From:	Shaw, Barbara
To:	Irving, Toni; Weems, Malcolm; Ocasio, Billy
Cc:	Holmes, Michael A.
Subject:	FW: NRI Cuts in House Committee
Date:	Wednesday, April 13, 2011 8:19:22 PM
Importance:	High

This 60% cut really guts the program. Is there anything we can do to reduce this cut?

From: Howard Lathan [mailto[redacted]
Sent: Wednesday, April 13, 2011 8:11 PM
To: Shaw, Barbara
Subject: Re: Request for Opinion

Barbara,
Hope you got notice, NRI was cut by 20m by Public Safety Approp. Rep. Arroyro.

Sent from my iPhone

On Apr 8, 2011, at 6:49 AM, "Shaw, Barbara" <Barbara.Shaw@Illinois.gov> wrote:

> Below is the opinion of the Dept. of Employment Security on the question of whether M+J and PLAN hires are covered by Unemployment Insurance.

Barbara:

In a nutshell, based on the info you've provided, it appears the activities of the youths participating in the Mentoring Plus Jobs program (the youths) and the parents participating in the Parent Leadership program (the parents) would not constitute covered employment under IL's unemployment insurance program – *i.e.,* the youths and parents could not base an unemployment-benefit claim on payments they received in connection with those activities, and no unemployment insurance (UI) liability would attach to an entity on the basis of those payments. It appears that, unless some express exemption from coverage were found to apply, the adult mentor/coordinators would be covered by the state's UI system, with UI liability potentially attaching to the community partner agencies. The following provides further explanation.

Background

Any service performed for an employing unit constitutes employment under IL's Unemployment Insurance Act unless it falls within a specific statutory exemption. *See,* 820 ILCS 405/206.

A worker's employing unit is the entity that exercises direction and control over the performance of the worker's services. *See, Mowry v Bd. of Review,* 411 Ill. 508 (1952). In general, the entity that pays a worker for his/her services and has the authority to hire and fire the individual is considered as having direction and control. *See, id.*

Among the various statutory exemptions is an exemption for services performed in the employ of a church, *see,* 820 ILCS 405/211.3A(1) and services performed by an individual as the recipient of work-relief or work-training, *see,* 820 ILCS 405/211.3E or

220D(2*). Also see,* attachment regarding the work relief/training exemption.

Additionally, service performed for a “501(c)(3) not-for-profit entity” does not constitute employment, unless, within the current or preceding calendar year, four or more individuals have performed services that would otherwise be considered employment for it in each of 20 calendar weeks. *See,* 820 ILCS 405/211.2.

Community Partner Agencies as Employing Units

You’ve indicated that the community partner agencies would pay the youths, parents and mentor/coordinators. We infer the agencies would also have some discretion over who remained in the program, either as a participating youth or parent or as a mentor/coordinator. Accordingly, it appears that, to the extent any of those individuals were performing services under the program, the community partner agency would be the employing unit.

The Youths and Parents

Based on the info you’ve provided, it appears that the Mentoring Plus Jobs and Parent Leadership programs are intended primarily to benefit the youths and parents respectively, rather than to have the youths or parents perform services to benefit an employing unit. Accordingly, the youths’ and parents’ activities would not appear to constitute services in employment for purposes of the UI system. Any purely incidental services performed by the youths or parents would not alter the analysis.

Adult Mentors/Coordinators

While the Mentoring Plus Jobs program is intended primarily to benefit the participating youths, it appears the mentor/coordinators will provide an integral service in achieving that end. Their activities would be considered employment in the employ of the community partner agencies, unless the agencies were able to take advantage of any of the previously discussed exemptions or some other exemption.

We’d reach the same conclusion to the extent there were any mentor/coordinators, or individuals performing comparable functions, for the Parent Leadership program.

Qualifications

This opinion is subject to change to the extent that a particular case may present facts in addition to or different from the info that’s been provided to us, or any inferences we’ve drawn from that info (please let me know if you feel we’ve drawn any incorrect inferences or overlooked something).

This opinion would not be legally binding on an IDES claims adjudicator or hearing officer or the Employment Security Board of Review, much less the courts, in the event a claimant were to challenge it. A participating youth or parent might ultimately challenge the idea that he/she could not claim unemployment benefits on the basis of their activities under the program.

I’ll wait to hear back from you before circulating this opinion among IDES field staff.

Joe Mueller, Legal Counsel
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<uipl 30-96.pdf>