

FLSA-217

March 12, 1987

This is in response to your January 28 letter requesting an opinion as to whether 14- and 15-year-old youths may operate power-driven lawn mowers under conditions described in your letter. You indicate that these young persons would be earning court-ordered restitution under a Juvenile Restitution Program managed by your private, nonprofit organization.

The Wage and Hour Division of the U.S. Department of Labor administers the Fair Labor Standards Act (FLSA), which is the Federal law that generally applies to minimum wages, hours of work, and child labor. The major provisions of FLSA are outlined in the enclosed "Handy Reference Guide to the Fair Labor Standards Act."

In order for FLSA to apply to any person, an employer-employee relationship must exist. It is our general position that an employer-employee relationship will not exist in the kind of program you manage if the following conditions are met: (1) The juvenile offenders voluntarily enter into the program for their own benefit; (2) they do not displace regular employees or impinge on the employment opportunities of others; (3) they are under the supervision or control of the court; and (4) the offenders perform the work without contemplation of pay. It is our opinion that the work should be restricted to public service activities such as work in community action programs and to service in nonprofit organizations formed for a public purpose.

In addition, we will not assert an employment relationship where children are working with their parents' consent to pay restitution; are not displacing regular workers or impinging on employment opportunities of others; and such work is performed under the jurisdiction, pursuant to the order, and subject to the protection of the court. Where no employment relationship exists, neither the pay provisions nor the child labor requirements of FLSA apply.

We are enclosing a copy of Child Labor Bulletin No. 101, which contains the child labor standards under FLSA. You may wish to follow these standards as guidelines for the program you described.

Sincerely,

Paula V. Smith
Administrator

Enclosures