

August 8, 2018

Answers to Airport Workers Wage Program Questions Presented by Covered Businesses

Question

We would like to clarify what the rules are regarding wages for staff using a vacation benefit. For example, a server (making \$2.73/hr) who uses a week's paid vacation would typically be paid at the Virginia State minimum wage \$7.25/hr. Under the Airport Workers Wage Program, are we required to pay the server \$11.25/hr for vacation time? Just want to make sure we are in compliance.

Answer

In this and other areas not specifically addressed by the Authority's Airport Workers Wage Program rules (O&I 5-4-1), the Authority turns to applicable federal rules that are used in the administration of the federal minimum wage requirements established in the Fair Labor Standards Act.

The FLSA rules do not apply the federal minimum wage requirements to vacation, sick or other hours of leave that an employer elects to provide its employees. The rules do not require that such hours of leave be compensated at all by an employer, let alone at the federal minimum wage rate. The FLSA rules address only hours that are worked by employees, and do not require employers to make any payment for non-worked time, including vacation, sick and holiday time. Whether an employer pays its employees for such non-worked time is up to the employer, and may be a matter of agreement between an employer and its employees or the employees' representative.

Similar to the FLSA, the Airports Workers Wage Program requires Covered Businesses to pay its Covered Workers only for the hours they work. See, e.g., O&I 5-4-1, Section 3 in Part II, Paragraph C. The program and its wage requirements do not reach vacation, sick or other non-worked hours for which Covered Businesses might elect or agree to pay their Covered Workers. Thus, whether Covered Businesses pay for any such non-worked hours, and the amount they pay, is a matter to be decided by the businesses, including in the context of an agreement with their employees or the employees' representative.

In short, the Workers Wage Program does not require Covered Businesses to pay their Covered Employees for non-worked vacation time. As under the FLSA rules, every Covered Business may decide (i) whether to provide paid vacation time to its Covered Workers and, if it elects to do so, (ii) the rate of compensation to pay for such time.

Question

Are businesses that are covered by the Airport Workers Wage Program required to pay their seasonal employees in accordance with the program – i.e., at an hourly wage rate that is no less than the program's Base Wage Rate – or are these employees not covered by the program?

Answer

The rule governing the coverage of a covered business's seasonal employees is no different than the rule applicable to a business's non-seasonal employees. Both categories of employees are covered by the program if, during the period of employment, they "work on an airport" on a regular basis; if they work on an airport on an irregular, occasional or sporadic basis, they are not covered.

Employees are considered to regularly work on an airport if they are assigned to an on-airport office or work site of their covered business employer and, at or from that location, regularly perform (or are prepared to perform) on-airport work. Employees also are considered to regularly work on an airport if, on a regular basis, they are directed by their employer to report to one or more other locations on an airport and, at or from those locations, they perform (or are prepared to perform) on-airport work.

Employees – again, both seasonable and non-seasonable – are not considered to regularly work on an airport if, during their period of employment, they are generally “located” off-airport and are instructed by their covered business employer, when the need for their work arises, to report to and perform work on an airport. In this case, the employees are considered to be working on an airport only on an irregular, occasional or sporadic basis, and fall outside of the wage program’s coverage.

Question

Is a “sub-lessee” concession business that leases space in an airport terminal from a business which leases the space under a lease from the Authority’s concession program manager (MarketPlace Development, Inc.) covered by the Airport Workers Wage Program?

Answer

A concession business which leases space from MarketPlace, and which has sub-leased the space to a sub-lessee business, does not have any obligation to make wage or any other payments to the sub-lessee’s employees. The lessee does, however, under its concession lease with MarketPlace (section 14.1), have the obligation to ensure that its sub-lessee has agreed in writing (i.e., in the sub-lease) to perform all of the obligations that are placed upon the lessee by its lease with MarketPlace. These obligations include the obligation to meet all applicable Authority rules and regulations, and these include the rules governing the Airport Workers Wage Program which are found in the Authority’s O&I 5-4-1.

Thus, the business leasing space from MarketPlace should, in this situation, be taking steps to ensure that its sub-lessee is meeting the requirements of the wage program. A failure by the sub-lessee to comply with the program would subject the MarketPlace lessee to enforcement action by the Authority. In addition, the Authority will be looking to the lessee (i) to enforce the terms of the sub-lease which obligate the sub-lessee to comply with the wage program, and (ii) to take actions under the sub-lease that are needed to bring the sub-lessee into compliance with the program. And those actions would include requiring the sub-lessee to make corrective wage payments to its covered employees, dating back to January 1, 2018, in the event the sub-lessee has failed to pay its employees as required by the wage program since the start of the year.

Question

Is a business covered by the Workers Wage Program required to pay the program’s Base Wage Rate to students who are hired on a temporary basis (for instance, for the summer or for as part of an intern program)?

Answer

The Workers Wage Program does not distinguish temporary student workers from any other workers employed by a business covered by the program. So long as the temporary student workers are working on an airport, are compensated on the basis of the hours they work, and are not “exempt” employees

under the federal Fair Labor Standards Act, they are to be compensated at an hourly wage rate that is no less than the applicable Base Wage Rate established by the program.