The Fair Labor Standards Act (FLSA) is the federal law providing for minimum wage and overtime pay. Under this law, employees must be paid no less than the minimum wage set by Congress (currently $5.15 an hour) and receive no less than time and a half pay for hours worked in excess of 40 hours in any given work week. Part I of this article (The Director’s Link, Spring 2002) discussed the circumstances in which an employee of an early childhood program fits within the “professional” category and is therefore exempt from the overtime provisions of the FLSA. In that article I tackled the thorny question of when is an early childhood teacher a “teacher” under the law? This follow-up article will address what is meant by “working time,” that is, the time for which all nonexempt employees of an early childhood program must be paid.

Anna is an experienced director of a new center with a licensed capacity of 60 children. She has just completed her hiring of the teaching staff, paying close attention to scheduling as a means to both quality and cost control. Anna knows how difficult it is to staff classrooms for school-aged children with well-trained, consistent teachers because of the part-time hours typical of after-school programming. Rather than compromise on the quality or consistency of the staff in the after-school program, she decided to hire only full-time staff, willing to work a split shift. Joe and Miranda were hired to work in a preschool classroom from 7:30 a.m. to 12:15 p.m. and in the school-aged classroom from 3:00 p.m. to 6:00 p.m. They are both nonexempt employees. They each have two years of college; Joe has 10 semester hours of credit and Miranda has 18 semester hours of early childhood education college credit. Both are paid for working 40 hours a week. Anna is concerned about whether the creative way she scheduled Joe and Miranda’s time might conflict with the provisions of the Fair Labor Standards Act.

Anna has good reason to be concerned. Like most early childhood directors, she does not have specific knowledge of how the labor laws and regulations should inform the management of an early childhood program. Furthermore, the Fair Labor Standards Act is difficult to understand as it pertains to employers as well as employees. The “working time” provision has been interpreted by the Secretary of Labor and by the federal courts to include any time spent by a nonexempt employee that benefits the employer. Problems can arise when employers such as Anna fail to recognize certain hours as paid working time.

Because measuring work time is key to enforcing the FLSA, there are often disputes over the services employees perform before and after their shifts, away from their work sites, and during travel between work sites. Are non-scheduled hours at work ever considered “working time?” What about the lesson planning teachers do at home? Are breaks and meal periods “working time?” When must travel time or training time be paid as “working time?” What, exactly, is meant by “working time?”
In-service training
One common mistake child care employers make is not paying their employees for the time they spend in training required by the state licensing regulations to maintain the center’s license. For example, if Joe and Miranda attend training on a Saturday or in the evening to help fulfill the annual 15-hour professional development requirement prescribed by the Illinois Department of Children and Family Services (DCFS), they must be paid for their time spent in training. This professional development time clearly benefits the employer. If Joe and Miranda work their regular 40 hours in the week they attended this training, they need to be paid overtime, at least time and a half, for all hours worked beyond their regular 40 hours.

Meetings and training
When employees are required to attend parent or staff meetings, this is “working time” and must be paid. When employees are required to attend special events such as fundraisers or holiday parties outside of regular hours, this is also viewed as “working time.” When employees attend training programs or lectures, it is not considered to be “working time” only if four conditions are met: 1) the employees are attending the event outside of their regular working hours; 2) the employees are attending voluntarily; 3) the event is not directly related to the employees’ jobs; and 4) the employees do not perform any work for their employers while at the event.

Lesson planning
Lesson planning is work time. If the employees of a child care center do this work outside the regular workday, even if performed off-site, it must be paid. If the work schedules Anna has arranged do not include planning time, the actual time the staff spends preparing the classroom or planning the curriculum must be paid. Again, this time needs to be paid at the overtime rate if the total hours worked in a given week exceed the 40-hour maximum.

Non-scheduled hours
One difficulty for Anna in scheduling a split shift is the unscheduled time in between the two shifts. If Joe or Miranda stays on-site during this time preparing materials, planning curriculum, or coordinating activities with co-workers, this is work time. Therefore, it must be paid and is quite likely to result in overtime pay. The law is clear that employees are not allowed to volunteer their time or services to their employers. On the other hand, it is not “working time” if employees choose to show up early for work and read the newspaper until their scheduled work begins.

