

EMPLOYING MINORS IN TENNESSEE – FAQs FOR EMPLOYERS

Insights

Nov 14, 2022

With the labor shortage, you may have started considering expanding your applicant pool to groups of potential employees you had not previously considered, like minors. Even if you have not yet considered hiring minors, [you may be tempted to do so given the upcoming holiday season.](#) However, you must take special care in employing minor employees, as both federal and state laws impose special rules on hiring employees under 18. Tennessee employers who hire minors must comply with both the federal Fair Labor Standards Act (FLSA) and Tennessee's Child Labor Act, which places restrictions on the hiring and employment of minors, prohibit minors from working in certain occupations, restrict the hours minors may work, and impose additional duties on employers. This Insight provides employers with a comprehensive series of Frequently Asked Questions to guide you through the process.

Who Are Considered "Minors" in Tennessee?

Tennessee's Act applies broadly to any individual under the age of 18. It generally prohibits children under the age of 14 from being employed in "any gainful occupation." However, there are certain exceptions based on the type of work performed and the status of the minor.

Tennessee law does not apply to minors employed in agricultural work, the distribution or sale of newspapers, errand or delivery work (by foot, bicycle, or public transportation), or as a musician or entertainer, among others. Additionally, Tennessee's child labor law exempts any minor who:

Related People



Marilyn Higdon

Associate

[615.488.2900](tel:615.488.2900)



Courtney Leyes

Partner

[615.488.2902](tel:615.488.2902)

- Has graduated high school or obtained a high school diploma equivalent;
- Is enrolled in a public employment program that is conducted or funded by the federal government;
- Is lawfully married or has children;
- Is 14 years of age or older and is a student enrolled in a course of study and training in a cooperative career and technical training program; or
- Is 16 or 17 years of age and employed as an apprentice in a craft recognized as an apprenticeship trade, employed as a student learner in a cooperative vocational training program, or excused from compulsory school attendance and not enrolled in school.

The Commissioner of Labor and Workforce Development also may consider and grant special exemptions requested in writing by the minor and the minor's parents or guardian if it is found that to do so would be in the best interest of the minor, and present no danger to the life, health, safety, or schooling of the minor.

What Types of Work Can Minors Perform?

Both the FLSA and Tennessee law prohibit minor employees from being employed in occupations that are considered dangerous and detrimental to the health, safety, and well-being of minors. The FLSA strictly prohibits the employment of minors in non-agricultural work falling within any of the Department of Labor's list of hazardous occupations for minors under 16 and between 16 and 18 years old.

Additionally, in Tennessee, minors cannot be employed in occupations involving any of the following:

- Manufacturing or storing explosives or explosive components;
- Driving motor vehicles;
- Mining, logging, or saw mill operations;
- Slaughtering, meat-packing, processing, or rendering;
- Manufacturing brick, tile, and similar products;

Service Focus

Wage and Hour

Workplace Safety

Related Offices

Memphis

Nashville

- Operating circular saws, band saws, guillotine shears, and most power-driving machines;
- Roofing, excavation, wrecking, demolition, or ship-breaking
- Exposure to radioactive substances; and
- Operating elevators or other hoisting apparatus.

Tennessee also prohibits minors from being employed by any business where more 25% of the business's gross receipts are from the sale of alcohol. Additionally, minors cannot be employed in occupations requiring them to serve alcohol.

The FLSA further restricts the types of work minors can perform by minors between the ages of 14 and 15 beyond those that are deemed hazardous. It prohibits minors under age 16 from operating amusement rides, lawn mowers, or weed trimmers, or performing most baking or cooking activities, among other things. However, tasks such as office and clerical work, creative work, cashiering, and stocking shelves, as well as limited food service work, maintenance work, lifeguarding, and running errands, among others, are generally allowed. The full list of prohibited and permitted occupations for minors under the age of 16 can be found [here](#).

How Are Work Hours Restricted?

The FLSA and Tennessee law limit the hours worked by minors based on age and centered primarily around school hours. In Tennessee, minors who are between the ages of 14 and 15 may not work:

- During school hours;
- More than three hours per day on school days (including Fridays);
- More than eight hours per day on non-school days;
- Earlier than 7:00 a.m. or later than 7:00 p.m. if the next day is a school day;
- Earlier than 6:00 a.m. or later than 9:00 p.m. if school is not in session (i.e. between Memorial Day and Labor Day);

- More than 18 hours per week during any week school is in session; and
- More than 40 hours per week during any week school is not in session.

Tennessee further restricts the hours worked by minors between the ages of 16 and 17 and are enrolled in school. These minors may not work:

- During hours when the minor is required to attend classes; or
- Between the hours of 10:00 p.m. and 6:00 a.m., Sunday through Thursday evenings preceding a school day.

