

Wednesday, November 12, 2014

Ladies and Gentleman,

I want to thank you for the interest you showed in the last meeting and I am very hopeful that there can be lasting and needed changes here after hearing your thoughts about new statutes and regulations. However, there are some other considerations that I feel you must be taken into serious consideration.

First,

***By a show of hands please, Veterans how many of you feel that you are not treated with the respect and dignity that all human beings deserve?***

***By a show of hands please, Veterans how many of you here feel that disciplinary action here is not handled fairly?***

***By a show of hands please, Veterans how many of you do not trust the staff to be fair and honest?***

Well now you have a feel for how some of us here, feel I would like to give a few specifics.

First, I just want to go over what happened to me quickly in order that you can see how things are done here. First I was given a choice on May 12<sup>th</sup> this year after making OSHA complaints and emailing then Commissioner Linda Schwartz telling her it was against regulations to move patients from the healthcare facility to the domicile. This letter was because of the OSHA complaint I filed for blood borne pathogens cause by one of the patients moved to A-Wing.

So, I believe it was within an hour after sending the email on Monday morning that I was called into the Domicile Office and given the choice to change Wings, quit, or be fired. I said it was up to them that I had done nothing wrong. I then worried all day about being fired and/or thrown out of the facility, so I put in a workplace violence complaint against the two that gave me the choice.

Well, on May 15<sup>th</sup> I was fired and I put in an OSHA Discrimination complaint. The following week Maria Cheney came back from vacation and told me the names of the 3 people who decided to fire me and I put in another workplace violence complaint now that I knew for sure who made the decision.

Well, since it was workplace violence I sent my complaints to both Hugo Adams the Director of Safety and Security and Noreen Sinclair the head of HR. Well as far as I knew for I never received the classes all State workers are entitled to Hugo was in charge of this as that was the

way it was done in the 2010 Governor's Workplace Violence Policy I found. So he assigned Security Officer Blasko to investigate my first claim.

Well, I have copies here for you of my complaint and his answer of June 2<sup>nd</sup> to it. First, as I said I named two people, the only place their names appear are on the list of those questioned. He never mentioned whether they were innocent or guilty. He did however; go on to say that there was no OSHA violation which he is not qualified to determine and that both Kim Ethridge and myself were guilty of workplace violence. After I received this I went to Kim to apologize for getting her in trouble and she said oh no Ron I am the shop steward and if they tried that I would be all over it.

Security Officer Blasko has no training to determine what is or what is not workplace violence nor does he have the training to determine what is or is not an OSHA violation. He states in this document that he used a 3 page Department of Veterans Affairs workplace violence policy dated 2/25/2014. So they feel this overrides the Governor's Workplace Violence Policy dated 2012 which DAS should have trained Noreen Sinclair to do as it was her job? His boss Hugo Adams is in charge of making this facility OSHA compliant so at least he made him look good in his decision.

So since the penalties go all the way up to being fired this should obviously be taken seriously but it was bogus to try and make me worry. Well then I found out the Governor came out with a new policy in 2012 and only HR can investigate and there are now steps that must be followed that were not. But amazingly according to the testimony written to OSHA the reason for my firing was asking that patients be moved back to the hospital, of course the regulation that states it was never allowed in the first place was never mentioned and this letter was signed by Linda Schwartz.

Then they tell OSHA we have no rights as we are patient workers on a work therapy program. So now it takes until September 29<sup>th</sup> for the AG's Office to determine we are employees at least as far as making an OSHA complaint goes but really we are more like prison inmates! We are Honorably Discharged Veterans whom served our Country! Each and every one of us at one time wrote a check to the people of the United States for anything up to and including our lives and I take the AG's letter as a personal insult!

I also understand under OSHA Laws they have the power to order my job returned and under State Law the Commissioner of Labor should have already ordered my job returned. So the problems here are not just here but compounded by other Departments of this State as well.

Further, when we looked up laws about all this, here is what we found. First, the Vietnam Era Veterans' Readjustment Act of 1974, this law, sometimes referred to as VEVRAA or Section 4212, requires employers doing business with the Federal government to take steps to recruit,

hire and promote protected veterans. It also makes it illegal for these companies to discriminate against protected veterans when making employment decisions on hiring, firing, pay, benefits, job assignments, promotions, layoffs, training, and other employment related activities. It makes Veterans a class of people under the law! I believe this act should be used to restore Chris Beloff to his State Union job here, as well as, to determine a fair pay base using Federal Contract Workers pay and to get us paid the overtime we earned.

To further strengthen this let's look at 1973 court decision.

Here we find:

**Souder v. Brennan** 📄

**SOUDER V. BRENNAN, 367 F. SUPP. 808 (D.D.C. 1973)**

**Key Issue: "minimum wage and overtime compensation provisions of the Fair Labor Standards Act apply to patient-workers of non-federal hospitals, homes and institutions for the mentally retarded and mentally ill"**

**Summary:**

The court ruled that notwithstanding claims that work is therapeutic, patient-workers at non-federal institutions are "employees" covered by the minimum wage and overtime compensation provisions of the Fair Labor Standards Act.