Travel time
The general rule is that the time an employee spends traveling to or from work is not “working time.” However, time spent traveling between two program sites of the same employer is considered “working time.” If an employee takes children to or from school, this is work time and must be paid at the appropriate rate.

Breaks and meal periods
The Fair Labor Standards Act does not require that lunch or rest breaks be provided. However, most employers do build breaks into their employees’ work schedules. Must the time given for meals or breaks be paid time? The answer to this question depends on whether the time primarily benefits the employee or employer. If the employer requires the employee to stay on the premises during a meal break, or if the break is shorter than 30 minutes, then the break is considered to promote workplace efficiency and, therefore, be for the benefit of the employer.

If you think the FLSA is uneven in its treatment of employers and employees, you are correct! More than 50 years ago, in *Roland Electric Co. v. Walling*, 326 U.S. 657, 670 (1946), the Supreme Court stated: “the purpose of the Fair Labor Standards Act is to raise living standards.” Today, the FLSA serves the same general purpose. Given the woefully inadequate compensation paid to the early childhood workforce, perhaps it is time to look at the FLSA as a tool to help increase compensation and stabilize the workforce.

This article is intended to increase awareness of legal risk and should not be regarded as legal advice or relied on to provide answers to specific problems.


The Director’s Link

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For more information about the Early Childhood Administration degree program, contact Doug Clark at dclark@nl.edu or (800) 443-5522, ext. 7711

For more information about these training opportunities, contact Eileen Eisenberg at eeisenberg@nl.edu or (800) 443-5522, ext. 7703

Professional Development Opportunities

Fall Management Institute:
Outdoor Play Environments
September 27-28, 2002

If you are building a new facility, renovating an existing playground, or looking for ways to extend your curriculum outdoors, this institute is for you. Vicki L. Stoecklin from the White Hutchinson-Leisure and Learning Group and Donna Thompson of the National Program for Playground Safety will be guest presenters.

Location: The Center for Early Childhood Leadership
National-Louis University, Wheeling Campus Annex

Time: Friday, 8:30 am - 8:30 pm
Saturday, 8:30 am - 4:30 pm

Fee: $199 (includes all institute materials and meals)

Participants may receive 1 s.h. of graduate credit (ECE544) by paying an additional $235 and participating in an online follow-up exercise.

The Next Step
October 24-26, 2002

The Next Step is an advanced leadership training program designed for seasoned early childhood professionals. The training focuses on building coaching and mentoring skills, increasing cross-culture sensitivity, enhancing presentation skills, and preparing participants to become Illinois Director Credential professional growth advisors and NAEYC accreditation mentors.

Space is limited to 15 participants. Experienced directors of NAEYC-accredited centers, college instructors, supervisors of multi-site programs, consultants, and early childhood leaders are encouraged to apply. Follow-up retreats will take place February 20-22, 2003 and at Leadership Connections in May 2003.

Location: The Center for Early Childhood Leadership
National-Louis University, Wheeling Campus Annex

Fee: $350, includes housing, food, books, and all training materials

Participants may receive 4 s.h. of graduate credit (ECE545 and ECE546) by paying an additional $940. Application deadline is August 1, 2002.

The Center for Early Childhood Leadership was recently awarded a professional development grant by the W. Clement and Jessie V. Stone Foundation. The award will be used to underwrite a third cohort of The Next Step, an advanced leadership training program for early childhood professionals. The training is designed for experienced center-based program directors, college instructors, consultants, and other leaders in the field of early childhood education.

A convening management institute is scheduled for October 2002 and follow-up retreats will take place in February and May 2003. The purpose of The Next Step is to assist participants in developing coaching and mentoring skills, increasing cross-culture sensitivity, enhancing presentation skills, and preparing to become Illinois Director Credential professional growth advisors and NAEYC accreditation mentors.
As many centers expand their programs to include infants, caregivers must be educated about Sudden Infant Death Syndrome (SIDS). SIDS is the sudden, unexplained death of a healthy infant. It usually occurs during sleep and often affects newborns. It is the major cause of death in children from birth to one year of age. African-American and Native-American babies are over represented in the 3,000—5,000 SIDS deaths in the United States each year. An infant is 2 to 12 times more likely to die of SIDS when sleeping in a prone position (on his or her stomach).

