



New York State Department of Labor
David A. Paterson, *Governor*
M. Patricia Smith, *Commissioner*

November 25, 2009

Re: Request for Opinion
Child Labor
RO-09-0118

Dear [REDACTED]

This letter is in response to your email dated August 24, 2009, in which you ask whether a non-profit organization may use twelve and thirteen year old children as volunteers to assist licensed equestrian instructors in side walking for riders with disabilities and in helping to clean saddles, bridles, feed buckets, and grooming brushes. The side walking involves three volunteers and one instructor in a riding ring leading a horse carrying an individual with disabilities. The goal of the program, and presumably the organization, is to enhance the social skills as well as the physical and emotional well-being of individuals with disabilities through riding therapy. Your letter asks whether there is an age cut off for individuals in New York State for volunteering in a situation such as that which you describe.

In General, Article 4 of the Labor Law (hereinafter referred to as the "Child Labor Laws") prohibits the employment of children under the age of fourteen with few, albeit limited, exceptions, none of them applicable to facts outlined in your email. However, children working as bona fide volunteers are excluded from the coverage of the provisions of the Child Labor Laws since true volunteer situations do not involve a master-servant relationship with a contract for hire. (*See*, 1976 NY Op. Att'y Gen. 59; *Bernal v. Baptist Fresh Air Home Soc.*, 275 A.D. 88 [1st Dep't 1949]; *Ludwig v Lowe*, 29 AD2d 267 [4th Dep't 1968]; *Warney v Board of Education*, 290 NY 329 [1943].) In similar fashion to other provisions in the Labor Law dealing with volunteers (*see e.g.*, Labor Law §651(5)(f)), the volunteer exception to the child labor laws is limited to work that is neither commercial nor business related, so as to prevent the use of child volunteers for profit. In line with that similarity, the Department applies the requirements for determining whether an individual is a "volunteer" in Section 651 of the Labor Law in determining whether the child's employment is within the volunteer exception to the child labor laws.

Labor Law §651(5)(f) excludes "volunteers" from the definition of "employee" when the volunteer work is performed for entities "organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual." The term "volunteer" is further defined by 12 NYCRR §142-3.12(c)(5) as "a person who works for a nonprofitmaking institution under no contract of hire, express or implied, and with no promise of compensation, other than reimbursement for expenses as part of the conditions of

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work.” It is worth noting that the failure to satisfy the requirements in Labor Law §651(5)(f) not only removes the child from the volunteer exception to the child labor laws, but it subjects the child to the full protections of the Labor Law, including, but not limited to, the minimum wage provisions. Additionally, like all volunteers, the children may not perform duties that would normally or would reasonably be expected to be carried out by a paid employee. Furthermore, such minors may not be required to work certain hours, perform duties involuntarily, or receive remuneration for their services.

While your e-mail does not provide enough information upon which to evaluate the purposes and operations of your organization so that a definitive determination as to the permissibility of the organization’s use of volunteers in general may be made, based on the limited information provided in your e-mail, it appears that the work described by you fits within the volunteer exception to both the New York laws governing child labor and the State’s Minimum Wage Act. Should you require a definitive determination as to whether your organization is eligible to utilize the services of such volunteers, please provide a detailed description of the organization, the services performed by the volunteers, and a statement indicating whether the net earnings of the organization in any way inure to the benefit of any individual.

Furthermore, please be advised that Section 260.10 of the New York State Penal Law provides that a person is guilty of endangering the welfare of a child when “[h]e knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his life or health.” Since the Department does not have jurisdiction over the enforcement of the New York State Penal Law, it would be inappropriate to provide an interpretation of or legal counsel as to its provisions. However, given that the work you have described involves working around large animals who could seriously injure a child if mishandled or became agitated, you may wish to seek private counsel as to whether this statute imposes an obligation upon your organization to provide special equipment or training to its volunteers or to take other precautions, prior to allowing them to engage in this work.

This opinion is based on the information provided your e-mail dated August 24, 2009. A different opinion might result if the circumstances stated therein change, if the facts provided were not accurate, or if any other relevant fact was not provided. If you have any further questions, please do not hesitate to contact me.

Very truly yours,

Maria L. Colavito, Counsel

By: 

Jeffrey G. Shapiro
Associate Attorney

JGS:mp
cc: Carmine Ruberto