The Leadership Conference believes that we must stand firm in our commitment to uphold basic employment protections for all individuals, particularly those most vulnerable. Ensuring that low-income individuals are protected against sub-minimum wages, inhumane working conditions, exploitation, and discrimination is only one piece of a larger, more fundamental struggle to help low-income families chart an escape path from poverty to financial independence."

-- Wade Henderson, Executive Director
Leadership Conference on Civil Rights

"Research indicates that the TANF [Temporary Assistance for Needy Families or 'Workfare'] program must include worker protections if we expect women to move from welfare to self-sufficiency. Simply providing jobs for welfare mothers will not enable them and their families to get out of poverty."

-- Institute for Women's Policy Research

What They're Saying . . .

"I applaud the President in his decision to apply labor standards, most notably the minimum wage, to welfare recipients required to return to the job market. Welfare recipients put to work are entitled to the same benefits as any other worker. To pay them less than a minimum wage is unconscionable."

-- Sharon Sayles Belton
Mayor of Minneapolis

"I have introduced legislation which would require that welfare recipients in work assignments in California have the same rights as other workers on job sites, including, first and foremost the right to receive at least the minimum wage. I strongly believe this is the best policy for California and for the nation. The Clinton Administration is to be congratulated for concluding that the Fair Labor Standards Act protects welfare recipients."

-- Antonio Villaraigosa
Majority Leader
California State Assembly

"While Workfare may be helpful in introducing some welfare recipients to the demands of the workplace, without job rights participants could all too easily be exploited. Treating Workfare participants differently from other employees would send the wrong message. It tells them and their potential employers they should not be viewed as members of the workforce. In contrast, treating Workfare participants as employees, with the rights and protections due employees, will help integrate them into the workforce and motivate them to develop and advance on the job."

-- Illinois State Representatives
Carol Ronen, Constance Howard,
Larry McKeon, Louis Lang,
Michael Smith, Kevin McCarthy,
Rosemary Mulligan, Michael Giglio,
Angelo "Skip" Saviano, Janice Schakowsky,
Larry Woolard, Steve Davis,
Arthur Turner, Mike Bost,
Lou Jones, Shirley Jones,
Miguel Santiago and Charles Morrow

Polling Data:

Minimum Wage Coverage For Workfare Recipients

Peter D. Hart Research Associates conducted a national voter survey, June 6-9, that included questions on extending minimum wage and other workplace legal protections to welfare recipients in workfare programs. Key findings include:

- **Strong voter support for minimum wage coverage.** The survey results reveal that voters strongly believe that minimum wage laws and other basic legal protections should apply to those in state workfare programs.
 - Fully 69 percent agree that workfare participants should be covered, while just 25 percent believe that states should not have to pay participants the minimum wage.
 - The breadth of support for minimum wage coverage is also striking, including two-thirds of those with incomes over \$50,000 (67%), professionals (67%), and white voters (67%). Even college educated men (71%) and Republican voters (62%) favor minimum wage coverage by large margins.
- **Voters are concerned about wage impacts.** By a decisive two-to-one margin (59%-31%), voters agree that workfare participants should be covered by minimum wage and other basic workplace protections to prevent the corrosive effect that sub-minimum workfare protections could have on the jobs and wages of low-wage workers *outside* of workfare programs. These margins occur despite a powerful opposition case that focuses on the cost of coverage to taxpayers.

59 percent agree with the statement that many current minimum-wage employees would lose their jobs if workfare participants could be forced to work for less; and that exempting one group of workers from minimum-wage protections opens the door to undermining the minimum wage for others.

31 percent agree with the statement that taxpayers would have to support higher welfare budgets if states are forced to pay the minimum wage; and that welfare recipients who want better pay should get off welfare and find a job on their own.

**GROUPS SUPPORTING FAIR LABOR STANDARDS ACT
COVERAGE FOR WORKFARE PARTICIPANTS**

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Americans for Democratic Action
American Friends Service Committee
American Jewish Congress
Black Women's Agenda, Inc.
Bread for the World
Business and Professional Women/USA
Catholic Charities USA
Center for Community Change
Center for Law and Social Policy
Center for Women's Policy Studies
Center on Budget and Policy Priorities
Chicago Commons Employment and Training Center
Chicago Jobs Council
Child Care Action Campaign
Church Women United
Clearinghouse on Women's Issues
Coalition on Human Needs
Commission for Women's Equity
Day Care Action Council of Illinois
Disability Rights Education and Defense Fund, Inc.
Feminist Majority
Hadassah
Illinois Hunger Coalition
INET for Women
Korean Immigrant Workers Advocates
Labor Project for Working Families
Leadership Conference on Civil Rights
League of Women Voters of Illinois
Lutheran Services in America
Mexican American Legal Defense and Education Fund, Inc.
Mid America Institute on Poverty
Migrant Legal Action Program
NAACP Legal Defense and Education Fund, Inc.
NAACP, Washington Bureau
National Association of Social Workers
9 to 5, National Association of Working Women
National Center for the Early Childhood Workforce
National Committee on Pay Equity
National Council of Jewish Women
National Council of Negro Women, Inc.

National Employment Law Project
National Hispana Leadership Institute
National Law Center for Homelessness
National Organization for Women
National Women's Conference
National Women's Law Center
NETWORK: A National Catholic Social Justice Lobby
New Girl Times
NOW Legal Defense and Education Fund
Poverty Law Project
Public Education and Policy Project
The Welfare Law Center
United Church of Christ, Office for Church in Society
Wider Opportunities for Women
Women Employed Institute
Women Work! The National Network for Women's Employment
Women's Legal Defense Fund



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(*Deceased)

May 15, 1997

President William J. Clinton
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Re: Welfare Reform and Civil Rights Enforcement

Dear President Clinton:

On behalf of the 180 national organizations that comprise the Leadership Conference on Civil Rights, the nation's oldest and most broadly-based civil rights coalition, we write to request your assistance in making the civil rights and economic security of low-income individuals and families a higher national priority, as states implement the recently-enacted **Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)**.

