COLORADO DEPARTMENT OF HUMAN SERVICES 1575 SHERMAN ST., DENVER, COLORADO 80203-1714 AGENCY LETTER	NUMBER: TCW-07-01-P CROSS REFERENCE NUMBER: FS
DIVISION OR OFFICE: Office of Self Sufficiency	DATE: February 13, 2007
PROGRAM AREA: TANF/Colorado Works – TCW	DIVISION DIRECTOR: Kevin Richards
TITLE: APPLICATION OF NEW STATE MINIMUM WAGE TO FAIR LABOR STANDARDS ACT TYPE: P - Procedure	OFFICE DIRECTOR: **Pauline Burton**

Purpose:

The purpose of this letter is to notify Colorado county departments of social/human services of the change in Colorado's minimum wage and the associated implications of that change in calculating Fair Labor Standards Act (FLSA) payments to Colorado Work participants.

Background:

The U. S. Department of Labor (USDOL) issued guidance that FLSA applies to Temporary Assistance for Needy Families (TANF) work activities (including work experience and community service, when defined as "work"), therefore requiring compensation. In the past, Colorado has used the Federal minimum wage in its FLSA payment calculations. Colorado has received new guidance from the Administration for Children and Families (ACF) stating that "Colorado is required to use the minimum wage that is appropriate to its area of jurisdiction", which in this case, is our new State minimum wage. The new minimum wage amount for Colorado was changed from $5.15 per hour to $6.85 per hour and is effective January 1, 2007.

Procedure or Information:

APPLICATION OF THE FAIR LABOR STANDARDS ACT (FLSA) TO TANF WORK ACTIVITIES

FAIR COMPENSATION OR TRAINING SITE PROVISIONS:

Beginning January 1, 2007, county departments of social/human services have two (2) options under USDOL guidance as it relates to compensation to those TANF/Colorado Works participants engaged in either Work Experience or Community Service work activities.

County Option 1) Counties may choose to compensate Colorado Works participants above the combination of their basic cash assistance grant and their food stamp grant amount, if any, divided by Colorado's new minimum wage. As of January 1, 2007, the food stamp inclusion will no longer be optional under Colorado's recent adoption of a mini-simplified food stamp program.

If a FLSA compensation practice is adopted by the county department, the following is an example of the calculation that will be used to determine the correct compensation for both two-

parent and single parent families engaged in either work experience or community service work activities:

EXAMPLE

Enter number of actual hours worked in the reporting month **Note:** *Hours used for this calculation are the total hours entered on the attendance screen in the work program area of CBMS for community service or community work experience*		140 (example)
Multiplied by Colorado minimum wage		x $6.85
Required compensation under FLSA		$959.00
Basic Cash Assistance (BCA) received (In the same reporting month as hours)	$356.00	
Food Stamp Benefit (FS)	$150.00	
TOTAL (BCA + FS)		$506.00
Amount uncompensated ($959.00 minus $506.00)		$453.00

If County Option One is chosen by the county, the uncompensated amount MUST be paid to the Colorado Works participant(s) at some time within the month following the reporting month. For example, if the hours were completed in March and reported in April for March, the FLSA payment must be made from CBMS work programs by the last working day of April. If the county chooses this option, uncompensated pay is not optional and does not depend on non-compliance or sanction. If the hours were completed and there is verification of completion in the file based on work verification procedures, participants MUST be compensated fairly based on the calculation above.

Colorado Benefits Management System (CBMS) currently contains logic to automatically calculate the FLSA payment related to Option Number One (1) on the attendance tab in the Work Programs area of the system. We are currently working on the changes to that aspect of the system logic to accommodate the new Colorado minimum wage in the calculation and more information on that change will be forthcoming. Also, Colorado Works participants engaged in this type of activity would continue to be considered a work experience or community service participant as appropriate and would be coded as such in the work programs section of the Colorado Benefits Management System.

OR

County Option 2) A county department may choose to establish ALL of their work experience or community service sites as training sties. USDOL guidance states that a welfare recipient who is engaged in training that meets the following six relevant criteria for training is not affected by the FLSA.

(a) Training is similar to that given in a vocational school;

(b) Training is for the benefit of the trainees;

(c) Trainees do not displace regular employees;

(d) Employers derive no immediate advantage from trainees' activities;

(e) Trainees are not entitled to a job after training is completed; and

(f) Employers and trainees understand that trainee is not paid.

If a county decides not to select option 1 above, they may consider work experience and community service sites as training sites. County staff must be able to assure that they meet the above six criteria and the substantiation for that is in each individual's case file or a file that can be related to each worksite.

Effective Date:

January 1, 2007

Supersedes:

Agency Letters: TCW-99-5-A and TCW-01-2-P

Contact Person:

Mary Riotte

Telephone:

303-866-2641