There are a few exceptions to these rules for minors between the ages of 16 and 17. The first restriction does not apply to a minor enrolled with a church-related school or to a minor who is homeschooled and who has the consent of the parent conducting the homeschool. To qualify for this exception and work during the hours the minor would otherwise be required to attend classes, the minor must present a letter signed by the superintendent confirming the student's enrollment and authorization to work. Additionally, the parents or guardians of a minor may submit to a signed and notarized Statement of Consent allowing the minor may be employed between the hours of 10:00 p.m. and 12:00 a.m., Sunday through Thursday evenings preceding a school day. Even if such consent is provided, minors cannot be employed between those hours on those evenings on more than three occasions during any week.

An additional important consideration in scheduling minor employees' hours is Tennessee's child curfew statute. Under the curfew, minors who are 16 or younger are prohibited from being out in public (without a parent or guardian) between 10:00 p.m. and 6:00 a.m. Monday through Thursday, or between 11:00 p.m. and 6:00 a.m. Friday through Sunday. For minors who are between 17 and 18 years of age the curfew applies to the hours of 11:00 p.m. though 6:00 a.m. Monday through Thursday, or 12:00 a.m. through 6:00 a.m. Friday through Sunday.

Exceptions are made to allow minors to be out past curfew when engaged in lawful employment or while traveling directly to or returning home directly from the minors' place of employment. However, to avail themselves of this

exception, minors must be in possession of written proof of employment issued by their employer.

Are Work Permits Required?

Tennessee employers are not required to obtain work permits from minor employees. However, you must obtain, and retain, proper documentation of proof of age, such as a birth certificate, driver's license, state-issued ID, or passport.

Can You Pay Minors a Lower Wage?

Tennessee does not have any state laws dictating minor wages. As a result, you must abide by the FLSA's minimum wage requirements. Under the FLSA, generally, employees cannot be paid below the minimum wage of \$7.25 per hour. However, the FLSA provides for exceptions to this rule for minors under certain circumstances. For example, under the FLSA's youth minimum wage exception, you are allowed to pay new employees who are under 20 years of age at a rate of \$4.25 per hour for the first 90 days of employment, subject to certain requirements, although practically speaking, you may not be able to attract workers at that wage.

Are Minors Entitled to Additional Breaks?

Minors are not entitled to breaks above and beyond those generally required in Tennessee for most employees. You must provide all minor employees with a 30-minute unpaid rest break or meal period for each day the minor employee is scheduled to work six or more consecutive hours. The break must be scheduled outside the first hour of work and the minor employees must be completely relieved of duty during the break.

However, employees who work in food or beverage service (such as wait staff) and receive tips may waive their right to the required break if certain conditions are met.

Are There Additional Posting and Recordkeeping Requirements?

Tennessee law requires all employers of minors to post in a conspicuous place on the business premises a printed notice of the provisions of the Child Labor Act. Additionally, you must maintain, and keep on premises, a separate file record for each minor employee containing the following:

- The minor's employment application;
- A copy of minor's proof of age, such as a birth certificate, driver's license, state-issued ID, or passport;
- Accurate daily time records; and
- Any records qualifying the minor for an exemption from the requirements of the Child Labor Act, as discussed above, such as proof of marriage, a high school diploma, etc.

Additionally, you must retain original copies of any letters signed by the superintendent confirming the student's enrollment and authorization to work or Statements of Consent from minors' parents allowing minors to be employed outside restricted work hours, as discussed above. Because the Department of Labor and Workforce Development may inspect all pertinent records of a minor's employment, at any time, and as often as necessary, you must be extremely conscious of maintaining these records and keeping them up to date.

What Are the Penalties for Violations?

Violations of Tennessee's Child Labor Act may be assessed civil and/or criminal penalties of varying degrees dependent on the violation. Potential penalties include: warnings, monetary fines ranging from \$150 to \$1,000 per offense, and criminal charges. Generally, violations constitute a Class C misdemeanor. However, if you employ a minor under the age of 14 in violation of the Child Labor Act, you are subject to being charged with a Class D felony and minimum fines of \$1,000 up to \$10,000.

These penalties can compound quickly. Each day a violation continues after you have been notified of the violation by the Department of Labor and Workforce Development constitutes a separate violation.

Penalties under the FLSA are much stricter, allowing for civil money penalties of up to \$10,000 per minor who was employed in violation. Willful violations of the FLSA may result in criminal prosecution and the violator fined up to \$10,000. A second conviction may result in imprisonment.

So What Can You Do?

Reading this Insight and understanding the limits of employing minors in Tennessee is the first and biggest step to complying with both Tennessee and federal law. You also should apply and follow internal policies, and closely monitor your pay practices to ensure you are complying with state and federal laws for all employees.

We will monitor developments, so make sure you are subscribed to Fisher Phillips' [Insight System](#) to get the most up-to-date information. For further information, contact any Fisher Phillips attorney in our [Nashville](#) or [Memphis](#) offices, the authors of this Insight, or any attorney in our [Wage and Hour Practice Group](#).