



Hiring Minors in the Heat of the Summer: What Employers Need to Know

Insights

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Summertime is quickly approaching and 'tis the season for beach vacations, fun in the sun, and summer hires—many of which will be under the age of 18 years old. In anticipation of summer hires, employers may want to familiarize themselves with the federal laws outlining child labor restrictions. Under the Fair Labor Standards Act (FLSA), the U.S. Department of Labor (USDOL) has issued youth employment regulations. While there are some exceptions, generally "youth" are entitled to minimum wage and overtime, but the FLSA includes other protections in the form of when and what a minor can do.

Hazardous Occupations – Sorry, No Can Do.

Federal law strictly prohibits the employment of minors in non-agricultural work falling within any of the USDOL's list of hazardous occupations. These occupations include, but are not limited to, manufacturing or storing explosives, driving a motor vehicle, work as an outside helper on motor vehicles, coal mining, firefighting, power-driven tools, exposure to radioactive substances, and many more. According to recent reports, the USDOL might relax these restrictions; however, creating and implementing these changes will take time. For at least this year, employers should assume the status quo.

Restrictions Based on Age – Uh, Let Me Get My Matrix.

The good news is that, while the hazardous occupations can be tedious to evaluate sometimes, these are the only federal child labor restrictions that apply to 16- and 17- year olds. At the other end of the spectrum, the analysis can be simpler because anyone under age 14 can do little more than babysit on a casual basis. The options expand for minors 14- or 15- years old though.

Children that are 14- and 15-years of age generally can perform tasks such as office and clerical work, intellectual or artistically-creative work, cashiering, and stocking shelves. They also can perform limited food service work, maintenance work (buildings or grounds), and, in some instances, lifeguarding, running errands, and washing vehicles, among other things. Even so, for this group employers must be mindful not just of the type of work, but of the hours.

For example, federal law only allows the employment of 14- and 15- year olds in non-agricultural work pursuant to specific total-hour and time-of-day restrictions. These can be difficult to apply given that school sessions vary widely, including that some cross into the summer months or go "year round". At bottom, the main factor when it comes to scheduling work will be whether the

particular day is a school day. For big picture purposes (such as hiring), however, it is often best to begin with whether the local public school will be out of session for the relevant workweeks.

Local Public School Status	Time of Day	Maximum Hours Per School Day	Maximum Hours Per Non-School Day	Maximum Hours Per Workweek
In Session	Outside of school hours;			
	7 a.m. and 7 p.m.	3 Hours	8 Hours	18 Hours
	Best practice: apply even if June 1 through Labor Day			
Out of Session	7 a.m. and 7 p.m.			
	Extended to 9 p.m. only June 1 through Labor Day	N/A	8 Hours	40 Hours

Best Practices

Beefing up your staff for the summer season is a welcomed relief for many employers. Additionally, summer jobs expose youth to tangible skills that foster independence and the ability to gain valuable work experience. Nevertheless, before hiring minors, consider all that you've read. The FLSA's child labor restrictions are heavily enforced and management bears the burden of abiding by these rules. So, before diving into the deep end of summer recruitment, employers should consider the following tips:

- Get and preserve a USDOL-sanctioned age certificate. If you hire an individual who turns out to be younger than you thought, the USDOL will not be influenced by the fact that the worker "looked" older or that you were misled about the worker's age. To avoid misjudging a minor's age and violating the child-labor regulations, obtain a qualifying age certificate even if not required (state law).
- Clearly outline the job duties associated with vacant summer-job occupations. Do not rely on a job title when determining if an occupation includes prohibited work. Dig deeper and consider the actual job duties. Many times employers mistakenly assume a role is permitted based on its title when, in actuality, the activities carried out in this position are prohibited. Carefully review both the permitted and prohibited work, especially before hiring an individual under 16 years of age.
- Inform employees of the specific tasks each minor-worker should not perform. Train management on what tasks can and cannot be assigned to minor-workers. Memorialize this training by distributing a memorandum clearly indicating the child labor limitations for each

minor-employee. Consider also informing other employees who will interact with the minor, and perhaps even the minor.

- Ensure each youth-employee is properly supervised. Be attentive when employing minors. One suggestion is to implement a mentor/mentee system where a seasoned worker is assigned a minor-employee to supervise. This can assist management with alleviating the task of micro-managing your summer staff.

The Bottom Line

This is only a general summary of the FLSA's child labor restrictions and, because of more restrictive state laws, federal law might only be the tip of the iceberg. At a minimum, an employer should review its hiring and employment practices with respect to minors, and implement a process to ensure compliance with the FLSA and any other applicable state laws. Should you have additional questions, contact your Fisher Phillips attorney.