

DOL Revises Child Labor Regulations

Under the federal Fair Labor Standards Act (FLSA), the employment of children under age 18 is heavily regulated. Generally, minors who are 13 or younger may not be employed, except for newspaper delivery, babysitting, or by a parent-owned business. At 14 and older, minors can be employed in a larger variety of businesses, but with strict limitations on hours of work and the actual type of work that can be performed. As the minor grows older, the restrictions ease until ceasing at age 18.

On December 16, 2004, the U.S. Department of Labor (DOL) revised its regulations under the child labor provisions of the FLSA, setting new rules and limits on employing minors in various occupations and making other changes as well.

Restaurant Cooking

The revised cooking regulations eliminate the “in plain view” interpretation of earlier regulations. Under the original interpretation, a minor could cook “in plain view,” while cooking performed out of plain view – such as in the kitchen or behind a partition – was not permissible. Under the new rules, minors who are 14 or 15 can perform “kitchen work” in the preparation of food but are limited in the type of appliances they can operate.

For example, they may operate dishwashers, toasters, popcorn poppers, milk shake blenders, coffee grinders, automatic coffee machines, warmers, steam tables, heat lamps, and some microwave ovens. They may also cook with electric or gas grills that do not involve cooking over an open flame and use deep fryers equipped with a device that automatically lowers and raises the baskets into the hot oil. Nevertheless, they may not cook with rotisseries, broilers, pressurized equipment, open-flame grills, or manual deep fryers.

Roofing

The revised regulations prohibit any minor under 18 from working “on or about a roof,” except as part of a bona fide apprenticeship or similar program. “On or about a roof” includes all work performed upon or in close proximity to a roof, including but not limited to:

- Installing or repairing a roof
- Painting and coating existing roofs
- Constructing the sheathing or base of roofs (wood or metal)
- Performing gutter and downspout work
- Installing and servicing television and communication equipment such as cable and satellite dishes
- Installing and servicing HVAC equipment or similar appliances attached to roofs
- Any similar work required to be performed on or about roofs.

Driving

The revised regulations and the “Drive for Teen Employment Act” prohibit employing any minor who is 17 or younger as a delivery or other type of driver; however, a 17-year old is generally permitted to make deliveries or otherwise drive if his or her driving is occasional, only incidental to the job, and within a 30-mile radius of the minor’s place of employment.

Such “occasional” trips can number no more than two per day and occupy no more than one-third of the minor’s work time in any given day. No minor may drive to make “time sensitive deliveries” such as “the delivery of pizzas and prepared foods to the customer.” Moreover, the minor employee must not have a record of moving violations at the time of hire.

Although the revised regulations do not require employers to keep specific records regarding driving by minor employees, employers may want to take measures to establish compliance with the regulations, such as obtaining a copy of the minor’s driving license and record.

Other Changes

The revised child labor regulations make two other noteworthy changes:

- Updating the definition of “explosives” in the DOL’s Hazardous Occupations Order No. 1, which restricts the employment of minors under 18 in any establishment that manufactures or stores explosives.
- Amending Hazardous Occupations Order No. 12, which prohibits minors under 18 from working in occupations involving the operation of paper-products machines, by permitting 16- and 17-year-old workers to load – but not operate or unload – certain scrap paper balers and paper box compactors as long as the balers and compactors meet specific safety standards.

Conclusion

Although these new regulations do not make wholesale changes in the law, employers who employ minors need to examine their hiring practices to ensure compliance with the new regulations. Failure to comply with the child labor regulations can result in civil penalties of up to \$11,000 per violation.

North Carolina Employer Alert— Protective Orders Now Available To Fight Workplace Violence

The laws in North Carolina and South Carolina permit employers to seek restraining orders against individuals who threaten the health, safety, or welfare of their employees. As of December 1, 2004, North Carolina employers have a new tool available to combat workplace violence: the North Carolina Workplace Violence Prevention Act.

Under this new statute, North Carolina employers may obtain a “no-contact order” to protect an employee who has been or may be assaulted, stalked, harassed, or threatened with bodily harm while at work.

To seek a no-contact order, the employer must file a lawsuit in state district court on behalf of the employee, though the employer must consult with the employee who has

been or may be harassed before filing suit. Although the employee's participation is not required to seek a no-contact order, it may be difficult to obtain the order without the employee's participation. The statute prohibits an employer from retaliating against the employee for refusing to participate.

Once a lawsuit has been filed, the court may enter a temporary no-contact order. The court will not consider entering a permanent order until the individual who is being restrained has been served with the complaint and given an opportunity to respond.

In the past, it has been difficult for employers to stop or prevent harassing or threatening behavior directed at their employees, including in the context of a disgruntled former worker or domestic disputes that have entered the workplace. The Workplace Violence Prevention Act now provides employers with the means to better control these incidents.

This Employment Law Update is published as a service to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation.

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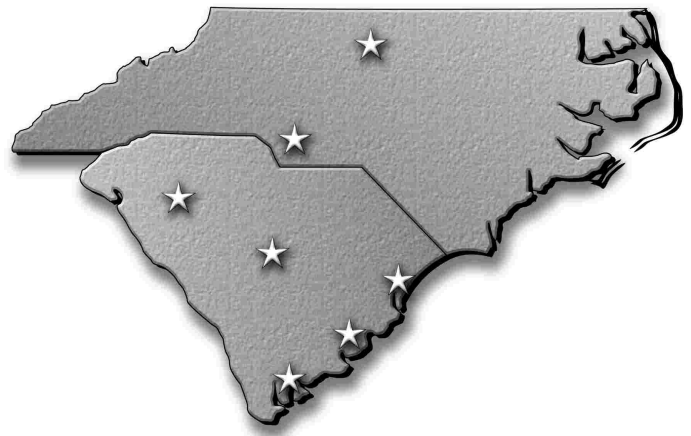
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