

EMPLOYMENT OF MINORS

Minnesota employers generally are covered by the Minnesota Child Labor Standards Act. Federal child labor laws apply if the employer is under the jurisdiction of the federal Fair Labor Standards Act and the federal act would provide more protection or set a higher standard. Information on federal child labor laws may be obtained from the United States Department of Labor.¹ Information on state child labor laws may be obtained from the Minnesota Department of Labor and Industry. Addresses and telephone numbers for both are listed in the Resource Directory section of the Small Business Assistance Office publication, *A Guide To Starting A Business In Minnesota*.

FEDERAL CHILD LABOR STANDARDS

The child labor provisions of the federal act are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being. The provisions include lists of hazardous occupation orders for both farm and nonfarm jobs declared by the Secretary of Labor as being too dangerous for minors to perform.

Regulations governing youth employment in nonfarm jobs differ somewhat from those pertaining to agricultural employment. In nonfarm work, the permissible kinds and hours of work, by age, are:

- 18 years or older: any job, whether hazardous or not, for unlimited hours.
- 16 and 17 years old: any nonhazardous job, for unlimited hours. (However, the State requirements do not allow 16 and 17 year olds to work after 11 p.m. on the night before a school day, or before 5 a.m. on a school day, subject to some exceptions.)
- 14 and 15 years old: outside of school hours in various nonmanufacturing, nonmining, nonhazardous jobs, under these conditions: no more than three hours on a school day, 18 hours in a school week, eight hours on a nonschool day or 40 hours in a nonschool week. Also, work may not begin before 7 a.m. nor end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m.
- Under a special provision 14- and 15-year-olds enrolled in an approved Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks and three hours on school days (including during school hours).
- 14 is the minimum age for most nonfarm work. However, at any age, youths may deliver newspapers, perform in radio, television, movie or theatrical productions, work for parents in their solely owned nonfarm business (except in manufacturing or on hazardous jobs), gather evergreens and make evergreen wreaths.

¹The U.S. Department of Labor has issued various Regulations on the Federal Child Labor Laws. These can be found in various Chapters in 29 CFR (including Chapters 570, 575 and 579).

Please note that a Final Rule updating regulations relating to nonagricultural labor under the FLSA was published in 2010. The purpose of the Final Rule found in the previous chapters, is to continue to foster permissible and appropriate job opportunities for working youth that are healthy, safe and not detrimental to their education. The Final Rule incorporates the 2008 amendment to Section 16(e) of the FLSA that substantially increased the civil penalty an employer may be assessed for child labor violations that cause death or serious injury of a young worker. Additionally, the Final Rule details and clarifies prohibited and permitted jobs for all nonagricultural workers under 18 and clarifies hour requirements for 14-15 year olds.

Hazardous occupations which are not permitted for any minor under age 18 are: working with explosives and radioactive materials; operating certain power-driven woodworking, metalworking, bakery, meat processing, and paper products machinery; operating various types of power-driven saws and guillotine shears; operating most power-driven hoisting apparatus such as non-automatic elevators, fork lifts, and cranes; most jobs in slaughtering and meat packing establishments; most jobs in excavation, logging and sawmilling; roofing, wrecking, demolition, and shipbreaking; operating motor vehicles or working as outside helpers on motor vehicles; and most jobs in the manufacturing of bricks, tiles, and similar products. Exemptions from some of the Department of Labor's hazardous occupation orders apply for apprentices and students in vocational education programs.

In addition to the hazardous prohibitions that apply to all minor workers, the Final Rule makes it clear that 14-15 year olds may only work in those jobs that the Secretary of Labor allows, viz. "Employment that is not specifically permitted is prohibited." Accordingly, the Final Rule clarifies, details and expands both prohibited and permitted jobs for 14 and 15 year olds:

- **Safe, Allowable Tasks:** The Final Rule expands the number and types of tasks that 14 and 15 year olds are permitted to perform. This expansion builds on the former regulations that allowed them to work in food service, retail, and gasoline service establishments. Permitted activities now include: office work; work of an intellectually or artistically creative nature; most restaurant tasks; most retail tasks, including cashiering, stock work, and clean-up work; errand and delivery work by foot, bicycle, or public transportation; work in such fields as advertising, teaching, banking and information technology; most gasoline service station tasks; and, under certain conditions, work inside and outside of places that use power-driven machinery to process food products. Additionally, 15 year olds (but not 14 year olds) may work as lifeguards at traditional swimming pools and water parks, as defined in the Final Rule.
- **Newly Prohibited Tasks:** The Final Rule also adds or makes explicit prohibitions on 14 and 15 years old performing the following tasks: door-to-door sales, or peddling (with an exception for doing so on behalf of charitable organizations or public agencies); poultry catching and cooping; and promotional activity like sign waving, unless performed directly outside the employer's establishment.
- **Clarifications:** Some provisions relating to employment tasks are clarified including: When youth may ride inside or outside of passenger compartments of motor vehicles; the types of materials and situations in which youth may load and unload motor vehicles; and provisions regarding meat coolers and freezers.