The Leadership Conference believes that real welfare reform must remain true to fundamental principles of equality, fairness, and social justice while increasing the chances for all families in need to become economically independent. The changes required by the PRWORA create new challenges -- and new risks -- to upholding these fundamental principles.

New Threats of Discrimination Targeted at Low-Income Families

The PRWORA creates perverse new incentives for states to deny assistance to needy families and act in discriminatory ways, thus, erecting new hazards for individuals who already face discrimination: persons of color, women, people with disabilities, and older people. For example:

"Equality In a Free, Plural, Democratic Society"

President Clinton

May 15, 1997

Page two

- **With the elimination of the individual entitlement to welfare benefits and services and the lack of clear rules, crucial decisions about who gets benefits, who gets services, and who gets penalized, may be made in arbitrary and discriminatory ways.** For example, as a result of the new legislation states now have wide latitude to use different rules in different geographic areas. As a result, communities with a high concentration of racial or ethnic minorities such as cities may receive lower benefits, fewer services, or be subject to harsher rules and penalties.
- **The harsh new restrictions aimed at legal immigrants will likely worsen discriminatory practices that many ethnic minorities already face.** Individuals who are eligible to participate in a particular welfare program could be shut out simply because they have an accent and are assumed not to be citizens. While the Department of Justice will be issuing guidance on verification of status procedures to providers that distribute federal public benefits, there will be no procedure to monitor the providers and likely no consequence to a provider that discriminates. Others may lose benefits because they are unfamiliar with new welfare program rules and cannot obtain materials in their native language. Still others are already being shunned by employers, or unfairly selected out to produce identification documents, simply because they "look foreign."
- **Early reports suggest that pressure on states to place recipients in jobs and meet strict new work participation requirements may push women, especially women of color, into low wage, stereotyped "women" and "minority" jobs with little training and few prospects for future employment.** States attempting to raise their work participation rates also may "cream" job seekers, i.e., focus more attention on individuals perceived as "more desirable" or the closest to being job-ready, and offer less desirable assignments to minorities, people with disabilities, older workers, pregnant women, immigrants and others who too often lose out on job opportunities, because of discriminatory stereotypes about their abilities.
- **Early reports also suggest that rigid new work participation requirements may discourage states and employers from assessing and accommodating the needs of individuals with disabilities.** A recent study by the Urban Institute found that 16-20 percent of women receiving AFDC (under the old welfare law) reported one or more disabilities that limited their ability to work. But some individuals with disabilities may be unable to comply with the new law's work requirements because their disability has never been identified, assessed, or reasonably accommodated. Moreover, specific provisions in the new law may have discriminatory effects on individuals with disabilities: the twelve month time limit on participation in vocational education, for example, may unfairly impact individuals with learning disabilities who need to enroll in specialized programs of a longer duration.

- **Increased sexual harassment is a foreseeable problem.** Women are the majority of adult welfare recipients. Given the documented instances of sexual harassment in our society, it is reasonable to assume that some of these women may become victims of harassment in the workplace because they are particularly vulnerable -- i.e. they risk losing vital benefits if they cannot keep their jobs.
- **Children may be penalized unfairly by welfare reform simply because of the circumstances of their birth; i.e. because their parents were unmarried, or young, or immigrants.** As a result, the new law will take benefits away from children who otherwise would receive them under the old AFDC program and who now desperately need them.

Recommendations

Welfare reform should not mean a loss of civil rights protection. Moreover, devolution of power to the states cannot and must not mean the abandonment of the federal government's responsibility to provide basic civil rights protections for low-income individuals and families. The new welfare law does not modify the many civil rights laws that protect against discrimination, nor does it alter the federal government's continuing obligation to enforce such laws. In this changed environment, the role of your Administration will be critical. We urge the Administration to:

1. **Vigorously enforce the laws prohibiting discrimination in federally funded programs, including those specifically listed in the legislation and Title IX of the Education Amendments of 1972, as part of welfare implementation.** As the recent U.S. Commission on Civil Rights report, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs* (June 1996) concluded, there has been a history of under enforcement of Title VI, especially in the context of block grant programs. Given the heightened potential for discriminatory practices under the PRWORA, the federal government must develop new strategies to detect and challenge discrimination, and better coordinate its enforcement efforts.
2. **As states submit, amend and expand their state plans, the federal government should require specific information about the "objective criteria" states will use to determine eligibility; how they will assure "fair and equitable treatment;" and how they will provide welfare recipients an opportunity to be heard as required by the PRWORA.** The Department of Health and Human Services does not have the authority to disapprove state plans, but it does have the responsibility to determine whether the plans are complete. Requiring states, as they submit their plans in future years, to articulate the standards and procedures they intend to follow is critical to prevent arbitrary and discriminatory decision-

President Clinton

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making at both the level of individual benefit determinations as well as the level of state-wide implementation. For example, if the state plan proposed differences in treatment for predominantly minority urban areas and predominantly white suburban areas, potential violations of Title VI could be identified and deterred.