We have Veterans here whom are only paid \$3 and sometimes nothing to clean toilets and mop floors etc. I would like to point out here that we are patient workers doing therapeutic work and probably most of us have at least one covered mental illness whether it be PTSD, depression, Bi-Polar disorder, or drug and/or alcohol problems which all would qualify under mental disorders. I believe since we are considered patients we are covered by this law and we found these laws but AG couldn't. Instead the AG equates us with convicted felons.

One Veteran was attacked in his living area near his bed and he defended himself and was thrown out. I am sorry but does not every American have the right defend him or herself in their own home. I don't think you can be more at home then in your own bedroom.

Veterans are constantly fired for no good reason and/or refused to be hired here. We have one Veteran whom for 10 years has worked in the diet kitchen in the healthcare facility and has put in for every job opening but he never received a State Union job. But he had to train every person that has been hired there and must cover for any State Union Worker whom is out sick.

I was told by a senior State Worker I trust that many things that happen here never make to the Acting Commissioners ears. This I might be able to believe as he was obviously shocked when I told him that Veterans in the Healthcare Facility were being robbed of most of their \$150 a month they are given by the State the night they receive it.

Finally, Maria Cheney has called Veterans into her office and asked them to testify here on the Department of Veterans Affairs behalf; even stating that “do you want him to speak for you?” Let’s see, Maria determines punishments, decides who is able to work here, who gets rides to school or to outside appointments, and of course who can live here. Am I the only one that sees a conflict of interest here and authoritative pressure being unduly welded over Veterans?

This I believe shows you that while your ideas for new statutes and regulations are welcome news to us; that without a major transfer of supervisor and above personnel to other departments of this State and new staff brought in to replace them; whom can read and follow statutes and regulations starting with the one that says “we are here to serve those who served” instead of misinterpreting it to read “Great their back to do our bidding again!” nothing will really change.

New statutes and regulations and/or executive orders will mean nothing to those whom are already ignoring the ones already in place with impunity, for as we speak not 300 feet from there is a regulation being broken and has been being broken continuously since April I believe. You guys write the regulations so maybe you gave them permission to disregard it, I wouldn’t know about that though.

I Thank You For Your Time.

Sincerely,

A handwritten signature in cursive script, reading "Ronald Curry", is written over a horizontal line. The signature is fluid and somewhat stylized, with the first name "Ronald" being larger and more prominent than the last name "Curry".



STATE OF CONNECTICUT  
DEPARTMENT OF VETERANS' AFFAIRS

Dr. Linda S. Schwartz, RN, FAAN  
Commissioner

August 1, 2014

Mr. Stephen C. Lattanzio  
Attorney for the Office of Program Policy  
Department of Labor  
200 Folly Brook Boulevard  
Wethersfield, CT 06109

RECEIVED

AUG 05 2014

Office of Program Policy  
Connecticut Labor Department

Dear Attorney Lattanzio:

I am writing in response to your request for information regarding Mr. Coveney's involvement in the Connecticut Department of Veterans' Affairs "Patient Worker Program/ Veteran Therapeutic Work Program". Mr. Coveney was admitted to the Connecticut Department of Veterans Affairs on June 17, 2008 and was placed in the Standard Veteran Improvement Program (STV) level of care. The STV level of care is designed to provide Veterans entering the facility the opportunity to develop an individualized treatment plan to either seek benefits, attend educational programs, obtain training to enhance their employability and/or to participate in the agency compensated work therapy program if physically able. The STV program utilizes a two year time frame to work on the goals necessary to return to independent living in the community. At any time the veteran may request transfer into the Extended Veteran Improvement Program (EXV) level of care.

On September 16, 2008 Mr. Coveney met with the Veteran's Improvement Program (VIP) Team (Vocational Rehabilitation Department and Social Work Department) to develop his discharge plan outlining the goals needed to return to independent living in the community. In his initial plan he stated that his long term goals were to obtain employment and to discharge to independent living. He also stated that he had an active Social Security Disability claim filed and an attorney was assisting him. The VIP Team continued to meet with Mr. Coveney every three months:

- 12/16/08 – Employment search postponed due to medical conditions, continues to see mental health clinician, SSD Appeal pending, compliant with rules and regulations of facility.
- 03/31/09 – Medical procedure in December 2008, employment still on hold due to medical condition, continues to see mental health provider, in process of medication change, waiting for SSD hearing to be scheduled.
- 6/17/09 – Attempted to establish a vending business in the community, the venture lost money and did not work out, continues to see mental health provider, followed for medical conditions by VA Medical Center.
- 09/15/09 – No longer actively seeking employment, acquiring additional documents to provide to SSD, continues to see mental health provider and receive medical care from VA Medical Center.