The Final Rule also clarifies regulations relating to hours of work permitted for 14 and 15 year olds. First, it clarifies that the 3 hour limit on employment on school days includes Fridays. Second, the prohibition on working during "school hours" is clarified as being "determined by the local public school district" where the minor resides, regardless of whether the student attends public school. Third, the Final Rule requires employers to use the same "week" (the 168 hour period that is used for computing whether employees are due overtime) to determine compliance with the child labor laws.

Additionally, the Final Rule creates a work-study program for 14 and 15 year old students in college preparatory curricula, recognizing that various work-study programs are already in place

throughout the country. The new work-study program must meet specific requirements set out in the Final Rule, but it allows 14 and 15 year old students to work during school hours, whereas child labor regulations otherwise prohibit working during school hours.

The Child Labor provisions do not apply to children under 16 years of age employed by their parents in occupations other than manufacturing or mining or occupations declared hazardous by the Secretary of Labor. However, this exception only applies when the parent is the sole employer of the minor.

Although an employer is not required by federal law to obtain an age certificate or work permit in order to hire minors, Minnesota law does require an employer to have proof of age of any employee or applicant who is a minor. Employers may, however protect themselves from unintentional violations of the child labor laws by keeping on file an age certificate or work permit for each minor employed. Employers who are found to have violated the federal child labor laws may be fined up to \$10,000 for each violation.

MINNESOTA CHILD LABOR STANDARDS

Under the Minnesota Child Labor Standards Act, a minor under 14 may not be employed, except:

- If at least 11 years old, as a newspaper carrier.
- If at least 12 years old, in agricultural operations with parents' or guardian's permission.
- As an actor or model with approval from the Minnesota Department of Labor and Industry.
- As an assistant soccer referee.

A minor under 16 may not work:

- Before 7 a.m. or after 9 p.m. except as a newspaper carrier.
- More than 40 hours a week or eight hours in a 24-hour period except in an agricultural operation.
- On school days during school hours, unless an Employment Certificate is issued by the appropriate school officials and kept on file by the employer.

Sixteen- and 17-year old high school students may not work:

- After 11 p.m. on evenings before school days (11:30 p.m. with written permission of a parent or guardian) or
- Before 5 a.m. on school days (4:30 a.m. with written permission of a parent or guardian).

A minor may not be employed in an occupation found by the Commissioner of Labor and Industry to be particularly hazardous or detrimental to the well being of minors. The list of occupations is extensive. Some of the types of occupations that are prohibited for minors include those where the minor may be exposed to hazardous substances; those involving power-driven machinery and equipment; those which involve operation of amusement rides; jobs in processing plants, and jobs in establishments where intoxicating liquors are served. Questions concerning whether a particular occupation is prohibited for minors should be directed to the Labor Standards Unit of the Department of Labor and Industry at the address and telephone number provided in the Resource Directory section of the *Guide*.

The following are exceptions to the general rule prohibiting employment of minors in hazardous occupations:

- A minor may be employed at tasks away from or outside of the area of hazardous operation, equipment or materials.
- The law does not apply to a minor employed to do home chores or to babysit or to a minor employed by his or her parents. Home chore work is that which is usual to the home of the employer. Work performed in connection with or as part of the business, trade, or profession of the employer is not a home chore. Home chores are all those variable tasks normal to the running of a household and include but are not limited to mowing lawns, raking leaves, removing snow, light housekeeping, washing clothes or dishes, vacuuming, yard cleaning and food preparation.
- The prohibitions do not apply to a minor training in a state-approved apprenticeship program or a program approved by the Division of Vocational Technical Education, Minnesota Department of Education.
- The prohibitions do not apply to 17-year-old high school graduates.
- The prohibitions do not apply if the corporation the minor works for is totally owned by, and its daily business is supervised by, one or both parents. If the minor's parent is a member of the family farm corporation where the minor works, the prohibitions also do not apply.

Every employer in Minnesota is required to have proof of age of any employee or applicant who is a minor. (Minn. Stat. § 181A.06.) This must be secured from the minor in the form of an age certificate, a copy of the minor's birth certificate, a copy of the minor's driver's license, or a United States Department of Justice Immigration and Naturalization Service Employment Eligibility Verification Form I-9.

The Commissioner of the Department of Labor and Industry may impose a fine of up to \$5,000 for each child labor law violation. Misdemeanor and gross misdemeanor charges also may be brought.