3. **Vigorously enforce other civil rights and labor laws on behalf of welfare recipients, including Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act, the Occupational Safety and Health Act, the Fair Labor Standards Act, the Americans With Disabilities Act and Section 504 of the Rehabilitation Act, the Immigration Reform and Control Act, and the Family and Medical Leave Act.** Welfare recipients, whose families' access to subsistence benefits hinges on their ability to get and keep jobs, will be easy and vulnerable targets for discrimination. They are entitled to the same protections against discrimination, unsafe working conditions, and exploitive pay as other workers. And enforcing the law on their behalf protects all workers, by reducing the incentive to replace current employees with cheaper and more exploitable labor.
4. **Ensure that states comply with the requirements of the PRWORA to maintain assistance to single recipients who cannot obtain child care for a child under six years old, and maintain Medicaid coverage for eligible families.** The Administration should ensure that states comply with the law's provision protecting families with children under six from being penalized if lack of child care prevents them from accepting a work assignment by requiring states to conduct case reviews of a sample drawn from families that have been sanctioned.
5. **Work to repeal the provisions of the PRWORA that severely limit the eligibility of legal immigrants and refugees for a wide variety of federal benefit programs, and to address the inadequacies of the naturalization process.** The provisions of the PRWORA related to legal immigrants are blatantly discriminatory in that they treat foreign-born individuals differently than those who are born in the United States, denying them benefits until they have become naturalized citizens regardless of whether they work and pay taxes to the United States government. These provisions have a particularly discriminatory impact on elderly and disabled immigrants, many of whom are unable to fulfill the English language and civics requirements for naturalization or to take a meaningful oath of allegiance and therefore will remain permanently ineligible for Supplemental Security Income and Food Stamps.

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We also urge efforts to allow legal immigrants to continue to receive assistance while they are in the naturalization process, to waive the English language and civics requirements for an expanded class of elderly immigrants, and to allow individuals who are too disabled to naturalize to continue to receive federal benefits.

In addition to challenging discriminatory practices at the state level, we urge the Administration to work diligently at the federal level to remedy the harshest effects of the new law. The Administration has begun some of this work, but there is more to do. For example, we support proposals in the Administration's budget to mitigate the new law's hardships for the most vulnerable legal immigrants, people with disabilities and children. But the far-reaching impact of the new law -- almost all noncitizens are no longer eligible for SSI and Food Stamp benefits, and new immigrants will be barred from federal means-tested benefit programs for five years -- will require the Administration to take more steps to restore the status of legal immigrants as full and equal members of American society.

We strongly urge the Administration to take advantage of any flexibility permitted under the new law to minimize its negative consequences. For example, the PRWORA targeted the SSI Childhood Disability program for cuts, and required the Social Security Administration to develop a new definition of childhood disability. Unfortunately, the Social Security Administration failed to take advantage of the statute's flexibility, and has issued unnecessarily harsh interim final regulations. If these regulations are not changed, they are likely to disqualify at least 135,000 children with significant impairments, and to fall especially heavily on children with mental retardation or mental health problems.

Restricting children's eligibility for the SSI Childhood Disability Program will also restrict their eligibility for Medicaid. Most children who qualify for SSI are automatically eligible for Medicaid; thus, children who fail to meet the new restrictive definitions for SSI eligibility lose this automatic coverage. Some will qualify for Medicaid on other grounds; others, however, will not. We commend the Administration for proposing to continue Medicaid coverage for children currently receiving SSI, who are disqualified under the new rules defining childhood disability. However, this proposal only helps current recipients. It will not ensure Medicaid coverage for children who would have qualified for SSI, and thus Medicaid, under the former rules, but cannot meet the stringent new standards.

New Barriers to Economic Security Facing Low-Income Families

Ensuring that low-income individuals are protected from discrimination is only one piece of a larger, more fundamental struggle to help low-income families chart an escape path from poverty to financial independence. The new law ignores many of the specific barriers -- such as the lack of

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livable wage jobs, transportation, health care, child care, domestic violence counseling, and limited access to quality education and job training programs -- that make it difficult for low-income individuals to move permanently from welfare to work. Many welfare recipients, for example, are being forced to drop out of school and take "dead-end" jobs even though completing their education may be the only way they can get jobs to support themselves and their families.

The welfare to work initiatives included in the budget may mean more funding to help individuals get jobs, but it is unclear what these initiatives will be and how much funding will be available. Even the original budget proposal -- \$3.6 billion allocated over five years -- is not enough to meet the needs of all of those who must find work. **We urge you to pursue meaningful and much-needed reforms, and seek additional funds to: (1) create new jobs that pay decent wages; (2) expand access to education and job training so that welfare recipients can be better prepared for the workplace; and (3) provide necessary support services, such as child care, health care, domestic violence counseling, and transportation costs, that welfare recipients need to go to work.** Without such reforms, welfare recipients will be pitted against, or simply displace, other low-wage workers as they vie for an inadequate supply of jobs and compete for ever-dwindling support services.

This Administration has distinguished itself by standing firm in its commitment to uphold basic civil rights protections for all individuals. We urge you to make the promise of our civil rights laws a reality for all individuals, particularly those most vulnerable, by making civil rights enforcement a top priority as the new welfare law is implemented. And, we urge you to go even further, by working to restore equal treatment for immigrants to this country, a safety net for children and adults with disabilities, and assistance to poor families struggling to achieve financial independence.