- **11/19/09** – CT DVA Vocational Rehabilitation Department provided a letter to Mr. Coveney's Attorney regarding his involvement in the "Patient Worker Program / Veteran Therapeutic Work Program", which explained that the program is a compensated work therapy program and should not be considered comparable to work found in the community. This letter was requested by the Attorney in connection with Mr. Coveney's application for Social Security Disability benefits.
- **12/16/09** – Mr. Coveney attended Social Security Disability hearing to determine eligibility for benefits, continues to see mental health provider and receive medical care through the VA Medical Center.
- **03/17/10** – Mr. Coveney is awarded Social Security Disability benefits, continues to see mental health provider and receive medical care through the VA Medical Center.
- **06/15/10** – Mr. Coveney was receiving Social Security Disability benefits and at this time he decided that he was going to remain at the facility on a long term basis. The VIP Team approved this request. Mr. Coveney was transferred to the Extended Veteran Improvement Program level of care (EXV).
- **10/14/11** - CT DVA Vocational Rehabilitation Department provided a letter to Mr. Coveney for the Social Security Administration regarding his involvement in the "Patient Worker Program / Veteran Therapeutic Work Program", which explained that the program is a compensated work therapy program and should not be considered comparable to work found in the community. This letter allowed him to continue to participate in the program without affecting his SSD benefits.
- **03/06/13** - CT DVA Vocational Rehabilitation Department provided another letter to Mr. Coveney for the Social Security Administration regarding his involvement in the "Patient Worker Program / Veteran Therapeutic Work Program", which explained that the program is a compensated work therapy program and should not be considered comparable to work found in the community. This letter allowed him to continue to participate in the program without affecting his SSD benefits.

As a resident Mr. Coveney was eligible to participate in the "Patient Worker Program / Veteran Therapeutic Work Program". He began working in this program on a July 04, 2008 and was removed from the program on May 15, 2014 after a meeting was held by the Vocational Rehabilitation Counseling Coordinator, the Lead Veteran Residential Facility Worker and the Buildings and Grounds Lead Patrol Officer to explain the reason for his removal. The "Patient Worker Program / Veteran Therapeutic Work Program" is a compensated work therapy program designed to assess an individual's ability to return to gainful employment in the community. It is also designed to provide individuals, such as in the case of Mr. Coveney, who are being treated for various medical and mental health conditions, the opportunity to perform simple work tasks for minimum wage compensation. Wages paid to workers in this program come from the agency's General Funds Budget.

Mr. Coveney was assigned to the Residential Facility Department where he was expected to perform basic work tasks. The work he performed cannot be considered comparable to work found in the community. As part of his overall treatment at the VA, Mr. Coveney performed the simplified tasks of monitoring residents that reside on one of the residential wings, under the daily supervision of a classified state employee. Over the years Mr. Coveney received good work performance evaluations overall. On 01/07/10 Vocational Rehabilitation and Residential Staff met with Mr. Coveney to establish a Veteran Worker Performance Improvement

Agreement because his morning reports were being submitted with mistakes and inaccuracies which affected our daily census count. He was placed on a probationary status while corrective steps were taken, over the next month Mr. Coveney's performance improved and he remained in his position.

In January of 2014, in response to the changing needs of our Veteran population, the agency established additional support services for residents to remain living in the Residential Facility. Living quarters for residents needing these additional services were set aside on two wings, one of the wings being the one Mr. Coveney monitored. Staff held several meetings with Mr. Coveney and the other Wing Monitor affected by these changes to prepare them, as well as offer staff support and guidance to manage these changes. On Sunday 05/11/2014 there was an incident on the wing monitored by Mr. Coveney requiring staff intervention. Residential Staff asked Mr. Coveney to perform the task of emptying the garbage on the wing. He became angry and confrontational, using derogatory and demeaning comments about the disabled and elderly residents on his wing and refused to complete the task. Residential Staff completed the task and emptied the garbage for him resolving the matter. Through staff observation of the recent changes in Mr. Coveney's behavior, and his inability to adapt to the additional responsibilities required of him within the wing he resided, it became clear that he could no longer respond effectively to the Veterans residing on the wing or to staff. In consultation with Residential Treatment Providers and the Agency Administration, Mr. Coveney was offered a transfer to another Wing Monitor position where these additional services were not available to residents, a transfer to another department or removal from the program. Since Mr. Coveney's solution was to move the residents requiring additional services off of the wing and he refused the option of transferring to another wing or department, we had no other option but to remove him from the "Patient Worker Program / Veteran Therapeutic Work Program". On 05/15/2014 Mr. Coveney was removed from the "Patient Worker Program / Veteran Therapeutic Work Program".

Sincerely,



Linda S. Schwartz, RN, MSN, DrPH, FAAN  
Commissioner



Unclassified			Eff. Date
Class Code	Pay Plan	Class Title	Mar 21, 2014
4112	VR - 99	GENERAL WORKER	

**PURPOSE OF CLASS:**

In a state agency this class is used in the following ways:

