

# MASSACHUSETTS TEACHERS ASSOCIATION

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## MEMORANDUM

TO: Barbara Madeloni, MTA President  
Janet Anderson, MTA Vice-President  
Ann Clarke, Executive Director/Treasurer

Cc: Mark Sheehan, Director of Affiliate Services  
Jo Blum, Director of Governmental Relations

FROM: Ira Fader, MTA General Counsel 

DATE: February 23, 2015

RE: Application of State Minimum Wage in Public Sector

Several MTA affiliates have asked whether the state minimum wage law applies to municipal or state employees. The question has arisen, no doubt, because of a recent increase in the state minimum wage. The short answer is that, unlike the federal law, the state wage law does not apply to municipal or state employees.

Under the federal Fair Labor Standards Act, the federal government currently sets the minimum wage for all employers in both the private and public sectors at \$7.25 per hour. The states are free to establish their own minimum wage laws, although the wage floor cannot be lower than the federal requirement. Massachusetts is among many states that have enacted minimum wage laws, and ours is found at General Law chapter 151. On June 26, 2014, the governor signed a law presented by the Legislature (St. 2014, c. 144) that raised the state wage floor to \$9.00 per hour effective January 1, 2015, and then to \$10.00 an hour on January 1, 2016 and to \$11.00 an hour on January 1, 2017.

Both before and after the 2014 amendment, G.L. c. 151, § 1 has stated: “It is hereby declared to be against public policy for any employer to employ any person in an occupation in this commonwealth at an oppressive and unreasonable wage . . .” The law prior to the June 2014 amendment provided that a “wage of less than \$8.00 per hour, *in an occupation, as defined in this chapter*, shall conclusively be presumed to be oppressive and unreasonable . . .” (Emphasis

added.) While increasing the dollar amount as described, the Legislature did not change the definition of “occupation.” An “occupation” is explicitly defined as

an industry, trade or business or branch thereof or class of work therein, whether operated for profit or otherwise, and any other class of work in which persons are gainfully employed, but shall not include professional service, agricultural and farm work, work by persons being rehabilitated or trained under rehabilitation or training programs in charitable, educational or religious institutions, or work by members of religious orders. Occupation shall also not include outside sales work regularly performed by outside salesmen who regularly sell a product or products away from their employer’s place of business and who do not make daily reports or visits to the office or plant of their employer.

G.L. c. 151, § 2.

Unfortunately, there is sufficient case law for me to advise that both state and municipal employees are not employed “in an occupation, as defined in this chapter.” *Id.* The Executive Office of Labor and Workforce Development has issued several Opinion Letters regarding the inapplicability of G.L. c. 151, § 1 (minimum wage) and § 1A (overtime) to state employees and to municipal employees. MW-2002-001; MW-2002-004; MW-2004-001 (available online at <http://www.mass.gov/lwd/labor-standards/minimum-wage/opinion-letters>.) These letters were based, in part, on an Appeals Court decision holding that “statutes regulating persons and occupations engaged in trade and industry are ordinarily construed not to apply to the Commonwealth or its political subdivisions unless the Legislature has expressly or by clear implication so provided.” Grenier v. Town of Hubbardston, 7 Mass. App. Ct. 911 (rescript) (1979). More recently, the United States District Court for the District of Massachusetts has twice opined that the provisions of the state’s minimum wage laws do not apply to municipalities. Lemieux v. City of Holyoke, 740 F. Supp. 2d 246 (Posner, J., 2010) and Burns v. City of Holyoke, 881 F. Supp. 2d 232 (Gorton, J., 2012). The Office of Labor and Workforce Development continues to hold this view of the law and as recently as October 2013 reiterated in writing that it does not enforce a minimum wage law for state employees.<sup>1</sup>

Absent a legal right, our approach must be political or legislative. Chapter 151 opens with a clarion statement of public policy, a relative rarity in legislative drafting reserved for statutes of signal importance. As noted above, the Legislature declared that it is “against public policy for

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<sup>1</sup> The reasoning in all of these cases is the same: the state and its political subdivisions enjoy sovereign immunity from lawsuits unless the Legislature has abrogated this immunity expressly or by necessary implication in a statute. The language of our state minimum wage law does not contain the kind of language that has been read to abrogate immunity.

any employer to employ any person in an occupation in this commonwealth at an oppressive and unreasonable wage.” It further established that a wage below the minimum wage “shall conclusively be presumed to be oppressive and unreasonable.” While the state and its political subdivisions are excluded from the legal “minimum wage” requirement, they are not excluded from the moral force of the statement of public policy. Even without the compulsion of the law, there is a compelling argument to be made at the bargaining table and in the public arena that no public employee in the Commonwealth should be paid an “oppressive and unreasonable wage” for his or her public service.