

COMMONWEALTH OF VIRGINIA
WORKFORCE INVESTMENT ACT
VIRGINIA EMPLOYMENT COMMISSION

FIELD GUIDANCE MEMORANDUM #05-03

TO: LOCAL WORKFORCE INVESTMENT BOARDS

FROM: WIA DIVISION

SUBJECT: YOUTH PROGRAM WORK EXPERIENCE

DATE: MARCH 24, 2005

The work experience activity is one of the elements of training available to youth participants under the Workforce Investment Act (WIA). This guidance is designed to inform local areas that payments received by participants during their enrollment in work experience is not subject to payroll withholdings, such as federal and state taxes, and unemployment insurance payments by a work experience site.

The purpose of the work experience activity is to provide the WIA eligible youth with opportunities for career exploration and skill development. It should be a planned, structured learning experience that takes place in a workplace for a limited period of time. It is designed to afford youth an opportunity to gain exposure to the working world and its requirements. It should help youth acquire the personal attributes, knowledge and skills needed to obtain a job and advance in employment. The intent is not to benefit the employer, although the employer may, in fact, gain from the activities performed by the youth.

Local workforce investment boards and service providers should ensure that the work experience training is appropriate based on the needs identified by the objective assessment of an individual WIA eligible youth participant. The Individual Development Plan (IDP) outlines the specific course of the short-term process. The IDP should clearly indicate how this activity is going to help the youth move from training to employment. Documentation to this effect is necessary.

The classification of a participant determines whether a service provider or a LWIB withholds taxes, FICA, and unemployment. A decision of this nature is generally based on the employer-employee relationship established in accordance with IRS rules.

The relationship between the WIA participant and the employer that provides the site for the work experience activity is not an employer-employee. The formal relationship is between the WIA program and employer that volunteer to provide the site for the work experience activity for the WIA program. During the period of a participant's enrollment in a paid work experience activity, the WIA payments received are not subject to withholdings by the employer nor the WIA program. The

payments are incentives for participation in a training activity, not compensation for services to an employer. The funds should not be considered for tax purposes on a 1099-MISC or W-2.

At the completion of a work experience activity the participant is not eligible for unemployment compensation. Neither the worksite nor the WIA program should contribute any funds to the state's unemployment insurance fund because the participant is not an employee.

Beginning immediately, do not withhold any taxes or treat as taxes any payments for youth in a WIA paid work experience training activity. Please review your program policies/procedures related to work experience for compliance to this guidance and forward them to Raymond Cousins of the WIA Division.

Please contact Mr. Cousins at 804-225-2192 if you have any questions concerning this guidance.

REFERENCES:

Clarification from the U.S. Department of Labor, Employment and Training Administration on January 20, 2005 in response to an inquiry from the VEC.

Workforce Investment Act; Final Rules, U.S. Department of Labor, Employment and Training Administration, (20 CFR §664.460 and §664.470).

Fact Sheet #13: Employment Relationship Under the Fair Labor Standards Act. U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division.

Trainees. elaws – Fair Labor Standards Act Advisor. U.S. Department of Labor.

School-to-Work. elaws – Fair Labor Standards Act Advisor. U.S. Department of Labor.

Publication 15, (Circular E), Employer's Tax Guide. U.S. Department of Treasury, Internal Revenue Service. Who are Employees?

Publication 15-A, Employer's Supplemental Tax Guide. U.S. Department of Treasury, Internal Revenue Service. Who are employees?