- PATIENT WORKER:** In accordance with Sec. 5-198 (q) of the Connecticut General Statutes, patient workers are defined as, patients of state institutions who receive compensation for services rendered therein. Examples of duties include: cleans wards, kitchens, dining rooms and other areas within facility or institution; performs simple tasks in preparation, handling or distribution of foods; helps in maintenance work such as cutting grass, shovelling snow, moving supplies, collecting and dispensing trash, rubbish and garbage; distributes, empties and sterilizes glassware, wash basins, bed pans, etc.; makes beds, stores linens, collects and counts soiled laundry; may assist in physical care of patient; may participate in workshop or other work activity center.
- STUDENT WORKER:** In accordance with Sec. 5-198 (o) of the Connecticut General Statutes, student workers are defined as students in educational institutions who are employed on a part-time basis. This class is limited to matriculating students enrolled in educational institutions who are employed on a part-time basis at such educational institutions. Incumbents who are classified as student workers may not work more than (6) months, the equivalent of 1040 hours, in a calendar year.
- DEVELOPMENTAL SERVICES-SELF ADVOCATE COORDINATOR:** Self Advocate Coordinators perform a range of duties to influence change that will result in the enhanced empowerment of people with cognitive disabilities to have control in their lives and authority over the resources that support them. Examples of duties include: provide leadership, mentor, train consumers, families, and staff; support existing and start new self advocacy groups and create self determination materials that are written for and by people with cognitive disabilities; participate on Department of Developmental Services and other statewide committees. In accordance with Sec. 49-62 of Public Act 12-197, General Workers employed in positions by the Department of Developmental Services as a Self-Advocate, not to exceed eleven such general workers, are 1) eligible for prorated sick leave, in accordance with DAS regulations; 2) eligible for prorated vacation and personal leave; and 3) must be given time off with pay, for the number of hours they would have been scheduled to work for any legal holiday that falls on a day that they would regularly be scheduled to work.

**HOURLY RATE SCHEDULE:**

ARRAS:	HOURLY RANGE:
1. Patient Worker	\$10.10 or up to \$10.10 if the agency/institution has a wage certificate from the U.S. Dept. of Labor
2. Student Worker	\$10.10
3. Developmental Services - Self Advocate Coordinator	\$10.10 to \$12.00

**RESTRICTION:**

Permanent status cannot be attained while working in this classification.

This replaces the existing specification for the class of General Worker in Salary Group VR 99 approved effective October 19, 2012. (Revised to modify Hourly Rate Schedule)

4112A 3/19/14 cm

CC	Item#	Occup. Group	Bargaining Unit	EEO
4112	2005	(99)-Unassigned or Unknown	(04)-OTHER NON-BARGAINING	(8)-Service Maintenance



**CONNECTICUT DEPARTMENT OF VETERANS' AFFAIRS**  
**RESIDENTIAL FACILITY**

**VETERAN THERAPEUTIC WORK PROGRAM**  
**(Guidelines and Responsibilities)**

The Veteran Therapeutic Work Program is a compensated work therapy program designed to assess an individual's ability to return to gainful employment in the community. It provides individuals, who are being treated for a variety of conditions, the opportunity to perform simple work tasks for minimum wage compensation. Wages paid to workers in this program come from the agency's General Funds Budget. Even though its main purpose is of a therapeutic nature, the program also provides a feeling of accomplishment and a sense of pride to those participating, in spite of their situation, limitations and disabilities.

**Responsibilities:**

The Director of Residential Programs and Services will have overall responsibility for administration of the program. The Vocational Rehabilitation Counseling Coordinator or designee will be responsible for assigning residents to Veteran Therapeutic Worker positions established in the designated Departments.

The following outlines the guidelines and responsibilities of the Vocational Rehabilitation Counseling Coordinator, Department Heads and Veteran involved in the implementation of the Veteran Therapeutic Worker Program.

**General Program Guidelines**

- Eligibility: In order to be a Veteran Worker, a person must reside in the Residential Facility at the CT. Department of Veterans' Affairs Home and shall have a physical classification of "D-1" or higher.
- Wages: Veteran Workers shall be paid minimum wage in accordance with State Job Specifications (class code 4112) for "General Worker".
- The maximum number of hours a Veteran worker is allowed to work in a day is eight (8) hours. The maximum number of hours allowed to work in a week is forty (40) hours. Each Veteran Worker must be scheduled for a minimum of two days off per work week.
- Timekeeping: It is essential that accurate timekeeping procedures be followed. All time sheets must be signed by the Veteran Worker and the Department Head. Time sheets will then be submitted bi-weekly to the Payroll Department.
- Room and Board: There will be no charge for room and board deducted from the pay of Veteran Workers. As with all residents at the D.V.A., they will be billed monthly at a fee determined by the Commissioner.

**Vocational Rehabilitation Counseling Coordinator Responsibilities or Designee (VRCC):**

- Assess employment skills and interests.
- Consider Physical Classification rating when referring candidates for work.
- Refer qualified candidates to D.V.A. Department Heads for job placement using Job Assignment document.
- Provide a copy of the Veteran Worker Guidelines and Responsibilities to the candidate
- Sign and submit all forms received from Department Heads to add or remove workers from the Veteran Therapeutic Work Program
- Submit all forms adding or removing workers from the Veteran Therapeutic Work Program to The Payroll Department so they are incorporated into the payroll system
- If the number of Veteran Workers exceeds the number of positions available the Vocational Rehabilitation Counseling Coordinator will develop and maintain a waiting list.
- Provide Quarterly Evaluation forms to each D.V.A. Department Head
- Liaison between Veteran Worker and D.V.A. Department to address any work related issues that may arise.