According to the American Academy of Pediatrics, 20% of all SIDS deaths occur when children are in non-parental care. To reduce the risk of SIDS caregivers must:

- Always put infants to sleep on their backs and educate parents about safe sleeping positions for SIDS prevention. Inexperienced caregivers may feel pressured by parents who desire to have their infants placed on their stomach in the crib. Have reminders and information to give to parents.

- Develop and document policies related to SIDS prevention.

- Have procedures in place for exceptions. Require written confirmation from a physician if a health condition or birth defect requires the infant to sleep in a prone position.

- NAEYC accreditation criteria H-16b states: Sides of infants’ cribs are in a locked position when cribs are occupied.

To find out more about Sudden Infant Death Syndrome, contact the NICHD website at www.nichd.nih.gov. You can also order free “Back to Sleep” materials from the National Institute of Child Health and Human Development by calling 800-505-CRIB. These materials include a parent brochure and a parent training video available in English or Spanish, crib stickers, and take-home cards.

Adapted from Accreditation Update, Vol. 3, No. 1, Winter 2002, a publication of the National Association for the Education of Young Children.
What do an aspiring artist and an early childhood program director have in common? They are one in the same if you are Alpha Jackson. Alpha is the Early Head Start Services Manager for the Catholic Charities of Joliet. His work at Catholic Charities began two years ago when he was called there to create the program from scratch. Today the program, known as the Feldman Center, serves families of children between 18 months and three years old. Along with the Early Head Start program, Alpha has nurtured the development of a family child care program as well as services for expectant mothers. He recently organized a male involvement conference with US Congressman Danny Davis as featured speaker. In Alpha’s words, “we’ve now added the fatherhood component.”

Before coming to the Feldman Center, Alpha’s career record was impressive, but it’s a unique twist of fate that may be the most remarkable part of his story. As a graphics communications major, Alpha was enrolled at Columbia College in the mid-1980’s. As part of the field-training experience required by the College, he was assigned to Chicago’s prestigious Leo Burnett advertising agency. As it turned out, one of Burnett’s clients was The Boys & Girls Clubs, and much of Alpha’s work was dedicated to that account.

Realizing the unique opportunity for community outreach, Alpha’s supervisors suggested that he volunteer on behalf of the agency to give art lessons on Saturday mornings for youngsters at the McCormick Boys & Girls Clubs on Chicago’s north side. Alpha quickly realized his true calling. “I was hooked,” he said about the fulfillment he received from the work with his young students. Without the slightest hint of regret in his voice, he states it plainly: “I gave up my career as an artist… and the rest is history.”

In no time, Alpha’s role grew from Saturday-morning volunteer to part-time instructional educator, and then to a full-time position as Individual Services Director at McCormick. During his four years of service in that capacity, he mentored wayward youth who had been appointed by the courts to do community service. “My job was to help them grow in self-esteem, in self-discipline and in responsibility,” he says.

Since entering the field of early childhood through one of its many side doors, Alpha has worked as director of the Marcy Newberry Association Head Start, Child Care, and School-age program overseeing 150 children. He has also worked for the Duncan YMCA, a center that serves about 100 families of 3-5 year olds. During his five years at Duncan, Alpha hosted such high-profile visitors as First Lady Hillary Rodham Clinton and Vice President Gore.

Today, after two successful years at the Feldman Center, Alpha’s aspirations are still lofty. He is presently guiding the program staff through NAEYC self-study and is pursuing a master’s degree in Early Childhood Administration at NLU. Recently, he was selected to receive a Johnson & Johnson Fellowship, an opportunity for advanced management training that takes place this summer on the campus of UCLA. As far as the future is concerned, Alpha would someday like to build a program “from the ground up” as he puts it, “…one with a focus on art and music education.”

So whatever happened to the budding artist? Alpha still stays active as a freelancer and as a regular exhibitor at major Chicago art fairs. It could be said that wherever he’s been, Alpha Jackson has left his mark. The halls of the Feldman Center surely provide the proof. Adorning the walls throughout the building, Alpha’s works in oil and pen and ink express his appreciation for multi-cultural experiences in the lives of children. The atmosphere is artistic, or as Alpha would say about his contributions, “it gives us a real art flavor.”

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