

Child Labor: Making Sure Your Clients are in Compliance

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As seen in the August issue of the [CBA Report](#).

As employment of summertime youth workers peaks, it is a good time to review compliance with the myriad federal and state laws and regulations governing this segment of your employee pool. In addition to all of the traditional workplace laws and rules that apply to adults, youth workers present additional restrictions and obligations regarding occupations, hours of work, pay, record-keeping, permitting, notice posting and other issues that must be carefully managed. For purposes of child labor regulation, minors are divided into three categories: (a) 16-17 year olds, (b) 14-15 year olds, and (c) 13 and under. Predictably, the permitted work hours and occupations increase with age, although record-keeping and other administrative issues remain constant. The purpose of this article is to identify the basic legal requirements pertaining to each of the three categories of youth workers. Where applicable laws provide different standards, the more restrictive standard applies.

What Occupations are Prohibited?

Determining the occupations in which a minor can be employed requires a careful review of the appropriate statute and regulations. The statutes provide both a list of permitted and prohibited occupations. Job descriptions as well as actual job duties should be closely scrutinized to ensure compliance.

16 and 17 year olds

Employers may utilize 16 and 17 year olds in a relatively wide variety of occupations. However, both the Fair Labor Standards Act (FLSA)¹ and Ohio law specifically prohibit employment of a 16 or 17 year old in any of the following occupations, all of which have been declared hazardous by the US Secretary of Labor.

Under the FLSA, prohibited occupations include: (1) manufacturing or storing explosives; (2) any driving by 16-year-olds, certain driving for 17-year-olds, and being an outside helper on a motor vehicle (limited driving by 17-year-olds is permitted.); (3) coal mining; (4) logging and sawmilling; (5) power-driven woodworking machines*; (6) exposure to radioactive substances and to ionizing radiations; (7) power-driven hoisting equipment; (8) power-driven metal-forming, punching, and shearing machines*; (9) mining, other than coal; (10) meat packing or processing, including power-driven meat slicing machines in retail and food service establishments*; (11) power-driven bakery machines, including mixers; (12) power-driven paper-products machines, including balers and compactors*; (13) manufacturing brick, tile, and related products; (14) power-driven circular saws, band saws, and guillotine shears*; (15) wrecking, demolition, and ship breaking operations; (16) roofing operations*; (17) excavation operations* (*Limited exemptions are provided for apprentices and student-learners under specified standards).

Ohio law² further limits the permitted occupations, including eliminating some limited exemptions available under FLSA and further limit permitted occupations, including: (1) slaughtering and rendering; (2) operation of power driven slicers; bakery machines; circular and band saws; guillotine shears; woodworking

machines; (3) manufacture and storage of chemicals, (4) mining other than coal (5) motor vehicle, railroads, maritime, and longshoreman occupations (6) roofing operations; and (7) excavation operations.

14 and 15 year olds

Historically, the FLSA and US Department of Labor (DOL) regulations have limited employment of 14 and 15 year olds to work that is expressly authorized by DOL. These have generally included (1) grocery stores; (2) retail stores; and (3) gasoline service stations.³ Federal law has expressly prohibited employment in (1) communications or public utilities jobs; (2) construction or repair jobs; (3) driving a motor vehicle or helping a driver (4) manufacturing, mining and processing occupations; (5) power-driven hoisting apparatus or machinery, other than typical office machines; (6) public messenger jobs; (7) transporting of persons or property; (8) workrooms where products are manufactured, mined or processed; (9) warehousing and storage; and any occupation prohibited for 16 and 17 year olds.⁴

The federal regulation of the permitted occupations available to 14 and 15 year olds has been modified, and a Final Rule⁵ has been issued which took effect on July 19, 2010. The effect of this revision has been to significantly expand the permitted occupations in an effort to balance appropriate teen work with expanded opportunities for personal development. DOL now expressly permits work in the following occupations for 14 and 15 year olds: (1) office and clerical work, (2) work of an intellectual or artistically creative nature (computer programming, writing software, teaching or performing as a tutor, serving as a peer counselor or teacher's assistant, singing, and others); (c) limited cooking; and (d) lifeguarding. Additional permitted occupations and specific rules about the added occupations are listed in the regulation, and should be carefully consulted before expanding the work that an employer allows 14 and 15 year olds to perform.

Despite any changes to the federal regulation of 14 and 15 year old workers, Ohio law prohibits the following work for these teens: (1) manufacturing and warehouse occupations (except office and clerical work); (2) public messenger services occupations; (3) work in freezers; meat coolers and all preparations of meats for sale (except wrapping, sealing, labeling, weighing, pricing, and stocking); (4) transportation; storage, communications, public utilities; construction and repair; (5) work in boilers or engine rooms; maintenance or repair of machinery; (6) outside window washing from window sills, scaffolding, ladders, or their substitutes; (7) cooking, baking, operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers, grinders, food choppers cutters, baker type mixers; (8) loading or unloading goods to and from trucks, railroad cars, or conveyors; (9) work with cars and trucks involving pits, racks, or lifting apparatus; (10) inflation of tires mounted on rimes equipped with a removable retaining ring; (11) for-profit door-to-door employment (unless the employer is registered with the state).⁶ Careful consideration should be given to determining whether or not the expanded opportunities under FLSA would still be prohibited by Ohio law. If so, the more stringent standard would apply.