#### **D.V.A. Department Head Responsibilities:**

- Interview candidates referred by the Vocational Rehabilitation Counseling Coordinator or designee
- If accepted, the D.V.A. Department Head will complete the "Application/Request for Appointment to Veteran Therapeutic Work Program" and submit the form to the Vocational Rehabilitation Counseling Coordinator or designee, and the Director of Residential & Rehabilitation Services for final signatures
- D.V.A. Department Head to explain detailed description of work duties expected by each Veteran Worker for the position assigned
- D.V.A. Department Head is expected to complete Quarterly Work Evaluations and review progress and concerns with each Veteran Worker
- Any transfer within the department requires a completion of a Transfer Form
- All Veteran Worker work related problems should be handled within the department, however, if problems persist, Vocational Rehabilitation Counseling Coordinator or designee can intervene with the request from the supervisor or Veteran Worker.
- Removal from Veteran Therapeutic Work Program: If it is necessary to remove an individual from the Veteran Therapeutic Work Program, the Department Head will complete the "Report of Resignation/Dismissal from the Veteran Therapeutic Work Program" form and submit it to Vocational Rehabilitation Counseling Coordinator or designee and the Director of Residential & Rehabilitation Services who will forward it to the Payroll Department

#### **Patient Worker Responsibilities:**

- Candidates will report to Vocational Rehabilitation Counseling Coordinator or designee, who will complete an initial vocational assessment to determine the Veteran's skills and abilities. Qualified Veterans will then be referred to a Department Head for an interview for an available Veteran Therapeutic Work position.
- Complete the interview with the designated Department Head
- Obtain description of job duties for position assigned
- Complete and sign all necessary forms needed to enter name into the payroll system.
- Sick Time/Vacation Time/Personal Time: It will not be possible to permit payment of sick time, vacation time or personal time. Payment will be for time worked only. The exception to this would be for on grounds medical appointments at the B-Clinic or Healthcare Clinic with maximum payment limited to one (1) hour only. No payment will be made for counselor or Social Work appointments, AA. Meetings, NA. Meetings, off grounds medical appointments, appointments at VA Connecticut, Newington and West Haven sites, schooling, etc. You must present your supervisor with written notice from the clinic in order to get the maximum one (1) hour pay.
- If unable to report to work due to illness, you must contact your supervisor and report to B-Clinic.
- If you wish to take a Pass during your regularly scheduled work day, you must obtain approval from your immediate supervisor who must also sign your Pass
- In the event that you wish to transfer to another D.V.A. Department, you must discuss this with the Department Head and notify the Vocational Rehabilitation Counseling Coordinator or designee.

**From:** Sponzo, Richard T.  
**Sent:** Monday, September 29, 2014 12:50 PM  
**To:** Rugens, Anne; Clifford, Thomas  
**Cc:** Lattanzio, Stephen; Schulz, Philip M.  
**Subject:** RE: OSHA Issue

**Follow Up Flag:** Follow up  
**Flag Status:** Red

I have reached a conclusion as to whether a patient worker at DVA can be considered an employee for purposes of the State's Occupational Safety and Health Act. Sorry for the delay in responding, but I wanted to "get it right." I think you told me you needed it by October 1 to meet the six months time limit on the inspection. I have concluded that the patient worker program at DVA is fundamentally different in critical, essential dispositive legal respects from the inmate work subject to the 2007 formal AG opinion you mentioned. That so clearly identified the work within the prison as serving a penological purpose of "hard labor." Also the inmates were paid next to nothing, nowhere close to minimum wage, and there was a reference in the opinion to Corrections Department health and safety policies applicable to the inmate work, even if not equal to OSHA's standards. There was further no reference to that inmate work as "employment." While C.G.S. Sec. 5-198(q) supports inmates, along with patient workers, as unclassified state employees, it should be noted that there is a class of inmates engaged in employment by statutory definition in so-called State use or prison industries. So the 2007 opinion may still be distinguished as an extraordinary case. While the State use industries program for inmates may not be a perfect fit for the patient worker program at DVA, it seems a lot closer than the hard labor referenced in the opinion. The State use program provides for inmates making products used by state agencies and municipalities and presumably within the prisons as well. That work is not, strictly speaking, "the State's time," as the hard labor is, but the inmate's work for compensation akin to regular outside employment. The patient workers too perform work similar to regular outside employment, within the DVA institutions, compensated at minimum wage and considered state employment by the Comptroller and DAS as well as Sec. 5-198(q). Moreover, while DVA may attempt to portray it as work therapy and the complainant may even have asked it be so considered for Social Security benefits, it appears quite distinct from the hard labor in the prisons and more attenuated from the medical treatment and purposes provided patients in the DVA hospitals on the bases mentioned above. There is, as well, another line of cases closer to the patient workers than the inmate work in prisons referenced above. In *Williams v. Strickland*, 837 F.Supp. 1049 (N.D. Cal. 1993), the court held that individuals housed in Salvation Army facilities performing work as therapy for their drinking problems pursuant to work therapy agreements were not employees for purposes of the federal Fair Labor Standards Act requirements for minimum wage and overtime. The court distinguished a U.S. Supreme Court case, *Tony & Susan Alamo Foundation*, also an FLSA case, as involving work for a commercial business and not pursuant to any work therapy agreement. In the patient worker program at DVA, while more akin to a nonprofit, charitable organization than a commercial business, there is simply not the same nexus between the work and the patient status of the residents where they are compensated at minimum wage and identified as engaged in employment by several sources. Moreover, they appear to meet the traditional definition of employee under the right to control test, even though State OSHA's definition of employee is extremely broad and expansive, applying to "any person engaged in service to an employer in a business of his employer," pursuant to C.G.S. Sec. 31-367(e). There is one more distinction of the patient worker program for purposes of OSHA. The cases above were brought under FLSA, not OSHA, and considered the provision of food, clothing and shelter in relation to FLSA's purpose to combat substandard economic conditions of employees generally. OSHA has an altogether different specific purpose of assuring the safety and health of workers specifically applicable to workplace

