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 | INFORMATIONAL LETTER |
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TRANSMITTAL: 92 INF-56

TO: Commissioners of
 Social Services

DIVISION: Services and
 Community
 Development

DATE: December 21, 1992

SUBJECT: Working Toward Independence: Model Worksite Agreement
 between New York State Department of Social Services
 and other State Agencies

SUGGESTED

DISTRIBUTION: Directors of Income Maintenance
 Employment Coordinators
 Staff Development Coordinators

CONTACT PERSON: Bureau of Employment Programs
 1-800-342-3715
 Richard Hider at extension 4-8753
 Jim Cook at extension 4-9320

ATTACHMENTS: Model Worksite Agreement By and Between the
 Department and other State Agencies - available on-
 line

FILING REFERENCES

| Previous ADMs/INFs | Releases Cancelled | Dept. Regs. | Soc. Serv. Law & Other Legal Ref. | Manual Ref. | Misc. Ref. |
|-----------------------|-----------------------|-------------|---|-------------|------------|
| 90 ADM-27 | | 385.13(e) | 250.63 | | |
| 91 INF-5 | | | 8.12-a State | | |
| 92 INF-11 | | | Finance Law | | |
| | | | Part 238 and Section 336-C SSL | | |

The purpose of this release is to notify local social services districts that the New York State Department of Social Services will be executing statewide worksite agreements with specific State agencies. These agreements will enable local districts to operate work experience programs with these specific agencies by representing this Department as our designated local administrative agency. This would mean that a local worksite agreement would not be necessary for the operation of Working Toward Independence (WTI) at State sponsored worksites.

The following should be noted:

1. Paragraph (9) in the model agreement indicates that the sponsor is responsible for maintaining and furnishing the local district, in accordance with their local practices/policy. The local district should still identify to each sponsor agency necessary reporting requirements such as line records and progress reports.
2. Paragraph (13) in the model agreement specifically indicates that the State agency is responsible for Workers' compensation and tort claim protection.
3. In the case of State agencies the provision for proof of certain types and amounts of liability insurance contained in some local worksite agreements is unnecessary. Pursuant to Section 8 of the Court of Claims Act, the State has waived sovereign immunity from liability for the actions of its officers and employees. Any claim against a State agency for liability can be filed in the Court of Claims or in certain instances can be settled by submission for payment to the State Comptroller pursuant to Section 8.12-a of the State Finance Law. In either case payment for State agencies' liability is backed by the State Treasury and there are no limits on liability.
4. This agreement doesn't contain a "Hold Harmless Clause" for identifying specific counties. There is no authority for a State agency to hold a County harmless in the event of negligence resulting in an injury or damage to property. Although the State agency could be held liable in the Court of Claims for any percentage of negligence determined by the Court, there would be no money in a State agencies' budget to separately indemnify the County for any percentage of negligence that may be attributable to them. As the result, it is likely that State agencies would not be willing to agree to such hold harmless clauses.

As these NYSDSS/other State agency agreements are executed we will provide local districts with the names of these state agencies.

Jack Ryan
Assistant Commissioner
Division of Services and
Community Development

Model Worksite Agreement By and Between
The Department and Other State Agency

The New York State Department of Social Services or designate local administrative agencies, hereinafter, "Department" and the (state agency name), hereinafter, "Sponsor."

WHEREAS, the Department is authorized, pursuant to Section 164 of the Social Services Law of the State of New York, to provide for the establishment of work experience projects for the assignment of employable persons in receipt of Home Relief (HR) and pursuant to the code of Federal Regulations Title 45, Part 238 and Section 336-c of the Social Services Law of the State of New York, employable persons in receipt of Aid to Families with Dependent Children (ADC), and to the extent it is necessary is authorized to designate local administrative agencies (local social services districts) in order to carry out the purposes of these laws and regulations; and

WHEREAS work experience projects may include the performance of work in the operation of or in an activity of a governmental unit, a non-profit or institution pursuant to a contract with the Department in accordance with regulations of State Department of Social Services; and

WHEREAS, the Sponsor is a state agency desiring to provide work experience for recipients of Home Relief and Aid to Families with Dependent Children under a contract complying with such provision of law and regulation;

NOW, THEREFORE, in order to define their respective roles and responsibilities in providing work experience projects, it is herein agreed as follows:

1. The Department shall assign to the Sponsor employable recipients of Home Relief or Aid to Dependent Children (hereinafter called "Participants") to whom the Sponsor shall assign work in accordance with the provisions of this agreement and applicable law and regulations.
2. The work to be performed by such Home Relief or Aid to Dependent Children recipients shall be useful, productive and shall provide experience which will maintain or develop work habits, maintain or improve existing skills, or develop new skills leading to self-sufficiency.
3. Such work shall be performed at the Sponsor's Office or at such other worksite locations as shall be mutually agreed upon between the Department and the Sponsor. The work experience site, however, must serve a useful public purpose in fields such as health, social services, environmental protection, education, urban and rural development and re-development, welfare, recreation, operation of public facilities, public safety and child day care.

