

# FLSA Child Labor Regulations Refresher

With summer just around the corner, it may be a good time to have a little refresher course on the Fair Labor Standards Act (FLSA) regarding child labor regulations.

The Fair Labor Standards Act (FLSA) establishes restrictions on the number of hours that minors between 14 and 16 years old may be employed, as well as restrictions on the time of day they may be employed.

The regulations (29 C.F.R. §570.35(a)) stipulate that minors who are between 14 and 16 years old are confined to the following periods for employment in any qualified occupation:

- ☐ outside school hours;
- ☐ not more than 40 hours in any one week when school is not in session;
- ☐ not more than 18 hours in any one week when school is in session;
- ☐ not more than eight hours in any one day when school is not in session;
- ☐ not more than three hours in any one day when school is in session; and
- ☐ between 7 a.m. and 7 p.m. in any one day, except during the summer (June 1 through Labor Day), when the evening limit is 9 p.m.

A youth **14 and 15 years old** may not work in the manufacturing or mining industries, or in any hazardous job. (See the list of hazardous occupations.) In addition, a 14- or 15-year-old may not work in the following occupations:

- ☐ Communications or public utilities jobs;
- ☐ Construction or repair jobs;
- ☐ Driving a motor vehicle or helping a driver;
- ☐ Manufacturing and mining occupations;
- ☐ Power-driven machinery or hoisting apparatus other than typical office machines;
- ☐ Processing occupations;
- ☐ Public messenger jobs;
- ☐ Transporting of persons or property;
- ☐ Workrooms where products are manufactured, mined or processed;
- ☐ Warehousing and storage.

A 14- or 15-year-old **may work in retail stores, food service establishments and gasoline service stations**. However, a 14- or 15-year-old **may not** perform the following jobs in the retail and service industries:

- ☐ Baking;
- ☐ Boiler or engine room work, whether in or about;
- ☐ Cooking, except with gas or electric grills that do not involve cooking over an open flame and with deep fat fryers that are equipped with and utilize devices that automatically lower and raise the baskets in and out of the hot grease or oil;
- ☐ Freezers or meat coolers work;
- ☐ Loading or unloading goods on or off trucks, railcars or conveyors;
- ☐ Meat processing area work;
- ☐ Maintenance or repair of a building or its equipment;
- ☐ Operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers, grinders, choppers or cutters and bakery mixers;
- ☐ Outside window washing, or work standing on a window sill, ladder, scaffold or similar equipment;
- ☐ Warehouse work, except office and clerical work.

The jobs a 14- or 15-year old **may do in the retail and service industries** include:

- ☐ Bagging and carrying out customer's orders;

- ⊘ Cashiering, selling, modeling, art work, advertising, window trimming or comparative shopping;
- ⊘ Cleaning fruits and vegetables;
- ⊘ Clean-up work and grounds maintenance - The young worker may use vacuums and floor waxers, but he or she cannot use power-driven mowers, cutters, and trimmers;
- ⊘ Clean cooking equipment, including the filtering, transporting and dispensing of oil and grease, but only when the surfaces of the equipment and liquids do not exceed 100° F;
- ⊘ Delivery work by foot, bicycle, or public transportation;
- ⊘ Kitchen and other work in preparing and serving food and drinks, but not cooking or baking (see hazardous jobs);
- ⊘ Office and clerical work;
- ⊘ Pricing and tagging goods, assembling orders, packing or shelving;
- ⊘ Pumping gas, cleaning and polishing cars and trucks (but the young worker cannot repair cars, use garage lifting rack or work in pits);
- ⊘ Wrapping, weighing, pricing, stocking and goods as long as the young worker does not work where meat is being prepared and does not work in freezers or meat coolers.

*Note:* Be sure you keep accurate and complete time records for minor employees. One employer learned this lesson the hard way, when the DOL came to check out an injury claim for a minor. The DOL checked the young employee's timecard, which only showed that he had worked X hours a day. With no time in/time out records, the employer could not prove the minor had worked only during FLSA-specified timeframes - and got slapped with a \$4,000 fine for improper recordkeeping.

