



Quick Quiz Answer: FLSA Child-Labor Restrictions (Driving)

Insights

7.11.14

The best answer to our July 3, 2014 [Quick Quiz](#) is, "This is true under some circumstances." In declining percentage order, the responses were:

"This is never true.": (60.7%)

"This is true under some circumstances.": (28.6%)

"This is always true.": (10.7%)

"Isn't All Driving By Minors Illegal Under The FLSA?"

In relevant part, the U.S. Labor Department's longstanding "Hazardous Occupations Order No. 2" generally prohibits the employment of anyone under 18 years old to drive a motor-vehicle on any public road or highway at any time during the course of his or her employment. This is true whether the employee is driving a company-owned vehicle *or a personal vehicle*.

The Order applies to all employers subject to the federal Fair Labor Standards Act's non-agricultural child-labor provisions. Since 1940, USDOL has enforced the Order strictly and vigorously.

Even so, USDOL has sometimes adopted a few, narrow exceptions. For example, in situations where a public road cuts through a golf course, golf carts, riding mowers, or other motorized vehicles are used on the private property of the course itself but must cross the public road in order to reach a worksite or to return to the clubhouse. USDOL will not assert a violation if (i) the contact with the public road involves only the crossing of that road, and (ii) these crossings occur only at marked cross walks and pathways.

However, none of USDOL's enforcement exceptions is so broad as to cover the circumstances in the Quick Quiz.

A Statutory Exception For 17-Year-Olds

The 1998 "[Drive for Teen Employment Act](#)" (29 U.S.C. § 213(c)(6)) amended the FLSA to say explicitly that "employees who are under 17 years of age may not drive automobiles or trucks on public roadways." However the amendment also set conditions under which minors *who are at least 17*

years old are permitted to drive *particular* automobiles and trucks on the job *if all of the statutory criteria are met*. Those criteria are that:

- The automobile or truck cannot exceed 6,000 lbs. gross vehicle weight;
- The driving is restricted to daylight hours;
- The minor has a state license that is valid for the type of driving called for in the job performed;
- The minor has successfully completed a state-approved driver-education course;
- The minor has no record of any moving violation at the time of hire;
- The vehicle has a seat-belt for the driver and for any passengers, and the employer has instructed the minor that seat-belts must be used when driving;
- The driving does not involve:
 - Towing vehicles,
 - Route deliveries or route sales,
 - Transportation for hire of property, goods, or passengers,
 - Urgent, time sensitive-deliveries,
 - Transporting more than three passengers, including other employees,
 - Driving beyond a 30-mile radius from the minor's place of employment,
 - More than two trips away from the primary place of employment in any single day to deliver the employer's goods to a customer (these may not involve urgent, time-sensitive deliveries), or
 - More than two trips away from the primary place of employment in any single day to transport passengers (aside from other employees), and
- The driving is only "occasional and incidental" to the minor's employment, meaning that the minor may not drive for (i) more than one-third of his or her worktime in any workday, or (ii) more than 20% of his or her worktime in any workweek.

The Bottom Line

Employers should consider carefully and in advance whether it is wise to permit *anyone* under 18 years old to drive a motor-vehicle on a public road at any time. Employers who decide to rely upon the Drive for Teen Employment Act exception should expect USDOL to scrutinize and strictly apply each of the conditions and requirements in any investigation.

Bear in mind also that the applicable child-labor restrictions or prohibitions of another law or jurisdiction might not contain or recognize any such exception.