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# Welfare Recipients and Workforce Laws

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# Welfare Recipients and Workforce Laws

## **Keywords**

Welfare, recipients, work, law, TANF, labor, FLSA, employee, minimum, wage, hour, benefit, state

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## Welfare Recipients and Workforce Laws

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### Summary

Work requirements of the 1996 welfare law (P.L. 104-193) and discussions about reauthorization of the program of Temporary Assistance for Needy Families (TANF) have raised questions about the application of basic labor and employment tax laws to TANF recipients. The most controversial issue has been the status of persons assigned to “workfare” programs, in which recipients work in exchange for their TANF benefits. The U.S. District Court for the Northern District of New York held on March 1, 2004, that participants in the Work Experience Program (WEP) are “employees” entitled to wage and hour protections of the Fair Labor Standards Act (FLSA). In February the Second Circuit Court of Appeals held that WEP participants also are employees under federal civil rights employment-related legislation. In the absence of explicit language in the 1996 law, the Clinton Administration’s Department of Labor (DOL) maintained that most workfare participants were employees and hence, must be “compensated” at the minimum wage rate. Because TANF sets a minimum work week, some states might have to raise benefits to meet the minimum wage standard for workfare participants. Another issue is whether workfare “wages” are subject to payroll taxes. If Congress should increase the federal minimum wage rate or the TANF work week, it would increase the number of states whose workfare programs might have to be changed to meet FLSA and Internal Revenue Service (IRS) requirements. This report will be updated when significant developments occur.

### Countable Work Activities

Seeking to move welfare recipients into jobs, the 1996 law stipulates that a certain percentage of TANF parents must engage in specified “work activities” if the state is not to lose some TANF funds. These countable activities can be grouped as follows: unsubsidized employment; subsidized employment; on-the-job training; human capital investment (including vocational educational training, completion of high school, and job search), and “workfare” (work experience and community service). **Table 1** shows how TANF work activities are affected by current laws and policies concerning the federal minimum wage rate, unemployment insurance, Social Security payroll taxes, workers’ compensation, income tax withholding, the Earned Income Tax Credit, Social Security payroll taxes, health and safety standards, nondiscrimination, and nondisplacement of existing workers. The table does not deal with some other laws of broad application, such

as Title VII of the Civil Rights Act (equal opportunity in employment)<sup>1</sup> or the National Labor Relations Act, which governs labor-management relations in the private sector.

To be counted as a work participant, most TANF recipients must engage in a recognized work activity 20-30 hours weekly. In states with above-average benefits and generous treatment of earnings, many persons who find part-time jobs could remain on TANF, at least for a time, receiving a reduced benefit. As the table shows, these persons, if in unsubsidized jobs, would be covered by the basic workplace laws. The table also shows that persons engaged in the act's human capital investment work activities would not be treated as employees and, thus, generally, would not be covered by many of the laws. However, the 1996 law explicitly applies several nondiscrimination laws to TANF-funded activities. It prohibits discrimination on the basis of age, disability, race, color, or national origin. For activities paid with Welfare-to-Work (WtW) funds, added in 1997, gender discrimination also is forbidden. The 1996 law spells out some rules against displacing existing workers and requires states to establish grievance procedures to resolve complaints. For WtW-funded activities, nondisplacement rules are expanded, and states are required to establish grievance procedures also for persons alleging violations of rules regarding discrimination and health and safety standards.

## Workfare

**Minimum wage.** In March, 2004, a federal district court in New York ruled that workfare participants are employees covered by the FLSA (*Stone v. McGowan*). The Clinton Administration's earlier (1997) decision<sup>2</sup> that most workfare recipients are covered by the minimum wage had been protested by the National Council of State Human Service Administrators<sup>3</sup> and some governors, but applauded by organized labor. TANF law sets minimum average weekly hours of work; (20 hours for single parents without a child under age 6 and 30 hours for other single parents). At the federal minimum wage rate of \$5.15, a 30-hour weekly workfare assignment equates to \$154.50 in benefits (\$669 per month). Only in Alaska, Wisconsin (Community Service program), and some parts of California and New York are TANF maximum benefits for a 3-person family (as of January 1, 2003) high enough to provide the required wage equivalent. Many of the other states could observe the workfare minimum "wage" by adding food stamps to the calculation, but some states would have to increase cash benefits. Up to now, states have made relatively little use of workfare, but under the House-passed TANF reauthorization bill (H.R. 4), more states probably would establish workfare programs in

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<sup>1</sup> The second Circuit Court of Appeals on February 13, 2004, held that WEP participants are employees covered by Title VII of the federal civil rights act, which prohibits employment-related discrimination on the basis of race, color, religion, national origin, or gender.

<sup>2</sup> DOL guidance, *How workplace laws apply to welfare recipients*, May 22, 1997. For text, see [<http://www.dol.gov/asp/w2w/welfare.htm>].