conditions. There is nothing g to indicate any DVA policies in place to assure the safety and health of patient workers in workplace conditions. And that even distinguishes the patient workers from the 2007 opinion applicable to the inmates at hard labor in the prisons, which, while concerning the application of OSHA, recognized the presence of Corrections Department policies affecting safety and health. Without more evidence and a clearer link between the patient worker program and their medical conditions, it is difficult to see how the patient workers at DVA hospitals should be deprived of the same basic safety and health protections in OSHA applicable to public and private sector employees generally. Please advise the OSHA Division to proceed with its inspection in a timely fashion. Let me know if you have any questions or need any further assistance. Thank you for your cooperation.

**Richard Sponzo**

Office of the Attorney General  
55 Elm Street  
P.O. Box 120  
Hartford, CT 06106

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To: Ronald Coveney  
From: Robert Blasko, Buildings and Grounds Patrol Officer   
Subject: Workplace Violence Investigation Findings  
Date: June 2, 2014

On May 19, 2014 I was directed to conduct an investigation of the Workplace Violence Complaint you filed. During the investigation I interviewed the following personnel:

- Chuck (Albert) Leone, Vocational Rehabilitation Counseling Coordinator
- Heroline Lee Standberry, Domicile Supervisor
- Ms. Kim Etheridge, Domicile Supervisor
- Frances Usher, Resident of A wing
- Ronald Coveney, Resident of A Wing
- Wendy Kelly, RN, B Clinic Head Nurse
- Telephone Interview of Ryan Sauvageau from Conn-OSHA
- Dr. Vamseedhar Alla, Chief of Medicine
- Cathy Anderson, RN, ICP, Infection Control Practitioner

I also reviewed the following documents:

- Ronald Coveney E-mail dated May 12, 2014, 9:53, entitled, "**Illegal Activities at Rocky Hill Vets Home**"
- Ronald Coveney E-mail dated May 12, 2014, 3:56, entitled, "**Workplace Violence Complaint**"
- Typed statement of Chuck Leone, Vocational Rehabilitation Counseling Coordinator
- Written statement from Jim Cunnane, Lead Custodian
- Written statement of Kim Etheridge
- Typed statement of Francis Usher
- String of E-Mails from Cathy Anderson, DVA Infection Control Practitioner regarding review and feedback on infectious waste pictures (pages 1-3)

- 2 Infectious waste pictures ( from the garbage can) submitted by Ron Coveney
  - DVA Spills of Blood or Body Fluids (spill kit procedure)
  - Certificate of completion on 2014 Infection Control Training for Albert Leone, Deborah Beverley, Kim Etheridge and Heroline Standberry
  - Department of Veterans' Affairs Workplace Violence Policy dated 02/25/2014 (3 pages)
1. After review of the documents and interviews I conclude that the Department of Veterans Affairs Workplace Violence policy was violated when Ms. Etheridge and Mr. Coveney "yelled" at each other creating a hostile work environment.
  2. Per the Department of Veterans Affairs Infection Control Practitioner, there was no violation regarding the disposal of items that you alluded to.

Please contact me at extension 3610 if you have any further questions.

Cc: Noreen Sinclair, Human Resources Administrator  
Hugo Adams, Director, Safety and Security  
Maria Cheney, Manager, Residential and Rehabilitation Services

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Home

## Souder v. Brennan



SOUDER V. BRENNAN, 367 F. SUPP. 808 (D.D.C. 1973)

**Key Issue: "minimum wage and overtime compensation provisions of the Fair Labor Standards Act apply to patient-workers of non-federal hospitals, homes and institutions for the mentally retarded and mentally ill"**

### Summary:

The court ruled that notwithstanding claims that work is therapeutic, patient-workers at non-federal institutions are "employees" covered by the minimum wage and overtime compensation provisions of the Fair Labor Standards Act.

### Background:

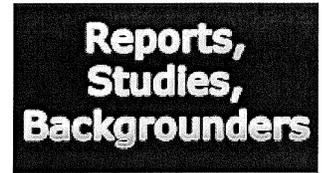
The issue of mental patient labor had first been brought to public attention by Lewis Bartlett in a July 1964 article in The Atlantic Monthly "Institutional Peonage: Our Exploitation of Mental Patients." Nine years later this case, seeking the status of employees for patient-workers, was brought by Paul Friedman, a founder (in 1972) of the Mental Health Law Project (now the Bazelon Center) and subsequently its director, and two other attorneys.