Sincerely,

Dr. Dorothy I. Height
Chairperson
Leadership Conference on Civil Rights

Wade Henderson
Executive Director
Leadership Conference on Civil Rights

Horace Deets
Executive Director
American Association of Retired Persons

Jackie DeFazio
President
American Association of University
Women

President Clinton
May 15, 1997
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Marian Wright Edelman
Founder & President
Children's Defense Fund

Antonia Hernandez
Executive Director
Mexican American Legal Defense &
Educational Fund

Paul Marchand
Director
The Arc of the United States

Kweisi Mfume
President & CEO
National Association for the
Advancement of Colored People

Hugh Price
President
National Urban League

Marcia Greenberger
Co-President
National Women's Law Center

Judith L. Lichtman
President
Women's Legal Defense Fund

Gerald McEntee
International President
American Federation of State,
County & Municipal Employees

Karen Narasaki
Executive Director
National Asian Pacific American
Legal Consortium

Rabbi David Saperstein
Executive Director
Religious Action Center
Union of American Hebrew
Congregations

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Andrew L. Stern

President

Service Employees International Union

Patrisha Wright

Executive Director

Disability Rights Education and Defense
Fund

Stephen P. Yokich

President

International Union, United Automobile
Workers of America

Raul Yzaguirre

President

National Council of La Raza

WOMEN EMPLOYED INSTITUTE

22 WEST MONROE STREET, SUITE 1400 • CHICAGO, ILLINOIS 60603
VOICE 312.782.3902 • FAX 312.782.5249

April 25, 1997

President William J. Clinton
The White House
1600 Pennsylvania Ave.
Washington, DC 20500

Dear President Clinton:

On behalf of hundreds of thousands of women in poverty who will be required to meet the work requirements of Temporary Assistance for Needy Families (TANF) under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, we urge you to support employment protections for participants of "Workfare" and other work-related programs.

Most Workfare programs, which states can create to meet their TANF work requirements, require TANF recipients to work in exchange for their benefits. Unfortunately, TANF does not mention the full range of employment and anti-discrimination laws that can protect Workfare participants from unlawful conduct. Current workers who do not receive TANF are already protected by such employment laws as the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act, the Family and Medical Leave Act and the Occupational Safety and Health Act. Denying Workfare participants similar protections sends the intolerable message that employers need not worry about treating Workfare participants fairly or with dignity and would allow Workfare employers to benefit from the labor of Workfare participants who are trying to support their families.

In a typical Workfare arrangement, employers will get TANF recipients to work for 20 hours per week and perform any work that the employer assigns. The employer will direct the participant's work, supervise the participant, and monitor the participant's progress, but will not be required to pay the participant's wages, provide skill training or commit to hiring the participant permanently. In most cases, the employer's extensive authority to direct and control the participant's work will satisfy the legal tests, such as the "economic realities" test that courts have used to determine whether a worker is covered by a particular employment law.

If employment protections are denied to Workfare participants, then this "make work" program, which is not creating jobs, is punishing recipients. In the absence of basic employment protections, Workfare participants are treated as prisoners who may have to endure discrimination or working in unsafe and hazardous environments or risk being sanctioned and losing their TANF benefits if they do not work under these conditions.

April 25, 1997
President William J. Clinton
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In light of TANF's strict work participation requirements and our economy's lack of a sufficient number of entry-level jobs, we must create programs and policies that help women find livable wage jobs that can support women and their families. Unfortunately, many Workfare programs will not advance these goals. Workfare forces participants to work in any job without regard to whether they need additional education, pre-employment or vocational skills training, or whether that job will lead to permanent, unsubsidized employment before their time limited cash assistance expires. But, if states decide to implement Workfare programs, basic employment protections must be extended to program participants.

As you stated in your proclamation for Women's History Month, women are almost an equal share of the labor force, yet gender barriers still exist that must be broken down. Do not allow Workfare to increase the barriers that women on welfare face as they work to become self-sufficient. We count on you to insure that Workfare workers are covered by the same employment protections that our country ensures for the rest of our workforce.

Sincerely,

American Friends Service Committee
American Jewish Congress Commission for Women's Equity
Black Women's Agenda, Inc.
Center for Women Policy Studies
Chicago Commons Employment and Training Center
Chicago Jobs Council
Child Care Action Campaign
Clearinghouse on Women's Issues
Church Women United
Day Care Action Council of Illinois
Hadassah
Illinois Hunger Coalition
INET for Women
League of Women Voters of Chicago
League of Women Voters of Illinois
Mid America Institute on Poverty
National Association of Social Workers
National Center for the Early Childhood Workforce
National Council of Negro Women, Inc.
National Organization for Women
National Women's Conference

KIDS PEPP

PUBLIC
EDUCATION
AND POLICY
PROJECT

April 24, 1997

President William J. Clinton
White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear President Clinton:

We would like to take this opportunity to highlight our concerns regarding employment protections for low-income heads of household who will likely be required to participate in "workfare" programs in order to receive cash benefits under the Temporary Assistance for Needy Families (TANF) block grant. We are asking that you support extending employment protections to welfare recipients participating in workfare.

The Kids Public Education and Policy Project was established in 1987 as a joint effort of the Ounce of Prevention Fund and Family Focus, Inc. to advocate for state and federal policies benefiting children and families.

According to provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, states have the ability to use workfare programs in order to meet the work participation requirements outlined in the legislation. Our concern is that only employers, and not workfare participants, will benefit unless the employment supports under the Fair Labor Standards Act (FLSA), Title VII of the Civil Rights Act of 1964 and the Occupational Safety and Health Administration (OSHA) are extended to this vulnerable population. Put directly, employers should not benefit at the expense of low-income parents who are trying to support their families.

The provisions of the new welfare legislation permit employers to use workfare participants for up to 20 hours per week without any compensation, including wages, skill training or promises of eventually hiring workfare employees. The employer's role under the workfare arrangement clearly meets the "economic realities" test which has been used by the courts to define whether or not a worker is an employee for FLSA coverage. This test factors in the employer's employment authority and control over the workfare participant and maintenance of participant employment records.

Under the old guidelines for the JOBS program, workers were covered under Title VII, OSHA and FLSA's minimum wage protection, mandating that the hours a recipient worked could not exceed her grant divided by the minimum wage. If these same protections are not extended to workfare participants, then this "make work" program—which does nothing to create jobs—will punish welfare recipients in two ways. First, it will force participants to work instead of allowing

122 S. MICHIGAN AVE.

SUITE 2050

CHICAGO, IL 60603

312-922-3863

FAX: 312-922-3337

A JOINT PROJECT
OF FAMILY FOCUS
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PREVENTION FUND

PAUL METZGER
CHAIRMAN
THE OUNCE OF
PREVENTION FUND

IRVING B. HARRIS
CHAIRMAN EMERITUS
THE OUNCE OF
PREVENTION FUND

BERNICE WEISSBOUD
PRESIDENT
FAMILY FOCUS, INC.

