

No Excuses: FLSA Child-Labor Rules Are Tough!

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by John E. Thompson

If you plan to hire anyone under 18 years old for the summer, you should be thoroughly familiar with the federal Fair Labor Standards Act's child-labor limitations. The U.S. Labor Department enforces these rules strictly and aggressively. Don't count on good intentions and "close enough" to save the day if you get it wrong.

The applicable restrictions depend in part upon the person's age. The employer bears the risk of misjudging how old a minor is. If a person is illegally employed because he or she turns out to be younger than the employer thought, DOL is unlikely to be swayed by the fact that:

- ◆ The minor "looked" old enough to do the work,
- ◆ The circumstances led someone to think the person was old enough, or
- ◆ The minor misled the employer about his or her age.

The only reliable protection is to get and preserve a DOL-sanctioned, valid, unexpired age certificate.

FLSA child-labor restrictions are not relaxed just because the minor is employed as a "favor" to his or her parent, or because the parent is a supervisor or manager and will oversee what the minor does. Although there is an exception outside of manufacturing, mining, or a "hazardous" occupation for minors employed by a parent or someone standing in the parent's place, this exception is extremely narrow and rarely applies. Employers should not rely upon this provision unless they have looked into the details and are *certain* that it applies.

In non-agricultural work, the FLSA allows the employment of minors who are at least 16 in any activity not falling within one of DOL's 17 "Hazardous Occupations" orders. The rules do not limit a 16- or 17-year-old's times or hours of work.

On the other hand, 14- and 15-year-olds may work only in limited occupations. And even in permitted jobs, these minors may work only within specific total-hours and times-of-day restrictions (including on weekends). They may not work before 7 a.m. or after 7 p.m. (except that they may work until 9 p.m. from June 1 through Labor Day). They may not work more than

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

For the most part, FLSA restrictions do not permit the employment of anyone under 14. There are a very few, narrowly-applied exemptions, such as one for delivering newspapers to the consumer. However, once again, relying upon one of these exemptions involves taking a close look at the legal requirements and all of the relevant facts and circumstances.

There are some different rules for agricultural employment. For example, in particular situations, there are age-12 and age-13 minimums for work outside school hours, provided that a parent gives consent or is employed on the same farm.

Perhaps a good starting point for evaluating your plans to hire workers under 18 is the summary DOL provides for [non-agricultural](#) and [agricultural](#) employment. However, these are simply overviews, and it might be necessary to dig into the actual child-labor provisions themselves.

The FLSA authorizes civil penalties of up to \$11,000 per illegally-employed minor. The penalties for even first-time violations can be substantial, as these summaries for [non-agricultural](#) and [agricultural](#) work reveal. For a violation resulting in such an employee's death or serious injury, the penalty can be up to \$50,000 and can double to \$100,000 in the case of a "repeated" or "willful" violation. There can be other sanctions, as well, possibly including even criminal prosecution.

Most states and other jurisdictions have their own child-labor limitations. Frequently, at least some of these requirements or prohibitions are stricter than the FLSA's. Employers should also study these provisions when evaluating whether and in what capacity to employ a minor.