



Hiring Children

Who, What, Why . . .

Who does it apply to: Virtually all business owners hiring individuals under the age of 18.

What is the minimum age to hire: There is a lot of variation about the minimum age to hire and there are different restrictions placed on various age groups:

- *Any age:* Farm work on a parent's owned or operated farm; perform on television, radio, movies, or other theater productions (with a permit); work for a parent's business in a "non-hazardous" position; and, believe it or not, gathering and making evergreen wreaths.
- *Age 11:* Delivering (not selling) newspapers.
- *Ages 12 and 13:* Farm work on someone else's farm with a parent's consent performed outside of school hours. The work may not be "hazardous."
- *Ages 14 and 15:* Farm work in "non-hazardous" positions with the following restraints: (a) outside of school hours; (b) no more than 8 hours in a day or 48 hours in a week; and (c) no work between 10 p.m. and 5 a.m. on a day followed by a school day, or midnight and 5 a.m. on a day that is not. Non-farm work (except sales, solicitation, or work in a sexually oriented business) which is not "hazardous" with the following restraints: (a) no more than 18 hours in a school week or 40 hours in a non-school week; (b) no more than 3 hours on a school day, or 8 hours on any other day; (c) no work before 7 a.m. or after 7 p.m., except between June 1 and Labor Day when work hours are extended to 9 p.m.
- *Ages 16 and 17:* Any "non-hazardous" work for unlimited hours.
- *Age 18 and older:* Any job, whether "hazardous" or not, for unlimited hours.

What exceptions are available for hardship of the child: A 14 or 15 year old child may get a waiver of the restrictions by applying with the Texas Workforce Commission. The application must provide required information, including written statements: (a) explaining the need of the child to work to support himself or his

immediate family; (b) the precise type of work to be done by the child for the employer; and (c) from the child's school regarding the advisability of letting the child work.

What is considered "hazardous" work: Again, there are different rules for different ages:

- *Ages 14 and 15 (Plus the section below):* Work that involves manufacturing, mining, or processing occupations (including occupations requiring the performance of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed); cooking; baking; public messenger service; occupations connected with transportation (by rail, highway, air, water, pipe, or other means), warehousing, window washing, storage, communications, public utilities, preparing meat for sale, boiler and engine rooms, maintenance and repair of a business or its equipment, and construction except for office work associated with these business types; operating or assisting in the operation of powered machinery or vehicles other than office equipment; setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers, cutters, and bakery-type mixers; working in freezers or meat coolers, and loading or unloading goods to and from trucks, railroad cars, or conveyors. And, anything the Department of Labor or Texas Workforce Commission determine hazardous in the future.
- *Ages 14 through 17:* Work that involves, driving under certain conditions; manufacturing or storing explosives; mining; roofing; excavation operations; logging or saw mills; manufacturing brick, tile or similar products; wrecking, demolition, and ship-breaking; firefighting; exposure to radioactive substances; operating or assisting in the operation of hoisting equipment, balers, compactors, or powered woodworking, metal forming, punching, or shearing, meat processing, baking, paper-product, saws, shearing, or abrasive cutting machines. And, anything the Department of Labor or Texas Workforce Commission determine hazardous in the future.

How much do I have to pay: All employees of all ages are entitled to at least minimum wage, however, employees under the age of 20 may be paid \$4.25 per hour (plus appropriate overtime, if any) for the first 90 calendar days or until they turn 20 – whichever comes first.

Do child workers require a work permit: Though a work permit is not required, Texas does have a certificate of age document that is available to children to prove their age to an employer. Child actors or performers under the age of 14 must obtain a permit.

Are there any other special rules for child actors: For child actors under 14, there are many additional restrictions. The restrictions include prohibitions against missing school, considerations about the conditions of the wardrobe and set environment and the proximity of the child's guardian. This is a very particularized area and should be carefully navigated with the assistance of someone who understands the laws in this area.

What if I hire someone underage without knowing it: Under Texas law, you may be subject to civil penalties up to \$10,000 per violation, and criminal penalties for a Class A or B misdemeanor. Under Federal law, you may be subject to separate penalties of up to \$11,000 for each violation.

Common Situations:

But it's not part of his job: Sal's Supermarket hires Bobby, a 15 year old, to work as a sack boy and day stocker outside of school hours. The company is careful not to work Bobby more than the hours he is permitted under the law and to keep his hours during the permitted time of day. One day, however, an 18 year old senior stocker asks Bobby to put some empty cardboard boxes in the paper compactor. This innocent mistake happened for

real to Chuck E. Cheese® who let employees under 18 operate its garbage compactor. This is probably the most common under age violation. In fact, as a 16 year old working at the local theater I operated an industrial sized garbage compact on a nightly basis.

Mowing the yard: Michael's dad wants him to learn to be responsible and what it is to start working and managing money. He gets the maintenance man from their church to hire Michael to mow the church lawn on a riding mower every week. The job doesn't really pay, but Michael's father secretly provides \$20.00 a week for the Church to pay his son. Based on what you've read, this is clearly a violation of the "hazardous" job requirement and probably a violation of the minimum wage requirement depending on how many hours Michael spends each week. (Yes, this was me, too. My father and I have recently settled out of court for an undisclosed amount.)

What should I do:

Good: Post required legal notice for child employment and, as a precaution, get written consent from parents or an age certificate for employees under the age of 16. Be sure no child under 18 is placed in a position that would be hazardous under the list above.

Better: The above, and in environments where "hazardous" work is done, educate supervisors to be sure not to allow children to act in hazardous capacities – even if it is not part of their regular job.

Best: All of the above, and evaluate all of your job descriptions for positions that involve "hazardous" work and set minimum age requirements at 18 in those job descriptions to avoid any risk.



Michael Kelsheimer is a Shareholder in the employment law section at Looper Reed & McGraw where he is joined by a number of employment law attorneys with experience in all areas of employment and labor law. Michael recognizes that the cost and expense of litigation makes resolving employment disputes challenging. To help avoid these concerns, he utilizes his experience in and out of the courtroom to prevent or quickly resolve employment disputes through proactive employer planning and timely advice. When a dispute cannot be avoided, Michael relies upon his prior experience as a briefing attorney for the United States District Court and his extensive experience in employment and commercial lawsuits to secure favorable resolutions for his clients.

This guide is one in a series. For more information, or to receive the entire collection contact Michael Kelsheimer by email at mkelsheimer@lrmlaw.com or by phone at 214.237.6346