

Hiring Under-18 Workers This Summer?

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If you plan to employ anyone under 18 years old for the summer, you should be thoroughly familiar with the child-labor limitations prescribed under the federal Fair Labor Standards Act.

The U.S. Department of Labor enforces these labyrinthine rules strictly and aggressively. Don't count on good intentions to save the day if you get it wrong.

Age-Based Restrictions

The applicable limitations depend in part upon the person's age. In non-agricultural work, the FLSA allows the employment of minors who are at least 16 in any activity not falling within one of USDOL's 17 "Hazardous Occupations" orders (one of which prohibits driving a motor-vehicle on any public road or highway under most circumstances). The rules do not limit a 16- or 17-year-old's times or hours of work.

By contrast, the regulations applying to non-agricultural work say that 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 can only work outside of school hours, and 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 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.

Individuals under 14 generally may not be employed in non-agricultural occupations. There are a very few, narrowly-applied exemptions, such as one for delivering newspapers to the consumer. However, relying upon one of these exemptions involves taking a close look at the legal requirements and all of the relevant facts and circumstances.

Some different rules apply to agricultural employment. For instance, 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.

Mistaken Assumptions, Conventional Wisdom

For the most part, FLSA child-labor rules are "no excuses" propositions.

As one illustration, management 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, USDOL 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 USDOL-sanctioned, valid, unexpired age certificate establishing the minor's age for FLSA purposes.

Furthermore, 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 exemption is extremely limited. Employers should not rely upon it unless they have looked into the details and are *certain* that the employment is allowed.

The Bottom Line

Perhaps good starting points for evaluating the potential employment of workers under 18 are the summaries USDOL provides for non-agricultural and agricultural employment. These are simply overviews, and it might be necessary to dig-into the actual legal provisions themselves.

The FLSA authorizes civil penalties of up to \$12,278 per illegally-employed minor. The penalties for even first-time violations can be substantial, as these summaries for non-agricultural and agricultural sanctions reveal. For a violation resulting in such an employee's death or serious injury, the penalty can be up to \$55,808 and can double to \$111,616 in "repeated" or "willful" cases. There can also be other exposure, possibly even including criminal prosecution.

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