For more information:
Maurice Emsellem
National Employment Law Project
(212) 285-3025, ext. 106

WORKFARE PRESS CONTACTS

May 1, 1997

WORKER ACCOUNTS

- General Issues

Kathy Wilkinson (attached press clipping)
Wheeling, West Virginia
(304) 242-7773

Kathy Wilkinson is a single mother with two daughters, ages nine and eleven, from Wheeling, West Virginia. She works two part-time minimum wage jobs at West Virginia Northern Community College -- as a lab assistant and a math tutor. She has an Associate's degree and is currently working toward a Bachelor's Degree in Education. Ms. Wilkinson was actively involved in last year's successful campaign to raise the federal minimum wage. In recognition of her work, she was honored at the minimum wage bill signing ceremony and introduced the President. Ms. Wilkinson is now campaigning for the rights of workfare workers for protection under basic employment laws.

Brenda Stewart (attached affidavit)
Brooklyn, New York
(718) 789-6565

Brenda Stewart, who has two children has been receiving Aid to Families with Dependent Children and Food Stamps since was laid off in 1992 from her job of two years with a community-based organization. Since 1994, Ms. Stewart has been assigned to the New York City workfare program doing extensive clerical work (filing, answering phones, and processing mail) for the Department of Social Services, which are duties equivalent to City employee title "Office Aide III". In return for \$561 a month in benefits, she has worked from 20 to as much as 35 hours a week. She was recommended for a full-time position by her supervisors, which she did not receive, and was instead assigned to train the newly-hired worker.

- Health & Safety

Ralph Tricoche (testimony attached)
Queens, New York
contact: Karen Yau, National Employment Law Project
(212) 285-3025, ext. 109

Ralph Tricoche is a recipient of Home Relief in New York City. Since August 1996, he has been assigned to the Department of Parks and Recreation workfare program for 46 hours every two weeks in return for monthly Home Relief and Food Stamps totaling \$296 a month. In the Parks Department, workfare workers now outnumber regular paid employees by 3 to 1. Among other responsibilities, Mr. Tricoche has raked leaves, removed garbage and swept the grounds. In fulfilling these duties, he has handled contaminated needles, soiled diapers, cloths and underwear, vomit, faces and Kotex. He has trimmed trees and rode on the back of a garbage truck to pick up garbage. He has used a chain-cutter to cut chains in order to replace old garbage cans. He has performed these responsibilities without any training on his health and safety rights.

Mr. Luis Pagan (attached workers' compensation complaint)
Bronx, New York
contact: Karen Yau, National Employment Law Project
(212) 285-3025, ext. 109

Mr. Pagan is a recipient of Home Relief in New York City. In 1995, he was assigned to a workfare placement in the Department of Parks and Recreation. He was seriously injured on April 16, 1996, working in a parks garage. Over his objection, Mr. Pagan was told to go with a truck driver to deliver garbage to a recycling plant. He was told to unjam the garbage container which was stuck with a tree. Mr. Pagan recalled that when he turned the handle of the container, the handle flew against his mouth "like a bullet". His teeth were knocked out of his mouth and he was rendered almost unconscious and taken to the emergency room. Since assigned to workfare, Mr. Pagan has never received any right-to-know health and safety training or any training in the operation of mechanical equipment. Despite his injury, he has been reassigned to workfare in the parks, and he continues to work without required health and safety training.

- **Discrimination**

For examples of disability discrimination in the operation of New York City's workfare program, contact: Cathleen Clements, Brooklyn Legal Services (Corp. B), (718) 237-5500.

- **Wage & Hour**

For information on an Ohio court case (Marilyn M.) involving a workfare participant who worked 740 hours extra without "compensation" due to an error in the calculation of her hours, contact: Gary Smith, Southeastern Ohio Legal Services (330) 364-7769.

EMPLOYER ACCOUNTS

- **Non-Profit Employers**

Fay Coddling
Lutheran Services in America, Washington, D.C.
(202) 626-7935

Lutheran Services in American (formerly the Association of Lutheran Social Ministry Organizations) is a national organization with local affiliates that operate social service programs for the poor. Lutheran Services in America is a signatory to the Fair Work Campaign, which is a code of conduct for employers of workfare participants guaranteeing basic worker protections, including the minimum wage, and promoting maximum access to job training and job placement.

- **Private-Sector Workfare**

Jerry Helmick, United Food & Commercial Workers, Kansas City, Missouri,
(816) 842-4086
Tim Barchak, Service Employees International Union, Local 91, Kansas City, Missouri,
(816) 931-9100

The Tyson Chicken plant in Sedalia, Missouri, a rural area of Missouri, has developed a program with the local Department of Social Services, which is also being promoted in state legislation, to refer welfare recipients to the plant for minimum wage jobs processing chicken parts. If the recipients do not accept the placements, in what are often hazardous jobs, they are automatically sanctioned from their benefits.

Geri Reilly, New York Assembly Labor Committee, Albany, New York, (518) 455-4311
(see attached correspondence)

In August 1996, the calendar-making company, "At-A-Glance" began employing workfare workers referred by a local community-based organization for work regularly performed by the union workforce. As the regular workforce was laid-off in December 1996, the workfare workers stayed on the job until the program was eventually terminated.

