



Hey, DOL—Leave Those Kids Alone!

Insights

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These days, just about every dealership operates a Lube Express. And why wouldn't a dealership have one? The Lube Express can generate additional revenue and give the customers a reason to come back again and again. The trick to this, of course, is to consistently provide efficient and top-notch service. And to achieve this, dealerships need quality Lube Technicians.

But, as most Services Managers would tell you, they are not always easy to find. So what is a Service Manager dealing with a Lube Tech shortage to do when they receive an application from "Adam," a 17-year old experienced Lube Tech? Let's consider this real-life scenario.

Adam Goes To Work And The DOL Pays A Visit

At the end of a chaotic week—made all the more chaotic by the abrupt resignation of one of your Lube Techs—Sam the Service Manager receives an application from Adam. Sam notices there is no checkmark next to the box that states "I am at least 18 years old." Before Sam can toss the application in the recycling bin, he notices that Adam has worked for nearly a year as a Lube Tech at a dealership down the street. Sam is short-staffed, so he invites Adam in for a trial run.

The following Monday, Adam arrives early to complete the necessary new-hire paperwork. During this process, Pam the Personnel Manager makes a copy of Adam's driver's license, which indicates he is only 17 years old. She asks Sam if he knows about this, to which Sam replies, "If he can change oil, I don't care if he's in middle school." Pam processes Adam's paperwork and Adam gets to work. It is immediately clear that Adam knows what he is doing under the hood. After observing him for a week, Sam offers Adam a full-time position, and Adam accepts. But Adam's tenure with the dealership is short-lived. After a few months, he relocates out of state. Not long after, Pam retires from the dealership.

A year passes and your dealership receives notice of an audit from the U.S. Department of Labor (DOL). Peter, the new Personnel Manager, takes the lead on collecting the requested documents and information and preparing for the onsite visit. When Ivan the Investigator visits your dealership several days later to review the documents and meet with certain hourly employees, he asks whether the dealership has employed any minors. Peter can think of no one, and tells Ivan as much.

But, when Ivan interviews another Lube Tech, he learns about Adam. Ivan determines the "dangerous" environment of Lube Express is not suited for a child. He promptly advises Peter that

employing Adam as a Lube Tech constitutes a child labor violation, which will result in a fine up to \$10,000. Peter immediately calls the dealership's attorney.

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Before the outcome of this scenario is revealed, let's talk about child labor. The federal child labor laws were enacted to ensure that when young people work, the work they perform is safe and does not jeopardize their health, well-being, or educational opportunities. These laws establish 16 as the basic minimum age for employment, but where the Secretary of Labor has determined that an occupation is particularly hazardous, then the minimum age for employment is 18 unless otherwise specified.

The Secretary of Labor communicates these determinations through Hazardous Occupations Orders (HOs). To date, there are 17 HOs that apply to non-agricultural employers on either an industry basis or an occupational basis (regardless of the industry). For instance, HO 2 mandates that no person under the age of 17 may drive automobiles on public roads as part of their employment, and even then, 17-year olds must meet several requirements (e.g., that the driving must occur during daylight hours). There are also additional child labor regulations that provide stricter protections to minors aged 14 and 15. If an HO or a child labor regulation applies, the employer must abide by its restrictions. To do otherwise could result in a sizeable penalty.

Going back to our scenario, Ivan contended that Adam's employment constituted a violation because "minors may not work in or around pits, racks or lifting apparatus servicing motor vehicles" – all components of the dealership's Lube Express. Fortunately, the dealership's attorney knew that this limitation only applied to 14- and 15-year old workers. The attorney also knew that no HO applied to the typical duties of a Lube Tech. Finally, no state law prohibited a 17-year old from working in this position in the dealership's state. As a result, the dealership lawfully employed Adam in its Lube Express, it was argued. After some figurative arm-twisting, Ivan reluctantly agreed.

How To Achieve The Same Result At Your Dealership

While things ultimately resolved in the dealership's favor in this scenario, things may have been different if the investigator's conclusion had not been challenged. Even so, several lessons can be learned:

- If you are going to employ a minor, ensure no child labor regulation or HO applies to the work the minor is to perform. For instance, 16-year olds should never drive cars off the lot.
- Under no circumstances should a dealership employ a minor under the age of 14 (unless perhaps the minor is the principal's child). But the safest course may be to only hire applicants above the age of 18.
- If a dealership employs anyone under the age of 18, it must maintain a certificate of age that includes the minor's name, address, date of birth, place of birth, signature, and sex (e.g., a driver's license photograph) for a period of three years following the minor's separation from employment.

DOL audits often open unexpected cans of worms. So, in addition to following the best practices itemized above, it may also be prudent to conduct an internal audit of your employment practices before the government comes knocking. If you have specific questions on how to address the employment of minors, how to prepare for a DOL audit or how to conduct an internal audit, contact your Fisher Phillips attorney or any member of our [Automotive Dealership Practice Group](#).

For more information, contact the author at JWrigley@fisherphillips.com or 228.822.1440.

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