The Fair Labor Standards Act (FLSA), as amended by the Drive for Teen Employment Act (Pub. L. 105-334), prohibits workers under 17 years of age from driving on public roads as part of employment.

The FLSA prohibits minors between the ages of 14 and 16 from performing work that involved "the transportation of people or property by rail, highway, air, water, pipeline or other means."

*Note:* I will leave this up to you for your interpretation, but for me this is very inclusive. This, to me, means no one 16 years or younger will run errands, make bank deposits, check in and report to their site. An employer in Alaska found out the hard way to the tune of an \$11,700 fine.

The act (29 U.S.C. §213(c)(6)) states that employees who are under 17 years of age may not drive automobiles or trucks on public roadways. Employees who are 17 years of age may drive automobiles or trucks on public roadways only if:

- ⊘ such driving is restricted to daylight hours;
- ⊘ the employee holds a state license valid for the type of driving involved in the job performed and has no records of any moving violation at the time of hire;
- ⊘ the employee has successfully completed a state approved driver education course;
- ⊘ the automobile or truck is equipped with a seatbelt for the driver and any passengers and the employee's employer has instructed the employee that the seatbelts must be used when driving the automobile or truck;
- ⊘ the automobile or truck does not exceed 6,000 pounds of gross vehicle weight;
- ⊘ such driving does not involve -
  - ⊙ the towing of vehicles;
  - ⊙ route deliveries or route sales;
  - ⊙ the transportation for hire of property, goods, or passengers;
  - ⊙ urgent, time-sensitive deliveries;
  - ⊙ more than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the employee's employer to a customer (other than urgent, time-sensitive deliveries);

- ⊖ more than two trips away from the primary place of employment in any single day for the purpose of transporting passengers (other than employees of the employer);
- ⊖ transporting more than three passengers (including employees of the employer);
- ⊖ driving beyond a 30 mile radius from the employee's place of employment.

### **Hazardous Occupations**

18 is the minimum age for employment in non-agricultural occupations declared hazardous by the Secretary of Labor. The rules prohibiting working in hazardous occupations (HO) apply either on an industry basis, or on an occupational basis no matter what the job is in. Parents employing their own children are subject to these same rules. Some of these hazardous occupations have definitive exemptions. In addition, limited apprentice/student-learner exemptions apply to those occupations marked with an \*.

These rules prohibit work in, or with the following:

1. Manufacturing and storing of explosives.
2. Driving a motor vehicle and being an outside helper on a motor vehicle.
3. Coal mining.
4. Logging and sawmilling.
- \*5. Power-driven woodworking machines.
6. Exposure to radioactive substances.
7. Power-driven hoisting apparatus.
- \*8. Power-driven metal-forming, punching and shearing machines.
9. Mining, other than coal mining.
10. Meat packing or processing (including the use of power-driven meat slicing machines).
11. Power-driven bakery machines.
- \*12. Power-driven paper product machines, including scrap paper balers and paper box compactors.
13. Manufacturing brick, tile, and related products.
- \*14. Power-driven circular saws, band saws, and guillotine shears.
15. Wrecking, demolition, and shipbreaking operations.
16. Roofing operations and all work on or about a roof.
17. Excavation operations.

*Note:* The question we get the most about summer employment is - can someone 16-18 years of age run a lawn mower to mow the parks? Our standard answer to this is - Not in the City of Aberdeen!! I know in some of the smaller municipalities it is hard to find an 18 year old to do manual labor (mowing, weed eating, hedge trimming, etc.). You can try the "I can't find anyone else" defense in court while you are defending an injury, accident or death to a minor. It might work?

This is just a tip of the iceberg, for more information go to the US Department of Labor at [www.dol.gov](http://www.dol.gov).

*Information for this article was gathered from the [www.youthrules.gov](http://www.youthrules.gov) site and notes were contributed by Al Ruhlman, Human Resource Director, City of Aberdeen, SD.*

*Reprinted with permission from the March 2009 issue of South Dakota Municipalities, the magazine of the South Dakota Municipal League.*