NATIONAL ORGANIZATIONS

- **Civil Rights Groups**

Wade Henderson
Leadership Conference on Civil Rights
Washington, D.C.
(202) 466-3311

Catherine Powell
NAACP Legal Defense & Education Fund
New York, New York
(212) 219-1900

- **Women's Groups**

Ellen Bravo
9 to 5, National Association of Working Women
Milwaukee, Wisconsin
(414) 274-0928

Jocelyn Frye
Women's Legal Defense Fund
Washington, D.C.
(202) 986-2600

Martha Davis
NOW Legal Defense & Education Fund
New York, New York
(212) 925-6635

Melissa Josephs
Women Employed Institute
Chicago, Illinois
(312) 782-3902

- **Fair Work Campaign**

Maurice Emsellem
Fair Work Campaign
c/o National Employment Law Project
New York, New York
(212) 285-3025, ext. 106

- **Labor Unions**

Marc Baldwin
AFL-CIO, Policy Dept.
Washington, D.C.
(202) 637-5202

Marie Monrad
AFSCME, Policy Dept.
Washington, D.C.
(202) 429-1155

Carol Golubock
SEIU, Legal Dept.
Washington, D.C.
(202) 898-3454

- **Low-Wage & Immigrant Worker Organizations**

Roy Hong
Korean Immigrant Workers Advocates
Los Angeles, California
(213) 738-9050

Maurice Emsellem
National Employment Law Project
New York, New York
(212) 285-3025, ext. 106

- Welfare Advocacy Groups

Henry Freedman
The Welfare Law Center
New York, New York
(212) 633-6967

Steve Savner
Center for Law & Social Policy
Washington, D.C.
(202) 328-5118

Cindy Mann\Steve Berg
Center for Budget & Policy Priorities
Washington, D.C.
(202) 408-1080

- Workfare Organizing Groups

John Kest
ACORN
Brooklyn, New York
(718) 693-6700

Benjamin Dolchin
WEP Workers Together!
c/o Fifth Avenue Committee
(718) 857-2990, ext. 18



Before President Clinton signed legislation raising the minimum wage during a ceremony at the White House yesterday, he spoke with Kathy Wilkerson, a minimum-wage worker from Wheeling, W.Va. Her daughters, Lisa and Deborah, sat at right.

Clinton Signs a Bill Raising Minimum Wage by 90 Cents

By RICHARD W. STEVENSON
 WASHINGTON, Aug. 20 — Making a political battle Democrats had played to their advantage for months, President Clinton signed legislation today raising the minimum wage by 90 cents an hour over the next year, saying the measure would give 10 million workers "a chance to raise stronger families and build better futures."

The increase will raise the minimum wage to \$5.15 an hour, from \$4.25, in two steps, the first being an increase of 50 cents an hour in paychecks effective Oct. 1, a month before Election Day.

Sounding a theme that will be central to his re-election campaign, Mr. Clinton said the increase was part of his Administration's record of improving conditions for working Americans.

"These 10 million Americans will become part of America's economic success story," Mr. Clinton declared at a ceremony on the South Lawn attended by labor leaders, Vice Pres-

ident Gore and a group of children of minimum-wage workers.

For a full-time worker earning the current minimum, the new law, when fully phased in with a 40-cent-an-hour increase on Sept. 1, 1997, will mean an annual raise of \$1,200 before taxes, to \$10,300.

Mr. Clinton used the occasion to credit his Administration with the creation of 10 million new jobs, a steep reduction in the Federal budget deficit and signs that a long period of wage stagnation is ending. The signing is the first of a series of events this week that he hopes will both burnish his Presidential image and emphasize his campaign message that he is the best protector of the economic interests of average Americans.

Mr. Clinton was also clearly seeking to give himself some political momentum in the days leading up to the Democratic National Convention in Chicago next week. He is scheduled to sign legislation on Wednesday to improve access to health insur-

Sounding a theme for Election Day and seeking political momentum.

ance, and he will sign the bill overhauling the welfare system later in the week, probably on Thursday.

Although the minimum-wage increase was largely the work of Democrats in Congress, the legislation also contained many provisions demanded by Republicans to help small businesses. Several Republican legislators were present at the ceremony. Mr. Clinton did not once mention his Republican challenger, Bob Dole, who as Senate majority leader opposed raising the minimum wage.

But he alluded to his campaign's strident criticisms of Mr. Dole's plan to slash taxes on wealthy irresponsible and a threat to Medicare and other politically sensitive programs.

"A minimum-wage increase, portable health care, pension security, welfare-to-work opportunities — that's a plan that's putting America on the right track," Mr. Clinton said.

"Now we have to press forward," he said, "giving tax cuts for education and child rearing and child care, buying a first home, finishing that job of balancing the budget without violating our obligations to our parents and our children and the disabled and health care, to education and the environment and to our future."

The Dole campaign issued a statement calling the minimum-wage bill a "helpful, but small, step toward addressing the economic anxiety of American workers."

"Remember, a tax cut is a raise,

and that is exactly what Bob Dole will give Americans," said Christina Martin, a spokeswoman for the Dole campaign. "Fair tax cuts, a balanced budget and spurred job growth will be the mainstays of a Dole Administration."