<sup>3</sup> In spring 1998 California gave notice that it did not regard TANF workfare participants as "employees." The National Conference on State Legislatures also objected to FLSA coverage of workfare recipients. It said that classifying TANF recipients who perform community service as "employees of the state" would require states or non-profit organizations to pay social security and unemployment taxes on their behalf and that this would weaken state job training efforts.

order to meet the bill's stricter work requirements. Workfare's potential benefit cost has been a concern of the governors as well as state lawmakers. At the same time, organized labor fears that unless benefits for workfare participants reflect the minimum wage rate, wage levels for entry-level jobs in both the public and private sectors will be depressed and some regular workers may be displaced. The House-passed H.R. 4 generally would require an average of 24 hours weekly in a narrow list of "direct work" activities. Only in 9 states would TANF maximum benefits for a 3-person family equal the federal minimum wage standard for 24 hours of weekly work (\$535 per month). Secretary of Health and Human Services Tommy Thompson said on March 6, 2002, that jobs that pay at least the minimum wage were the centerpiece of the Bush proposal to reauthorize TANF. He said the Bush Administration would insist that TANF recipients receive "at least the minimum wage for the hours they work, including community service jobs." Some 13 states have established state minimum wage rates above \$5.15, and FLSA requires employers to pay the state minimum wage rate if it exceeds the federal minimum.

The DOL guidance memorandum said that states could combine food stamp benefits and TANF grants in determining whether the minimum wage requirement was met in food stamp workfare or food stamp wage supplementation. However, DOL said that credit toward paying the minimum wage could not be taken for pension benefits, health insurance (including Medicaid) or other benefits excluded under the FLSA. Under pre-TANF law, benefits from Aid to Families with Dependent Children (AFDC) could not to be treated as "compensation for work performed" in Community Work Experience Programs (CWEP), and required workfare hours could not exceed the number needed to equal the benefit, with each hour valued at the federal minimum wage rate, or, if higher, the state minimum.

**Social Security Taxes, EITC, Unemployment Insurance, and Workers' Compensation.** In the 1997 tax act, Congress prohibited the EITC for TANF payments made for participation in work experience or community service programs. A Clinton Administration official gave assurances in August 1997 that social security and unemployment taxes would not be imposed on workfare jobs. On May 8, 1998, the AFL-CIO sent a memorandum to the Treasury urging it to grant a "work relief" rather than a "general welfare doctrine" exception from Social Security and unemployment taxes to workfare payments. On December 17, 1998, IRS gave notice (IRS Notice 99-3) that it had decided to treat TANF payments as exempt from federal income and payroll taxes under the following three conditions: (1) the only payments received by the TANF recipient are received directly from the state or local welfare agency (an entity with which a state or local agency contracts to administer the program would be treated as the state or local agency); (2) the person's TANF eligibility is based on need and the only payments for his/her work activity are funded entirely under a TANF program; and (3) the size of the TANF payment is determined by applicable welfare law, and the number of hours of work activity does not exceed the recipient's TANF payment divided by the higher of the federal or state minimum wage. IRS said its notice was based on the "general welfare doctrine. An official of Michigan's TANF agency has protested that the third condition, when combined with the TANF hourly work rule, would make many of the payments taxable unless grant amounts are "significantly increased." He urged IRS to drop step three of its proposed test. The extent to which TANF recipients are covered by state workers' compensation laws is determined by each state.

**Table 1. Workplace Laws: Application to “Work Activities” Under TANF**

<b>Workplace law</b>	<b>Work experience, community service (“workfare”)</b>	<b>Unsubsidized employment</b>	<b>Subsidized private or public employment</b>	<b>On-the-job training</b>	<b>Vocational education, high school, job-related education or skills training, job search</b>
Fair Labor Standards Act (e.g., minimum wage rate, overtime rules, child labor)	Yes, usually. (DOL guidance memorandum, May 22, 1997)	Yes	Yes	Yes (unless not deemed an employee)	No
Federal Unemployment Tax Act (Unemployment Insurance)	No, provided three conditions are met. <sup>a</sup> IRS Notice 99-3.	Yes	Yes (Public employees are not subject to federal tax, but states must cover most public employees unless job is regarded as work relief)	Yes (unless not deemed an employee)	No
Federal Insurance Contributions Act (FICA) Social Security payroll taxes	No, provided three conditions are met. <sup>a</sup> IRS Notice 99-3.	Yes	Yes	Yes	No
Workers’ Compensation (state laws)	State law requirements <sup>b</sup>	Yes	Yes	Yes	No
Federal income tax. (Earnings subject to income tax)	No, provided three conditions are met. <sup>a</sup> IRS Notice 99-3. NOTE: TANF benefits generally would be below income tax threshold.	Yes	Yes	Yes	No
Earnings eligible for earned income tax credit	No. Explicit provision of P.L. 105-34	Yes	Yes	Yes	No

