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September 3, 2004

Colleagues,

Recently there has been a lot of discussion regarding the new Federal Overtime Rules but in New York State there is a ray of hope for Not-for Profit organizations.

In the Consumer Directed Personal Assistance Program, the payment of overtime could present a significant problem for both the Consumers and the programs, given the fact that the rate structure does not incorporate an assumption for overtime. To manage overtime, Consumers would be forced to limit their workers to no more than 40 hours a week or ultimately risk removal from the program.

To avoid this problem, New York State Not-for-Profit organizations have the ability to avoid the new overtime rules, provided they have applied for an exemption from the New York State Department of Labor. Please note this option, outlined below, must be requested within six months of organization or six month of the date the organization first hired employees. If an organization missed these deadlines, the organization can consider re-incorporating. Re-incorporation was a strategy that was successfully used in 1980 by the New York City "vendor" agencies. At that time, the City of New York was concerned about the overtime issue and to avoid this problem they required each of the "vendor" agencies with active employees to first re-incorporate and then request the option.

For more information, about this option, please contact the New York State Department of Labor Standards and your attorney to plan the strategy that would best serve your organization.

Labor: ARTICLE 19 - MINIMUM WAGE ACT

S 652. Minimum wage.

3. Non-profitmaking institutions.

(a) Application of article. This article shall apply to non-profitmaking institutions.

(b) Option available to non-profitmaking institutions. The provisions of any wage order issued under this article shall not apply, however, to any non-profitmaking institution which pays and continues to pay to each of its employees in every occupation a wage, exclusive of allowances, of not less than the minimum wage provided in subdivision one of this section provided that such institution had certified under oath to the commissioner, on or before September first, nineteen hundred sixty, that on or before October first, nineteen hundred sixty it would pay and thereafter intended to pay such wage to each of its employees in every occupation and provided further that all the provisions of this article have not become applicable to such institution by operation of paragraph (c) of this subdivision.

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If such institution was not organized or did not hire any employees as defined in subdivision five of section six hundred fifty-one of this chapter before September first, nineteen hundred sixty, such provisions shall not apply so long as, commencing six months after it was organized, or first employed such employees it paid and continues to pay such wage to each of its employees in every occupation, provided that such institution certified under oath within six months after it was organized or first employed such employees that it would pay and thereafter intended to pay such wage to each of its employees in every occupation and provided further that all the provisions of this article have not become applicable to such institution by operation of paragraph (c) of this subdivision.

- (c) Termination of option. All the provisions of this article, including all of the provisions of any wage order issued thereunder which, but for the operation of paragraph (b) of this subdivision, would apply to any non-profitmaking institution, shall become fully applicable to such institution sixty days after such institution files a notice with the commissioner requesting that the provisions of such wage order apply to it, or immediately upon the issuance of an order by the commissioner finding that such institution has failed to pay the wages provided in paragraph (b) of this subdivision, but in no event shall any such order discharge the obligation of such institution to pay the wages provided by paragraph (b) of this subdivision for any period prior to the issuance of such order.

Note: the above information was compiled with the assistance of Ms. Constance Laymon, CEO Consumer Directed Choices, Inc. I remembered the general nature of the overtime exemption, but she remembered the statute that supported the exemption.

I hope this information helps.

Best Regards,  
Edward Litcher