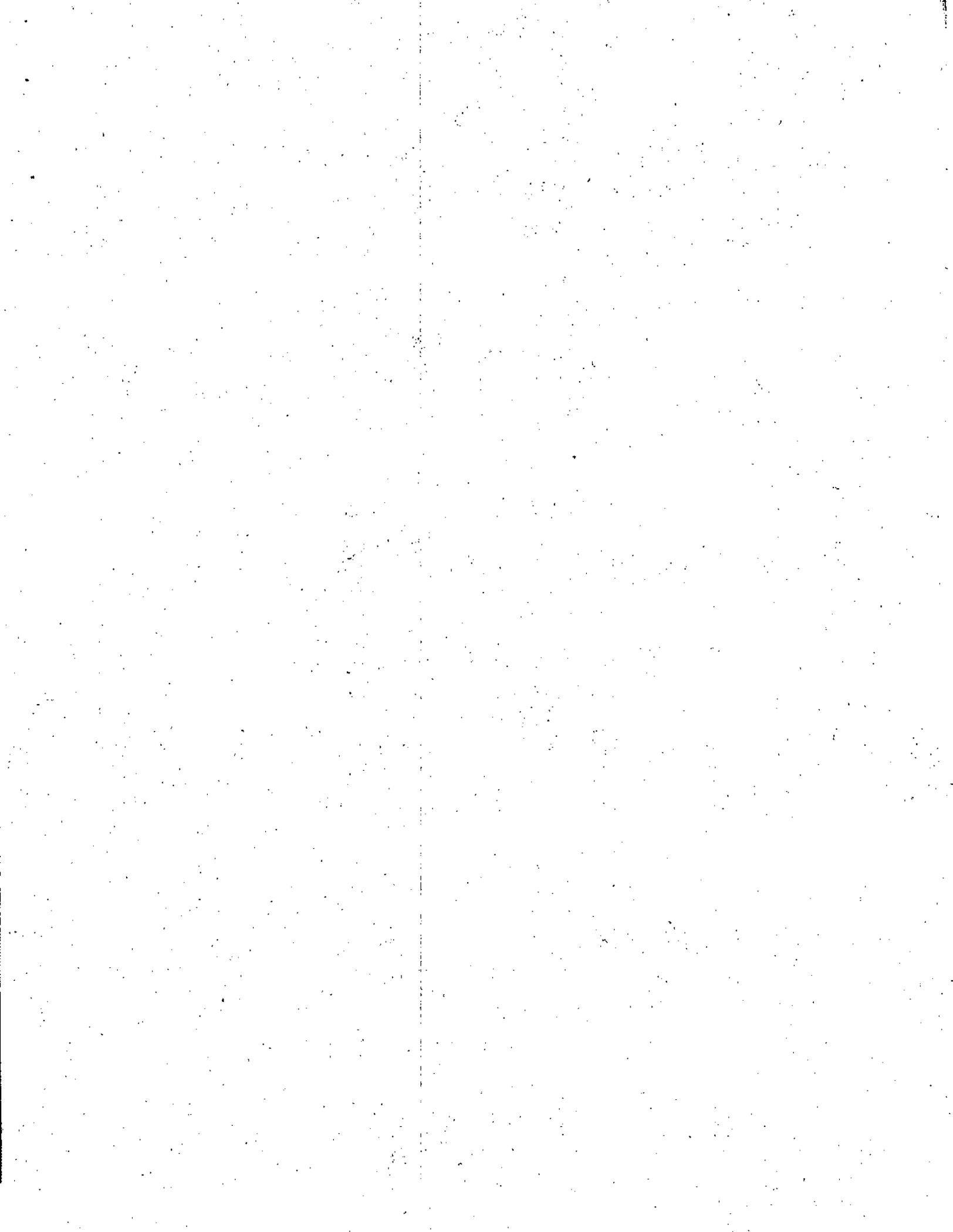
The minimum-wage legislation was among the most hotly debated bills of the current Congress, and one that for months seemed doomed by strong opposition from the Republican majority. Many Republicans argued that raising the minimum wage would destroy jobs by making it too expensive for employers, especially small-business owners, to keep on as many workers.

But the wage increase won overwhelming public support in opinion polls, and Republicans largely gave in after it was tied to a measure offsetting some of the costs to small-business owners, partly through tax breaks valued at \$21 billion over 10 years.

The breaks include more generous provisions for writing off the cost of investments. The measure also eliminates requirements for small-business pension programs. In addition, it contains an untimed provision establishing a \$2,000 tax credit for couples who adopt a child.

Kathy Wilkerson, a lab assistant and student from Wheeling, W.Va., who is a single parent of two daughters and earns the minimum wage, said at today's signing ceremony that the law would have a "phenomenal" effect on her life.

"It's going to be such a relief to be able to pay the gas and the electric all within one month because I've got that little bit extra in my paycheck," Ms. Wilkerson said. "And for my children, both of whom want to be in the school band, I can now afford to put some money away to get them the instruments."



7. No one ever advised me how my hours of WEP participation were calculated.
8. At the Livingston IS Center, Audrey Brow, the WEP supervisor, assigned me to an Undercare Group in the Income Support Center. The Undercare Assistant Office Manager assigned me to do clerical work. My responsibilities included compiling information for various reports, which involves tallying the number of cases processed each day by the caseworkers. I was also responsible for filing papers, answering the phone, and processing incoming and outgoing mail.
9. My work responsibilities as a WEP participant were equivalent to that of a City employee with the title "Office Aide III".
10. In 1995, the office manager changed my duties as a WEP participant. I was to compile information for various reports, but on behalf of many more caseworkers.
11. In August 1995 I heard from co-workers that there were job openings for clerks at IS Centers. I spoke to the office manager about my applying for one of these positions, and she told me my name had been submitted. I also read a memo to directors of IS Centers asking for lists of potential applicants. A copy of that memo is attached hereto as Exhibit B. I was not hired.
12. Instead, I trained the person who was hired for the clerk position in my office. She then took over the responsibility for compiling information for some of the reports I had been doing.
13. In January 1996 I received a letter from a representative of respondent HAMMONS, advising me my hours of WEP participation were increased to 70 hours every two weeks. A copy of that letter is attached hereto as Exhibit C. As a result, I then worked at the Livingston IS Center from 9 AM to 5 PM, 5 days a week, with one hour for lunch, for a total of 35 hours a week.