Workplace law	Work experience, community service (“workfare”)	Unsubsidized employment	Subsidized private or public employment	On-the-job training	Vocational education, high school, job-related education or skills training, job search
Occupational Safety and Health Act (OSHA)	<p>Yes, but OSHA does not have direct jurisdiction over public employees in many states.</p> <p>Rule for persons in activities funded with Welfare-to-Work (WTW) grants: health and safety standards of federal and state law that otherwise apply to employees apply equally to them; grievance procedure required to resolve complaints.</p>	Yes	<p>Yes (but OSHA lacks direct jurisdiction over public employees in many states).</p> <p>Rule for persons in WTW-funded activities: health/safety standards of federal and state law that otherwise apply to employees apply equally to them; grievance procedure required to resolve complaints.</p>	<p>Yes</p> <p>Rule for persons in WTW-funded activities: health/safety standards of federal and state law that otherwise apply to employees apply equally to them; grievance procedure required to resolve complaints.</p>	<p>No</p> <p>Rule for persons in WTW-funded activities: health/safety standards of federal and state law that otherwise apply to employees apply equally to them; grievance procedure required to resolve complaints.</p>
Non-discrimination: Age Discrimination Act; Section 504 of Rehabilitation Act; Americans with Disabilities Act; Title VI of Civil Rights Act (race, color, national origin)	<p>Yes (explicit provision of TANF law).</p> <p>For WTW-funded activities, gender discrimination also is forbidden. Grievance procedure required to resolve complaints of alleged discrimination.</p>	Yes	<p>Yes (Explicit provision of TANF law).</p> <p>For WTW-funded activities, gender discrimination also is forbidden. Grievance procedure required to resolve complaints of alleged discrimination.</p>	<p>Yes (Explicit provision of TANF law).</p> <p>For WTW-funded activities, gender discrimination also is forbidden. Grievance procedure required to resolve complaints of alleged discrimination.</p>	<p>Yes (Explicit provision of TANF law).</p> <p>For WTW-funded activities, gender discrimination also is forbidden; grievance procedure required.</p> <p><b>NOTE:</b> Sex discrimination also is prohibited by Title IX of Education Amendments of 1972 for any school receiving federal funds.</p>

<b>Workplace law</b>	<b>Work experience, community service (“workfare”)</b>	<b>Unsubsidized employment</b>	<b>Subsidized private or public employment</b>	<b>On-the-job training</b>	<b>Vocational education, high school, job-related education or skills training, job search</b>
Nondisplacement of existing workers	<p>TANF recipient may fill vacancy, but not if anyone is on layoff from the same or a substantially equivalent job; if the employer has cut workforce to hire TANF recipient; or, for WTW-funded activities if employer has cut work hours below full time. WTW activity cannot violate existing collective bargaining agreements.</p> <p>Grievance procedure required to resolve complaints of alleged displacement.</p>	<p>TANF recipient may fill vacancy, but not if anyone is on layoff from the same or a substantially equivalent job; if the employer has cut workforce to hire TANF recipient; or, for WTW-funded activities if employer has cut work hours below full time. WTW activity cannot violate existing collective bargaining agreements.</p> <p>Grievance procedure required to resolve complaints of alleged displacement.</p>	<p>TANF recipient may fill vacancy, but not if anyone is on layoff from the same or a substantially equivalent job; if the employer has cut workforce to hire TANF recipient; or, for WTW-funded activities if employer has cut work hours below full time. WTW activity cannot violate existing collective bargaining agreements.</p> <p>Grievance procedure required to resolve complaints of alleged displacement.</p>	<p>TANF recipient may fill vacancy, but not if anyone is on layoff from the same or a substantially equivalent job; if the employer has cut workforce to hire TANF recipient; or, for WTW-funded activities if employer has cut work hours below full time. WTW activity cannot violate existing collective bargaining agreements.</p> <p>Grievance procedure required to resolve complaints of alleged displacement.</p>	Not relevant

- a. IRS notice 99-3 sets forth three conditions for excluding TANF workfare payments from federal income taxes and employment taxes: (1) the only payments received by the TANF recipient are received directly from the state or local welfare agency (an entity with which a state or local agency contracts to administer the program would be treated as the state or local agency); (2) the person’s TANF eligibility is based on need and the only payments for his/her work activity are funded entirely under a TANF program; and (3) the size of the TANF payment is determined by applicable welfare law, and the number of hours of work activity does not exceed the recipient’s TANF payment divided by the higher of the federal or state minimum wage.
- b. According to *Welfare News*, May, 2004, published by the Welfare Law Center, many states have incorporated workers’ compensation protections directly into their workfare statutes, and several court decisions have held that workfare workers are covered by workers’ compensation laws.