



FLSA Child-Labor Regulations Revised Extensively

Insights

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The U.S. Labor Department has released final revisions of its child-labor regulations under the federal Fair Labor Standards Act. They will become effective on July 19, 2010.

Proposed changes had been published for comment in 2007. DOL says that the revisions are intended to make it easier for individuals under the age of 18 to work. Among other things, the revised regulations expressly address employment in industries such as advertising, banking, information technology, and teaching.

Our May 12 post summarized the general restrictions on the employment of minors under the FLSA. Some of the significant changes, clarifications, and revisions include the following:

- A provision permitting 14- and 15-year-olds to work in computer programming, teaching, tutoring, and other jobs of an "artistically creative nature."
- A prohibition against "youth peddling" by 14- and 15-year-olds, an activity defined as "the selling of goods or services to customers at locations other than the youth-employer's establishment" However, there is an exception for "the activities of persons who, as volunteers and without compensation, sell goods or services" for certain entities. An example of a permitted activity is selling Girl Scout Cookies.
- A reiteration that 14- and 15-year-olds may operate espresso machines and certain toasters (such as "two- and four-slice 'pop up' toasters," but not "rapid toaster machines used at both quick and full-service restaurants to toast such items as buns, bagels, sandwiches, and muffins," because they typically operate at temperatures above 140 degrees).
- A section expressly permitting 16- and 17-year-olds to operate certain bakery machines, such as "portable counter-top power-driven food mixers that are, or are comparable to, models intended for household use."

The revisions also newly define a "workweek" for 14- and 15-year-olds as "a fixed and regularly recurring period of 168 hours – seven consecutive 24-hour periods..." This harmonizes the definition with the one applying to other FLSA requirements. Prior to this change, DOL had required a *calendar* week to be used to determine compliance with the total-hours limitations applying to these minors.

DOL adopted regulations implementing the child-labor civil money penalty changes made in the Genetic Information Nondiscrimination Act of 2008 (GINA), concluding in doing so that there was no need for prior notice or any opportunity for comment. GINA added penalties of up to \$50,000 for each child-labor violation that results in death or serious bodily injury of any employee under 18. The penalties may be doubled to as much as \$100,000 if the violation is "repeated" or is determined to be "willful."

These revisions apply only to non-agricultural jobs. DOL now intends to review and revise the provisions concerning minors in agricultural employment.