The basis for the suit were 1966 amendments to the Fair Labor Standards Act (FLSA) which revised the meaning of "enterprise" to explicitly extend the FLSA's coverage to employees of public and private non-Federal hospitals and institutions for the residential care of the mentally ill. The Department of Labor (DOL) determined it would not enforce the Act in respect to patient-workers. It shifted its ground for the decision: at first the DOL argued that Congress had not intended the law to apply to patient-workers (there was no reference to them in the legislative history); subsequently the DOL said the law did apply, but it had decided not to enforce it "because of the number of unresolved problems involved." The suit's focus was on forcing the Department of Labor to change its policy of not enforcing the Fair Labor Standards Act in respect to patient labor.

Two of the three original individual plaintiffs, Nelson Souder and Joseph Lagnone, were retarded; the third, Edwin Leedy was mentally ill, a long term resident of Haverford State Hospital, and died while the suit was being brought. Also serving as plaintiffs were the American Association on Mental Deficiency and the National Association for Mental Health. The American Federation of State, County and Municipal Employees (which in its brief contended that unpaid patient labor was unfair competition for its own worker-members) joined as an "intervenor-plaintiff."

### The Decision:

The attorneys for the plaintiffs asked for, and won, summary judgment in their favor in federal district court as well as certification of the case as a class action applying to all patient-workers in non-federal institutions for the residential care of the mentally ill and mentally retarded. The judge noted although neither the statutory language nor the legislative history of the 1966 amendments to the Fair Labor Standards Act made any reference to the status of patient-workers, "the words of the statute here in question say simply that 'employ' means 'to suffer or permit to work,' that 'employer' specifically includes a hospital, institution, or school' for the residential care of the mentally ill. The terms of the Fair Labor Standards Act have traditionally been broadly construed and Congress is not only aware of but has approved of such broad construction. Economic reality is the test of employment and the reality is that many of the patient-workers perform work for which they are in no



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way handicapped and from which the institution derives full economic benefit." The judge concluded that "Congress did not exclude patient-workers from coverage and, therefore, the Court cannot do so."

The judge further pointed out that the present officially stated policy of the Department of Labor was that "patient-workers may be considered employees under the statute," and cited "difficulties" in enforcement as the reason for its failure to do so. But, the judge ruled, "administrative burden is no excuse for failure to implement the statutory mandate" and "the Secretary of Labor has a duty to implement reasonable enforcement efforts applying the minimum wage and overtime compensation provisions of the Fair Labor Standards Act to patient-workers..."

In a footnote the judge dismissed the argument that patient-work should be considered a form of therapy. Work was therapeutic for most people in providing a sense of accomplishment but "that can hardly mean that employers should pay workers less for what they produce for them."

The possibly negative effects of the ruling were also relegated to a footnote. The judge noted that there were "questions as to whether extension of coverage will in the long run be in the best interests of the patient-workers and the public" given the "significantly increased costs for the operation of institutions" that may result.

## Significance:

Souder v. Brennan changed the basic operating rules of mental hospitals in such a way as to further promote radical deinstitutionalization. Traditionally, large mental hospitals depended on the unpaid labor of patients in kitchens, dining rooms, laundries, farms, dairies, even on-site factories. A Harvard Law Review article (by Paul Friedman, who brought the suit) quotes one hospital superintendent in the early 1960s who observed that "The economy of a mental hospital is based on 'patient labor.'...[Without] it the hospital...would collapse."

Even with unpaid patient labor, state hospitals absorbed a significant portion of state budgets and beginning in the 1950s state legislators and officials openly called for ending the heavy burden the large institutional population imposed on taxpayers. The Souder decision, by requiring institutions either to pay patients or use non-patient personnel to perform the tasks formerly left to patients, made mental hospitals vastly more expensive to operate, so that cutting down their size seemed even more essential.

While some states initially reacted to the Souder decision by paying some patient-workers (while limiting the hours they worked), most states, citing budget constraints, simply eliminated patient labor. This has remained the situation, even though, as mental health law expert Michael Perlin points out, in 1976 the Supreme Court undercut the Souder decision in its holding, in *National League of Cities v. Usery*, that those sections of the federal Fair Labor Standards Act that had extended minimum wage protections to employees of states were unconstitutional. The Department of Labor therefore returned to its original position of not enforcing the Act in respect to patient-labor in state mental hospitals.

## Comment:

The Souder case has proved one of the most destructive to patient welfare of all the cases brought by the mental health bar. Careless Congressional legislation opened the way for the mental health bar, since, given the absence of any mention of patient-labor in the legislative history, it seems clear that Congress thought it was extending FLSA protections to workers in institutions for the mentally ill and developmentally disabled, and the possible implications for patient-labor had not occurred to those who voted for the legislation.

Thanks to Souder, enforced idleness has become one of the worst features of mental hospitals and a standard complaint of commissions investigating state hospitals has been (in the words of a New York commission) "the total lack of occupation" on the wards. Yet there are few principles more broadly accepted than the therapeutic value of labor which, from the pristine days of moral treatment, was considered the capstone of therapy. Emil Kraepelin, the father of biological psychiatry, summed up the general view: "Every experienced alienist soon recognizes the worth of meaningful activity, especially farming and gardening, in the treatment of mental patients."

