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# 6 QUESTIONS RETAILERS SHOULD ASK BEFORE HIRING MINORS TO ADDRESS THE LABOR SHORTAGE

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Some companies are well known for providing teenagers their first jobs and providing a learning foundation on what it takes to be successful in the workplace. But many retailers have long held policies against employing minors. The current labor shortage has many retailers revisiting the question about whether to prohibit employment of minors or whether to modify the rule to broaden their applicant pool. In making this decision, it's important to understand the practical risks, along with the many laws restricting the terms of a minor's employment. This Insight will present some pros and cons and conclude with six questions every retailer should ask before revising your policies to hire minors.

## The Practical Risks Inherent in Employing Minors

Perhaps the most significant risk in hiring a minor is the difference between an employer's responsibility when something goes wrong. This is not necessarily a factor of the law treating minors differently from adults. Title VII prohibits sexual harassment of all employees regardless of age. But practically, courts, juries, and the press hold an employer to a higher standard when it comes to preventing harms from the workplace.

Because they are not adults, society does not expect as much of them when it comes to protecting themselves. The presence of minors in the workplace carries with it an inherent societal expectation that the employer has a heightened duty to protect these employees from harm.

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Employing minors also brings with it a host of new compliance responsibilities. Both federal and state laws restrict minors from engaging in certain occupations, the hours of the day minors can work, and the number of hours a week minors can work. A minor thus cannot simply be asked to stay on a few extra hours when another employee does not appear without considering these limitations. Often minors must obtain a permit to perform a job and the employer must keep a copy of that permit. There may also be specific duties or activities that a minor cannot perform such as driving.

### **Be Aware of Federal Law**

The Fair Labor Standards Act, which most think of in conjunction with minimum wage and overtime, also has provisions restricting the employment of minors. Minors under the age of 14 are only allowed to work in retail establishments if the establishment is owned by their parents. Minors aged 14 and above are allowed to work in retail establishments.

There are other restrictions, however, based on the minor's precise age. Of particular interest to retailers, 14- and 15-year-old minors cannot work on ladders and cannot perform sign-waving activities. When school is in session, 14- and 15-year-olds may only work a total of three hours on a school day – including Fridays – and a total of 18 hours in a week. When school is not in session, they may work up to eight hours per day and 40 hours per week.

Federal law does not limit the hours minors aged 16 and 17 can work. They are, however, barred from working in certain hazardous occupations. Prohibited hazardous activities that may be present in a retail establishment are operating power-driven hoisting apparatus (i.e., forklifts), meat slicing machines, and power-driven bakery machines. Minors aged 17 may drive for work but with many restrictions, including doing so only during daylight hours and only when incidental and occasional to their regular duties.

### **And Don't Forget State Laws**

Every state has laws regulating the employment of minors. When these laws are more restrictive than federal law, the more restrictive state provision controls. As such, employers must familiarize themselves with each state's laws prior to

hiring minors to ensure that the restrictions do not make the employment of minors untenable.

Most states have provisions like the federal rules' regulating the hours a minor may work including different standards for working while school is in session and while it is not. But there can be many additional nuances. Alabama, for example, applies its rules to individuals under 19, not 18. Other states, such as Hawaii, have restrictions limiting the number of consecutive days a minor can work. Some, like Louisiana, have break requirements that limit the number of consecutive hours in a day a minor can work without a break. And yet others, like Oklahoma, limit the hours of the day a minor may work often prohibiting employment during nighttime.

States also have their own listings of hazardous occupations in which minors cannot be employed. These often differ based on the age of the minor such that 17-year-olds can perform duties 14-year-olds cannot.

States often require significant paperwork associated with the employment of minors. For example, many states require a minor obtain a work permit that the employer must obtain from the minor and keep on file. Other states require the employer to apply for a license to employ minors. There can be additional requirements such as maintaining a copy of the minor's proof of age or posting information about the hours a minor can work. Finally, penalties for violating these laws can be severe.

## **6 Questions to Consider**

Before you decide that part of the solution to the current labor crunch could include hiring younger workers, every retailer should ask itself these six questions.

1. Does the area in which the store is located have a large number of minors looking for work? In other words, will widening the net actually increase the pool of applicants you see? Information about the employment of teens can be found on the Bureau of Labor Statistics website.
2. What level of employee will be required at your establishment to maintain compliance with the additional obligations that hiring minors brings? In other words, can a store manager be trusted to understand and work within the regulations, or will the involvement of a District

Manager or HR be required? And, of course, how would these additional duties impact their workload?

3. Do the hours minors are permitted to work match the hours the store is having trouble staffing? Limitations on minors working nights while school is in session may make them a poor solution to a night shift shortage.
4. What age minor is the store willing to hire? In many cases, the restrictions on 17-year-olds working are significantly less than younger teenagers and they may provide more flexibility. Be sure to check your state's age discrimination law to ensure it does not prohibit age discrimination against minors.
5. Do restrictions on the type of work inhibit the ability of minors to perform a job? For example, if a lot of the stocking work in a store requires the use of a ladder, minors would be a poor choice.
6. Will your timekeeping system allow you to put automated safeguards in place to prevent minors from working during prohibited hours or more than allowed hours? Properly programmed computers are better to rely on than humans who may be distracted by other duties and simply miss the fact a minor has not clocked out and gone home.

## Conclusion

In spite of the difficulties, minors can be a major labor source and well worth the administrative cost. The key is to understand the compliance obligations up front and to put processes in place to ensure compliance. Training store managers before they begin supervising minors on those compliance obligations is a must. Ensuring minors get a solid orientation covering discrimination and harassment is also necessary. Having automated schedules to avoid schedule violations can save significant compliance effort. If systems are in place that reduce risk, the benefit of hiring minors can outweigh the costs.

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