14. In the spring of 1996, I went to the ninth floor of 250 Church Street, the headquarters of the New York City Human Resources Administration ("HRA"), where I spoke with a Ms. Nelly Perez about the hiring procedure at HRA. She told me that the agency chose names submitted according to the priority that the ISC directors placed them in. She explained that the agency had not gotten to my name on the list and that I would have to wait. After that, I asked two staff members at the Livingston ISC to write letters of recommendation for me to speed along the hiring process. A copy of the two recommendation letters I received are attached hereto as Exhibit D. In June 1996, I received from the Director and Deputy Director of the Livingston ISC a Certificate of Appreciation for outstanding achievement. A copy of that certificate is attached hereto as Exhibit E.

15. Although my family's budget was reduced in May 1996 to reflect to removal of my husband from the budget, my work hours not reduced at that time. My WEP supervisor, Audrey Brown, told me I need to wait until my case was reclassified to reflect my husband's absence from the household to see if my hours would be reduced.

16. If the work I was performing at that time had been done by a paid City employee, it would have been compensated at a significantly higher rate. On information and belief, an Office Aide III would be paid no less than \$8.50 an hour.

17. As I was working in essentially the same position for approximately two years, it seemed unlikely that my WEP assignment would lead to full-time employment with the City.

18. If my hours of WEP participation had been reduced I could have taken refresher courses in computers and sought employment in that field. I took several computer courses in the past and did very well in them, including being the salutatorian of my class at Crown Business Institute.

19. Since I was required to be at work from 9 AM to 5 PM, 5 days a week, it was extremely difficult for me to pursue other employment opportunities.

20. On or about August 12, 1996, I was told that my name had been removed from the WEP roster at the Livingston ISC. No one at the center or at OES was able to explain to me why my name had been removed. A supervisor at OES told me that I would get a letter from the BEGIN program, but he did not tell me what the letter would say and he did not know when I would get the letter.

21. In November 1996, I received a letter calling me in to the BEGIN program on November 25. I went to the November 25 appointment at the Willoughby BEGIN Center where I was reassigned to WEP, this time at the Department of Health. I was given a referral form for that assignment which informed me that I was to work 40 hours every two weeks. A copy of that referral form is attached hereto as Exhibit F. I was never told how the 40 hours was calculated, and no one I spoke to about my assignment mentioned what wage rate was used to determine the number of hours I was to work.

22. If I do not participate in the Health Department WEP assignment, I could be subjected to a sanction reducing my benefits. My grant is currently not enough to pay all of my bills. On the other hand, if I go to work to avoid a sanction, I would be working at least part of the time for the City for free.

23. I object to being assigned without being told what the Labor Department's determination of the prevailing wage rate is for this new assignment. Also, I am currently contesting my assignment through the administrative process on grounds unrelated to this suit.

24. No prior application has been made for the relief requested herein.

WHEREFORE, it is respectfully requested that the Court grant the relief sought herein.

Brenda Stewart
BRENDA STEWART

Sworn to before me this

16th day of *December* 1996.

Michelle Florence Green
Notary Public

MICHELLE FLORENCE GREEN
Commissioner of Deeds
City of New York-3-3559
Certificate Filed in New York County
Commission Expires October 1, 1997

**Statement by
RALPH TRICOCHÉ
WEP Worker**

Submitted to

The Council of the City of New York

**Joint Hearing of the Committee on Parks, Recreation,
Cultural Affairs and International Intergroup Relations and
the Committee on General Welfare**

December 12, 1996

**“Oversight of the Parks Department Use of *
Work Experience Program (WEP) Workers”**

Good afternoon, my name is Ralph Trioche. I live in Astoria, Queens and I was a participant in the Work ^{H.R.} Experience Program from August through November of 1996. My first WEP assignment was in Astoria Park in Queens. I was there for two weeks before I was transferred to my own site, Athens Square Park. Athens Square is a playground park in Queens. I was responsible for taking care of this park with one other WEP worker.

When I arrived at Astoria Park, I received no instruction or training to do my job. I was handed a rake and told to rake leaves. When I moved to Athens Park, I was dropped off by the supervisor and told to keep the park clean. The supervisor said, when he came by he wanted to see the park clean. I wasn't told I would be picking up feces or how to deal with bloody needles.

As the person responsible for the park, I did things like paint, clean bathrooms and pick up trash. People who used the park's bathrooms sometimes left feces on the floor, which I had to clean up. When I did painting, I had to scrape old paint off and I had no way of knowing what was in the paint chips that were flying into my nose and mouth. At no time was I issued protective gear to do these things. I was not provided a mask or rubber gloves to do any of these jobs. I believe, I was entitled to a uniform of some kind including pants, shirt and jacket. When I went to work, I had to wear my own clothes which were ruined by the work I did. I received no extra money from welfare to buy clothes to do my WEP job.

In doing my job, I picked up garbage and anything that people left in the park. I picked up bloody needles, pampers, kotex, dirty clothing, broken glass and feces. I received no training as to how to pick these things up and no protective equipment. The only personal protective equipment I ever received was the one pair of gloves. I never

learned about any hazardous material, biological or chemical, virus or bacteria that I may have been exposed to by coming into contact with blood or feces.

In doing my WEP job, I ran the same risk as the Sanitation worker who recently died doing his daily routine when a jug of acid that was left out for curbside pick up, exploded in his face. If I had been hurt doing the same type of daily routine, picking up some unknown hazardous material that had been left in the park, my story never would have made it in the paper. And I wouldn't have even received a decent burial.

I had no chance of getting a real job with the Parks Department. I did the same job that city workers used to do, except I did it for slave wages. The WEP program is about exploitation. It's about indentured servitude with no chance for advancement or independence for obtaining a real job.