4. No participant shall be used to replace or to perform any work ordinarily and actually performed by regular employees, or to replace or to perform any work which would ordinarily be performed by craft or trade unions in private employment.
5. The assignment of a participant to a work experience program must not result in:
 - a. the displacement of any currently employed worker or loss of job or position, including partial displacement such as a reduction in the hours of non-overtime work, wages or employment benefits, or result in the impairment of existing contracts for services or collective bargaining agreements;
 - b. the employment or assignment of a participant to a position when any other person is on layoff from the same or any equivalent position or the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the effect of filling the vacancy so created with such participant; or
 - c. any infringement of the promotional opportunities of any currently employed person.
6. Participants receive credit for work performed for the Sponsor at the Federal or State minimum wage or the prevailing wage for comparable work, whichever is higher. No participant shall be required to work for more than the number of days necessary to earn an amount equal to his or her public assistance grant or for more than eight hours in a day, or for more than 40 hours in any one week, or for more than the customary full-work week of the Sponsor if that is less than 40 hours per week. The Department will advise the Sponsor if that is less than 40 hours per week. The Department will advise the Sponsor as to the number of mandatory work hours for each participant for each month, based upon the rate specified in this paragraph.
7. Appropriate standards of health, safety and other work conditions will be established and maintained to ensure that the participants are adequately protected against hazards or activities which may adversely affect their health or safety.
8. Participants will be required to perform only those activities that are within their physical capabilities.
9. The Sponsor will maintain and furnish to this Department, in accordance with the local practices, time records with respect to all participants adequate to meet the needs of the Department. Such time records will include the Sponsor's name, the participant's name and the period covered by the report. The Sponsor will notify the Department if an individual refuses/fails to perform assigned responsibilities.

10. There will be no discrimination on the grounds of race, color, religion, sex, sexual orientation, age, marital status, national origin, prior criminal record, mental or physical disability, or veteran status.
11. Each participant's work will be so scheduled as to make time available to him or her to seek regular employment and/or secure appropriate training or retraining opportunities that may be available, as well as necessary time to meet with Department staff.
12. Participants shall not be required to travel an unreasonable distance from their homes (generally a round trip lasting more than two (2) hours) or remain away from their home overnight for the purpose of participating in a work experience assignment.
13. The Sponsor shall provide appropriate workers' compensation or equivalent protection for on-the-job injuries and tort claims protection on the same basis as they are provided to other persons in similar employment.
14. The Sponsor shall promptly notify the Department of a participant's absence (whether for illness or otherwise), except when such absence is on a pre-planned basis approved by the Department. Such notification shall include prompt telephone notice to the Department followed by written confirmation, if requested. The Sponsor shall report any injury to or illness of any participant.
15. The Sponsor shall provide adequate supervision to the participant. These supervisors will cooperate in reviewing performance and attitude of all participants with a representative of the Department at regular and mutually convenient intervals.
16. The Department will provide transportation, or meet the cost of transportation, provide necessary allowance for lunches and child care and provide other supportive services as may be required for participation. Allowances for lunch shall not exceed \$2.00 per day for recipients of Aid to Families with Dependent Children.
17. It is understood that the Sponsor shall provide any special clothing, specific tools or equipment which may be required for the participants to perform the work assigned by the Sponsor.
18. Participants may be assigned to work requiring the use of a motor vehicle. The Sponsor shall provide the motor vehicle and adequate liability insurance for such motor vehicle which shall cover the participant who may be operating it on behalf of the Sponsor. Only properly licensed participants shall be assigned to such duties.
19. The Sponsor may discharge any participant at will, provided that the Sponsor shall furnish the Department with written evaluation of the participant's work performance and the reason for the termination.

20. The Sponsor may offer full-time paid employment to any participant provided the Sponsor has furnished to the Department written notice of such offer, and the participant's acceptance or rejection thereof, including details as to the job description, wages and date of employment.
21. This agreement shall take effect as of _____, 19__ and may be terminated at any time by either party upon 30 days written notice by registered or certified mail, return receipt requested.

This agreement shall not be modified except by a further written agreement signed by both parties.

In witness thereof, the parties have executed this agreement on the day and year first mentioned.

The foregoing is accepted and agreed by:

NYS Department of Social Services

(signature)

Date:

NYS Department of Social Services

Sponsor Agency

(signature)

Date:

Any State Agency