



Who-When-What: State Law Basics on Summer Hiring

Insights

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Here we are - the school year is coming to a close and you are eager to get your business staffed with forward-thinking, millennial summer hires. Don't move too fast though, because in addition to the federal Fair Labor Standards Act's restrictions we discussed earlier this month, there are numerous states that provide even more rigorous limitations on the employment of minors.

Typically, state laws regulating child labor set the minimum age of employment for youth; the duties they can perform; and whether their employment requires a work permit, among other things. To give you a taste of how varied these requirements can be, here are some samples from the southeastern states (i.e., states that typically follow the FLSA otherwise).

Minimum Age for Duties

Some states have both general minimum age requirements for employment, and higher thresholds for certain work. In Georgia, for instance, minors under 12 years of age generally are prohibited from working in any gainful occupation. All minors under 17, however, specifically are prohibited from working in mills, factories, laundry facilities, manufacturing establishments, workshops, or in any other occupation which has been designated as "hazardous" under Georgia law. In Florida, minors younger than 16 cannot conduct door-to-door sales. Tennessee law prohibits minors from working at heights greater than 10 feet off the ground. It is a good idea to get familiar with the various limitations in your state because, as you can see, a state might have its own specific areas of concern.

Work Schedule

Generally, state child labor laws allow longer, more flexible, work hours for minors when school is not in session. Keep in mind, however, state laws typically impose greater total hour and time-of-day restrictions for minors under 16 (to the extent that they can work at all). For example, Alabama minors 16 and 17 are able to work the same amount of hours as adults when school is out, but when school is in session they cannot work between 10 p.m. and 5 a.m. on any night before a school day. Minors aged 14 or 15 though, have more protective, time-of-day restrictions and have additional total hours restrictions, both of which vary depending on whether school is in session. To top it off, an interesting nuance in Alabama is an exception for high school graduates - regardless of age. Yet, it does not provide exceptions similar to North Carolina where a minor age 16 or 17 can work seemingly any time of day with the written authorization of the parent and school principal.

These uber-specific total-hour and time-of-day restrictions can be hard to keep track of for employers that operate nationally as, again, they are not necessarily just variations of each other or federal provisions. A good rule of thumb within a particular state, however, might be following the provisions applicable to a 14-year-old on a school day/night (which is typically going to mean compliance for any minor aged 14-17 any day of the year) unless the specific scenario at hand has been evaluated.

Required Permits

Many states require a work permit in order to employ minors. For instance, in Georgia minors aged 12-16 historically have been required to obtain work permits from the superintendent, principal, or homeschool provider, depending on the school, though this recently became limited to minors employed in entertainment. In other states, such as Alabama though, a work permit is required for minors under 16 and a different work permit is required for those 16 and 17 years old. Notably, of these three states, it is Tennessee, which generally does not regulate minimum wage and overtime but nonetheless regulates child labor, that is most cumbersome.

Rest Periods

State law also requires breaks at certain times for minor employees. For example, in Florida, all minor employees are entitled to a 30-minute rest period before 4 continuous hours of work. North Carolina has a similar requirement, but it has a slightly longer window (5 continuous hours) and only applies to minors under 16 years of age. Tennessee though, requires all minors to have a 30-minute rest period no earlier than 1 hour into the work and before 6 continuous hours of work.

The Bottom Line

With steep federal and state law penalties on the line and rules that can be so cumbersome and, frankly, confusing to apply, it would be prudent to consult an employment attorney to ensure compliance. In the meantime, these general tips may help guide you.

- Determine whether school is “in session”: Besides considering whether the minor actually is to attend school that workweek, do not forget that there might be other relevant factors (for example, a home-schooled minor’s local school being “in” session or, at the other extreme, a high-school-graduate minor qualifying for an exception).
- Check for federal and state overlap: At every turn, an employer should comply with the most restrictive, which might not be the same for every sub-issue. For instance, perhaps federal law is less restrictive with respect to the total hours worked in a workweek, but more restrictive than state law with respect to the total hours worked in a day.
- Stay away from the cookie-cutter-approach: As demonstrated above, child labor laws are far too much in the details for a universal approach; and could just cause more work on the back-end. The more general the policy, the more important it could be to implement a process for human resources to approve exceptions.
- Convey work limitations to management: Once you have put in the work, a failure to educate

managers and supervisors sufficiently with respect to a minor's restrictions could make it all for naught.

Overall employers should take a thoughtful approach to the issues that arise when employing minors and avoid implementing generic rules unless willing to take a very conservative position. Clearly even these states, which typically follow the FLSA in matters if they wade into wage-hour requirements at all, add a layer of complexity that requires careful consideration when employing minors.