Under 14

As a general matter, the FLSA does allow those under the age of 14 to (1) deliver newspapers; (2) work as a baby-sitter on a casual basis; (3) work as an actor or performer in motion pictures, television, theater or radio; (4) work in a business solely owned or operated by the youth's parents. However, parents are prohibited from employing their children in manufacturing, mining, or any other occupation declared hazardous for older workers by the Secretary of Labor. Children 13 and under are not permitted to be employed in non-agricultural jobs.⁷

When can Minors Work?

As with the permitted occupations, hours of work and breaks are more specifically regulated for minors. While the FLSA does not regulate working hours or breaks for 16-17 year old workers, it does provide mandates for 14-15 year olds and Ohio law regulates work hours and breaks for employees age 14-17. At a minimum, all minors must be given at least a 30 minute break for each 5 hours of work.⁸

16 and 17 year olds

Under Ohio law, minors 16-17 years old may not work during the following times:

- Before 7:00 a.m. on a day when school is in session (such as Monday thru Friday)
- Before 6:00 a.m. when school is in session if they did not work after 8:00 p.m. the previous night
- After 11:00 p.m. on any night preceding a day that school is in session (such as, Sunday thru Thursday)

14 and 15 year olds

The FLSA provides the following rules for work hours, and 14 and 15 year olds may work up to:

- 3 hours on a school day
- 18 hours in a school week
- 8 hours on a non-school day
- 40 hours in a non-school week

Additionally, the work must be performed between the hours of 7 a.m. and 7 p.m., except from June 1 through Labor Day, when the evening hours are extended to 9:00 p.m.

Ohio law prohibits work by 14 and 15 year olds except as set forth below:

- Before 7:00 a.m. or after 7:00 p.m. when school is in session
- Before 7:00 a.m. or after 9:00 p.m. when school is NOT in session or during a school holiday of five (5) or more days (note, however that the USDOL does not allow for the school holiday of 5 or more days exemption)
- More than 3 hours in a school day
- More than 18 hours in a school week
- More than 8 hours a day when school is NOT in session
- More than 40 hours per week when school is NOT in session

When are Work Permits Required?

Every minor 14 to 18 years of age must have a work permit.⁹ The application for minor work permit form is a prerequisite for the minor work permit, and contains employer and job information, employer pledge and parental consent. The specific procedure for completion and handling of the requisite documentation can be found at www.com.ohio.gov/e/laws/QuickRefGuideEmpMinors.aspx. The employer is required to return the work permit to the Superintendent of Schools where the minor is enrolled within three days after the separation of the minor from employment.

What Records Must be Kept?

Employers must keep a time book or other written record stating the name, address, occupation, number of hours of work each day of the week, hours of beginning and ending work, hours of beginning and end meal periods, and the amount of wages paid each pay period of each minor employee. These records must be retained for two years.¹⁰

What can be Withheld from Minor's Paychecks?

Depending on state law, it may be possible to make certain withholdings from an adult's paycheck for various items, such as cash shortages and other losses. With respect to minors, however, those rules are typically modified. In Ohio, employers are prohibited from making deductions from wages for shortages, presumed negligence, breakage of machinery, incompetence, or inability to perform work according to any standard of merit.¹¹

What Notices Must be Posted?

Any employer that employs a minor must post in a conspicuous place a notice poster, which is available from at www.com.ohio.gov/laws/docs/laws_MLLPoster.pdf. Typically, employers should post the required poster where other required employment posters are kept, such as a break room.

What other Issues Should an Employer Consider?

In addition to wage and hour and safety considerations, an employer must be cognizant that teenagers are also subject to the same protections afforded by Title VII, the Ohio Civil Rights Act, Americans with Disabilities Act, workplace safety laws and any other law which affords protection to adult workers. Teenagers are afforded the same right to work in a harassment-free and safe workplace, and have the same ability as an adult to bring complaints of discrimination to the appropriate agency or file a lawsuit for damages. Of the utmost importance, however, is for employers to be mindful that the heightened responsibilities outlined herein with respect to teenage workers applies on a year-round basis, not just during summer vacation.

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- (1) 29 USC §201 et seq., 29 CFR Part 570
 - (2) Ohio Rev. Code Ann. Chapter 4109
 - (3) 29 CFR 570.33-34
 - (4) For the complete list of permitted and prohibited occupations, see 29 CFR 570.33-34
 - (5) 29 CFR 570.31-34
 - (6) See www.com.ohio.gov/laws/ProhibitedOccupationsForMinors.aspx
 - (7) Subject to a few limited exceptions that will not be addressed in this piece.
 - (8) Ohio Rev. Code Ann. §4109.07(C)
 - (9) Ohio Rev. Code Ann. §4109.02. 16 and 17 year olds not required to provide age and schooling certificate as a condition of employment if employed during summer vacation months.
 - (10) Ohio Rev. Code Ann. §4109.11
 - (11) Ohio Rev. Code Ann. §4109.10(B)