Ironically, the most exhaustive and eloquent descriptions of the importance of work in the lives of hospitalized mental patients has come from proponents of Souder within the mental health bar. In a lengthy 1976 article in the *Seton Hall Law Review* on the vital role of work in therapy, Michael Perlin contended that stoppage of work programs violated the patient's right to treatment because unemployment leads to "passivity, apathy, anomie, listlessness, dissociation, lack of interest and of caring." Work programs, he wrote, were "such an integral and essential component of therapy" that the termination of work programs posed a threat to the safety of residents, resulting "in a dangerous and unhealthy atmosphere, violating "the patients' constitutional right to freedom from harm." Indeed, once they had outlawed patient labor, some members of the mental health bar brought suit to impose it. A New Jersey suit to force hospitals to employ patients at prevailing commercial wage rates resulted in a consent decree, but in the absence of funds to pay them, no enforcement.

The question arises why, given the Supreme Court's 1976 decision overturning Souder mentioned earlier, the

states did not reinstate patient labor. Even Souder offered a loophole, for it held open the possibility of hospital administrators deducting from patient pay the cost of their care.

The probable answer is fear of additional lawsuits. A year prior to Souder, the judge in Wyatt v. Stickney had outlawed unpaid work (with a specific exception permitting the patient to make his own bed) on the principle that work was "dehumanizing" unless it was voluntary, therapeutic and compensated at FLSA wage rates. And he had held that the state could not give with one hand and take away with another, by taking back the wages as payment for care. Other suits had been brought charging that "institutional peonage" violated the 13th amendment outlawing slavery. Unable to pay the wage rates demanded, state officials found it was easier to eliminate patient labor than run the legal risks of continuing or resuming it.

Perlin concedes that Souder resulted in "a total elimination of work programs in many institutions" but claims with is "clearly not foreseen" and "no fault of its proponents." This is hard to swallow. The attorneys who brought Souder, as well as the other "peonage" suits were well aware of the financial constraints under which state hospitals operated. In other forums they made clear that their real goal was to empty institutions, not improve the way they were run.

Terms: [Backgrounders/Fact sheets](#), [Civil commitment laws and treatment standards](#), [Deinstitutionalization](#), [Hospitalization](#), [Legal documents](#), [Treatment](#)



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# United States Department of Labor

## Office of Federal Contract Compliance Programs

### Office of Federal Contract Compliance Programs (OFCCP)

## OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

### KNOW YOUR RIGHTS

#### Protected Veterans' Rights Fact Sheet

##### OFCCP Protects Veterans from Discrimination

The Office of Federal Contract Compliance Programs (OFCCP) enforces the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. This law, sometimes referred to as VEVRAA or Section 4212, requires employers doing business with the Federal government to take steps to recruit, hire and promote protected veterans. It also makes it illegal for these companies to discriminate against protected veterans when making employment decisions on hiring, firing, pay, benefits, job assignments, promotions, layoffs, training, and other employment related activities.

- What is employment discrimination based on someone's status as a protected veteran?
- Who is a "protected veteran" under Section 4212?
- What are my rights as a protected veteran?
- Who does OFCCP protect?

##### Finding Employment Opportunities

- Where can I obtain job services that will help me find employment?
- Does Section 4212 require Federal contractors to take specific actions to recruit protected veterans?
- Do protected veterans receive preference when hiring?
- Can an employer offer me a lower salary or pay me less than it pays other employees doing the same job because I receive a military pension?

##### Seeking Reasonable Accommodation for Disabled Veterans

- What is "reasonable accommodation"?
- What are some examples of "reasonable accommodation" that employers can provide during the hiring process and later to assist with performing the job?
- How do I request reasonable accommodation?

##### Filing a Complaint

- How do I file a discrimination complaint based on my status as a protected veteran?

- [Can I be fired for filing a complaint?](#)
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## **OFCCP Protects Veterans from Discrimination**

### **1. What is employment discrimination based on someone's status as a protected veteran?**

Employment discrimination based on your status as a protected veteran generally occurs when an employer treats you, as an employee or job applicant, unfavorably because you belong to one of the categories of protected veterans covered under Section 4212.

### **2. Who is a "protected veteran" under Section 4212?**

You are a "protected veteran" under Section 4212 if you belong to one of the categories of veterans described below:

- **Disabled Veteran**

A veteran who served on active duty in the U.S. military and is entitled to disability compensation (or who but for the receipt of military retired pay would be entitled to disability compensation) under laws administered by the Secretary of Veterans Affairs, or was discharged or released from active duty because of a service-connected disability.

- **Other Protected Veteran**

A veteran who served on active duty in the U.S. military during a war, or in a campaign or expedition for which a campaign badge was authorized under the laws administered by the Department of Defense.

- **Recently Separated Veteran**

A veteran separated during the three-year period beginning on the date of the veteran's discharge or release from active duty in the U.S. military.

- **Armed Forces Service Medal Veteran**

A veteran who, while serving on active duty in the U.S. military, participated in a U.S. military operation that received an Armed Forces service medal.

For some Federal contracts and subcontracts entered into prior to December 2003, the categories of protected veterans under Section 4212 are slightly different. If you have questions about whether your military service qualifies you as a protected veteran, you should contact OFCCP via any of the contact information provided below.

### **3. What are my rights as a protected veteran?**

As a protected veteran under Section 4212, you have the right to work in an environment free of discrimination. You cannot be denied employment, harassed, demoted, terminated, paid less or treated less favorably because of your veteran status.