

# LABOR AND EMPLOYMENT LAW UPDATE



## IS YOUR TEEN WORKFORCE IN COMPLIANCE WITH CHILD LABOR LAWS?

Approximately 75% to 80% of teens work before they graduate from high school. Recent data shows that a significant percentage of these teenagers endure working conditions which are unsafe or harmful to their education.

On March 5, 2007, results were released from a study funded by the National Institute of Occupational Safety and Health (“NIOSH”) which surveyed teens who worked in the retail and service industry. The first national study of its kind found:

- 52% of males and 43% of females under 18 said they performed tasks which were hazardous or which involved selling or serving alcohol in places where it is consumed.
- 37% of teens under the age of 16 reported working after 7 p.m. on a school night.
- 1/3 of the teens surveyed stated they had no safety training. 25% claimed to have worked without adult supervision.
- 9% said they worked alone after dark.

NIOSH estimates that approximately 160,000 youth suffer work-related injuries and illnesses each year.

Meanwhile, the Equal Employment Opportunity Commission (“EEOC”) receives hundreds of charges each year from teenagers. A significant percentage of these charges allege sexual harassment.

Historically, data showing that labor and employment laws are not being heeded by employers has been the impetus for prompt and well-publicized measures by the agencies charged with the enforcement of such laws. Since the victims are children, the NIOSH study is likely to have an even more pronounced impact. Employers who employ teens would do well to review their policies to ensure they are in compliance with all applicable laws.

**COST OF NON-COMPLIANCE:** Both civil and criminal penalties, including imprisonment for repeat offenses, can attach for violations of child labor laws. Liability for sexual harassment of teens can be significant; in 2005, a San Diego jury awarded four teens \$850,000 in compensatory damages and \$6 million in punitive damages.

**MINIMUM AGE:** The Fair Labor Standards Act (“FLSA”) sets 14 as the minimum age for most non-agricultural work. There are some exceptions to this general rule which include the following:

- Babysitting
- Delivering newspapers
- Performing in radio, television, movie, or theatrical productions
- Working for parent-owned businesses

Some states have higher minimum ages.

**PERMISSION:** Although not required by the FLSA, some states require that certain age groups obtain a written permit or employment certificate from their school, their parents or a government institution before they can work.

**PROOF OF AGE:** A teen’s misrepresentation of age does not necessarily absolve an employer from liability under child labor laws. The only defense recognized by the FLSA under these circumstances is a certificate of age issued by a state agency, school or the U.S. Department of Labor.

**RECORDKEEPING:** The FLSA requires employers to record the date of birth of any employee 18 or younger.

**WORK HOURS:** Under the FLSA, permissible work hours for children under the age of 16 are:

- Non-school hours.
- 3 hours on a school day and 8 hours on a non-school day.
- 18 hours in a school week and 40 hours in a non-school week.
- Between 7 a.m and 7 p.m. except during the summer (defined as June 1 through Labor Day)

There are no limitations under the FLSA on the hours that may be worked by older teens.

Some states have hour limitations which are more stringent than the FLSA. Moreover, many states require that certain age groups be afforded rest periods or breaks of specified lengths.

**WAGES:** The minimum and overtime pay provisions of the FLSA are fully applicable to minor employees. A limited exemption, however, allows employers to pay employees under the age of 20 an initial wage of \$4.25 per hour. After the earlier of 90 calendar days or the employee's 20<sup>th</sup> birthday, this wage must be increased to the full minimum wage of \$5.15 per hour. Some states have higher minimum wages.

**SEXUAL HARASSMENT:** State penal laws may be implicated by sexual harassment of a minor in the workplace. Most states already impose a duty on employers to exercise reasonable care in the hiring, retention and supervision of employees. More care may be required with respect to employees who interact with minors.

Greater protection against the sexual harassment of minors may not be expressly set forth in federal or state discrimination laws, but such protection is implied in jurisprudence construing such laws. Some courts have held that the age of the victim may be considered in determining whether the sexual harassment was severe or pervasive. An employee's age may also be considered in determining whether he or she has taken adequate steps to bring the harassment to the attention of the employer.

**ALCOHOL:** Most state and local laws prohibit minors from selling or serving alcohol in places where it is consumed.

**HAZARDOUS WORK:** The FLSA and many states prohibit anyone under the age of 18 from performing jobs deemed to be hazardous. Such jobs generally involve hazardous workplaces or the operation of motor vehicles or power-driven lifts and machinery. There are greater restrictions on the jobs which may be performed by younger teens.

**QUESTIONS:** Questions regarding child labor laws or any other labor and employment law issues can be directed to Robert G. Chadwick, Jr. at Campbell & LeBoeuf, P.C.

## DISCLAIMER

This paper is not intended to provide legal advice in general or with respect to any particular factual scenario. Any such advice should be obtained directly from retained legal counsel.

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