



<b>Policy Name / Subject:</b>	Fair Labor Standards Act
<b>Policy Number:</b>	0801-062
	Joint DHS/OED Policy
<b>Effective Date:</b>	October 1, 2009
<b>Revision date</b>	March 2011
<b>Policies being updated or replaced:</b>	98-7-E/SS (Effective June 1, 1998)
<b>Online location:</b>	
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## Background

The U. S. Department of Labor (USDOL) issued guidance that the Fair Labor Standards Act (FLSA) applies to Temporary Assistance for Needy Families (TANF) work activities; examples of those work activities include community services and community work experience programs/activities. Colorado Works participants who are engaged in these work activities are now considered “employees” under FLSA. The participant’s Basic Cash Assistance (BCA) and Food Assistance (FA) benefits will be considered as payment for the work performed. Compensation for hours worked will be paid at the higher of the state or federal minimum wage for hours worked above the BCA and FA grants. If the hours a participant works at a site exceeds the BCA and FA benefit payment (overtime hours), the participant is entitled to an additional payment.

The Denver Department of Human Services (Department) and its contractor, the Office of Economic Development-Workforce Development (OED-WD) viewed community service and community work experience programs as work site training activities; therefore, did not pay the participant for overtime hours. Effective with September 1, 2009 activity hours, CDHS has directed the Department that community service and community work experience sites can no longer be defined only as training sites and a participant must be considered an “employee” of the assigned work site.

In addition, Colorado’s Work Verification Plan requires that the FLSA calculation be used with the greater of the state or federal minimum wage.



The result of that FLSA calculation results in the number of hours in which the work-eligible participant is required to participate for the month to satisfy the Colorado Works/Food Assistance grant for that month. If the result of that calculation is less than 20 average hours per week, the individual is considered to have satisfied the first 20 hours average weekly core/primary work activity hours toward the federal work participation rate (FWPR). This is referred to as the deeming provision in Colorado's Work Verification Plan.

Volume 3, section 3.631.2 C & F state:

Work activities are defined as:

C. Work experience - a work activity performed in return for Colorado Works assistance payments, that provides an individual with an opportunity to acquire the general skills, training, knowledge and work habits necessary to obtain employment. Work experience assignments must improve the employability of those who cannot find unsubsidized employment.

F. Community service programs - Structured work programs performed for the direct benefit of the community under the auspices of public or non-profit organizations. Community services programs must be limited to projects that serve a useful community purpose in fields such as health, social service, environmental protection, education, urban and rural redevelopment, welfare, recreation, public facilities, public safety and child care.

Agency Letter TCW-09-03-I states (Effective September 1, 2009):

As of October 1, 2008, work activities such as community service and community work experience are no longer eligible for the county to designate as "training."

Counties may still choose to assist clients with short-term training as a part of some work activities subject to FLSA and as allowed in Colorado's Work Verification Plan, but those individuals will be considered employees.



## Policy

1. The Department/OED-WD will treat Community Service (CS) and Community Work Experience (CP, PW) participation as countable work activities for Colorado Works participants and will consider Colorado Works participants who are engaged in these work activities as “employees” under FLSA.
2. The Department/OED-WD will compensate Colorado Works participants in CS, CP, or PW activities for hours worked that exceed the combination of their BCA and their FA benefit amount, if any, divided by the higher of the state or federal minimum wage. The FLSA payment is automatically calculated by CBMS
3. **FLSA payments will not be issued if CS, CP, or PW is identified solely as a classroom training activity.**
4. The OED-WD contracted Community Based Organization (CBO) and the work site supervisor will be responsible to ensure that the participant adheres to the number of hours agreed upon on the participants IRC. The participant will not be allowed to complete more hours than what is agreed upon on their IRC.
5. OED-WD provides worker’s compensation for Colorado Works participants for whom OED-WD provides workforce functions, if not otherwise provided by the site.
6. The FLSA payment will be issued in lieu of the TANF Participation Incentive if the FLSA payment is more than the approved Incentive amount. If the FLSA payment is less than the approved Incentive amount the difference will be issued as an Incentive payment.
7. If the Colorado Works case is discontinued and the FLSA payment can not be made at the time the hours have been entered in CBMS, the payment can only be issued if the case reopens with the next 2 months.  
For example, if a FLSA payment was due for July 2010 and the case closed 7/31/2010, the FLSA payment can be issued no later than September 30th, 2010. This is per the recommendation of the State Department of Human Services.
8. All FLSA payments issued in error will be recovered thru the CBMS claims process.



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## Attachments

OED-WD Colorado Works Community Work Experience, Assignment Agreement and Guidelines  
Fair Labor Standard Act FLSA Procedure

## Index / Key words (This list is not part of the actual policy.)

Alternate Work Experience  
Community Service Deeming Hours  
Community Work Experience  
Deeming  
Employee  
Fair Labor Standards Act  
Federal Work Participation Rate  
FLSA  
Minimum Wage  
Office of Economic Development  
Overage  
Training  
Work site  
Work experience  
Workforce Development

## Procedures

CS, CP, or PW classroom training

1. The OED-WD worker will negotiate an Individual Responsibility Contract (IRC) with a Colorado Works participant specifying that the participant will attend training through a contracted Community Based Organization (CBO). The number of hours that a participant will be assigned to



attend training at the site will be determined based on the CBO's program requirements.

2. No Community Service Agreements will be completed for the classroom training at the CBO site.
3. The worker will enter the hours in the CBMS attendance screen and if a FLSA payment is calculated, case comments will be entered to identify the activity as being classroom training and that the participant is not eligible for the FLSA payment.

#### CS, CP, or PW "Hands-on" Work Experience

1. An OED-WD worker or a contracted Community Based Organization (CBO) worker will negotiate an Individual Responsibility Contract (IRC) with a Colorado Works participant specifying that the participant will perform community service activities or community work experience activities in a:
  - Public agency;
  - School;
  - Community center;
  - Church; and/or
  - Other business agency and private employer.

The number of hours that a participant will be assigned to participate at the site will be determined through the individual assessment and negotiated with the participant. The worker will note the number of activity hours on the IRC.

2. The OED-WD worker/contractor will contact the work site and inform the Volunteer Coordinator that the participant will attend the site for a specified time frame and is expected to perform work activities. The work site must agree to provide:
  - A structured and meaningful training experience for the Colorado Works participant (not to exceed 12 months, unless authorized);
  - Daily supervision of participant activity;
  - Accurate progress reports to the OED-WD worker monthly; and
  - When the participant arrives at the work site, the work site supervisor will complete the attached OED-WD Colorado Works Community Work Experience, Assignment Agreement and Guidelines.



3. The OED-WD worker will monitor the participant's attendance and progress monthly, and enter participant hours in the Colorado Benefits Management System (CBMS), Work Participation screens. (See the attached Fair Labor Standard Act (FLSA) Payments Procedure.)
4. If the participant completes any hours beyond the amount of hours, that, at minimum wage, equals the amount of his/her BCA and FA, CBMS will automatically calculate a payment to the participant.
5. The OED-WD worker must pay the participant (s) within the month following the reporting month. Payment is not optional and does not depend on non-compliance or sanction **but can only be paid on an active Colorado Works case.**
6. The OED-WD worker will authorize the payment through the CBMS Support Service Payment screens in the Workforce section.
7. The OED-WD worker will monitor the FLSA and Participation Incentive payments monthly to identify when to issue the difference.
8. When verification is received or documented that a FLSA payment was issued erroneously, either by Client or Agency error, the payment will be recovered thru the CBMS claims process.