

Updating Child Labor Regulations for the 21st Century

On May 20, 2010, the Department of Labor's Wage and Hour Division published a Final Rule designed to protect working children from hazards in the workplace while also recognizing the value of safe work to children and their families. The Final Rule contains the most ambitious and far-reaching revisions to the child labor regulations in the last thirty years and marks another step forward in the Department's ongoing effort to promote positive, safe work experiences for young workers. The provisions of the Final Rule will become effective on July 19, 2010. This is the second update to the child labor rules since 2005.

Highlights of the new rule include:

- The Final Rule implements changes to seven non-agricultural hazardous occupation orders (HOs) and revisions to the rules for 14- and 15-year-olds. The Final Rule also incorporates into the regulations statutory changes regarding the assessment of child labor civil money penalties and the employment of youth by establishments that use machinery to process wood products.
- These changes stem from the Department's enforcement experience, two statutory changes, and the 2002 National Institute for Occupational Safety and Health (NIOSH) review of the child labor HOs. NIOSH recommended 35 modifications to the existing non-agricultural child labor HOs. The Department issued a Final Rule in December 2004 implementing six of the NIOSH recommendations. The current Final Rule addresses 25 of the remaining NIOSH non-agricultural HOs recommendations.
- The Final Rule strengthens child labor laws to protect against workplace hazards. Examples of new prohibitions impacting the employment of youth under the age of 18 years include:
 - Working at poultry slaughtering and packaging plants.
 - Riding on a forklift as a passenger,
 - Working in forest fire fighting, forestry services, and timber tract management,
 - Operating certain power-driven hoists and work assist vehicles,
 - Operating balers and compactors designed or used for non-paper products, and
 - Operating power-driven chain saws, wood chippers, reciprocating saws, and abrasive cutting discs.
- The rule expands youth workplace opportunities that have been judged to be safe for young workers. Examples include:
 - By removing a 40-year-old provision that generally limits the employment of 14- and 15-year-olds to jobs in retail, food service, and gasoline service establishments, the rule opens up safe and positive employment opportunities in industries such as advertising, banking, and information technology.
 - The Final Rule allows 14- and 15-year-olds to perform work of an intellectual or artistic nature in establishments that were previously prohibited. Such work includes computer programming, drawing, and teaching.

**CHILD LABOR FINAL RULE, NONAGRICULTURAL EMPLOYMENT
 16- AND 17-YEAR-OLDS—MAJOR CHANGES**

<p><u>CURRENT RULE</u> Hazardous Occupations 29 CFR Part 570, Subpart E Prior to July 19, 2010</p>	<p><u>FINAL RULE</u> Hazardous Occupations 29 CFR Part 570, Subpart E Effective on July 19, 2010</p>
<p><u>HO 4</u> (Logging and Sawmilling)— Currently bans most work in logging and in the operation of a sawmill.</p>	<p><u>HO 4</u> Expands prohibitions to include most work in: forest fire fighting; forest fire prevention that is performed in conjunction with extinguishing an actual fire; forestry services, including forest economics and marketing; and timber tract management. Also incorporates into the HO the provisions of FLSA section 13(c)(7), which allows certain youths to work, under specified conditions, inside and outside of businesses that use power-driven equipment to process wood products.</p>
<p><u>HO 7</u> (Power-Driven Hoisting Equipment)—Prohibit minors from operating power-driven hoisting devices such as cranes, derricks, hoists, high-lift trucks, manlifts, and freight elevators.</p>	<p><u>HO 7</u> Expands current hazardous order to prohibit youth from tending, riding upon, working from, repairing, servicing, or disassembling an elevator, crane, derrick, manlift, hoist, or high-lift truck. Expands definition of high-lift trucks to include backhoes, front-end loaders, skid loaders, skid-steer loaders, Bobcat loaders, and stacking trucks. Expands definition of manlift to prohibit use of truck- or equipment-mounted aerial platforms known as scissor lifts, boom-type mobile elevating work platforms, work assist vehicles, cherry pickers, basket hoists, and bucket trucks. Removes previous exception that allowed youth to operate certain hoists of less than one ton capacity.</p>
<p><u>HO 10</u> (Meat Processing and Power-Driven Meat Processing Machines)—Currently prohibits employment in slaughtering, meat processing, and rendering occupations. Also prohibits the operation of most power-driven meat processing equipment, such as meat slicers, in all types of establishments.</p>	<p><u>HO 10</u> Expands the prohibitions to include work in poultry slaughtering establishments as well as in establishments that manufacture or process meat or poultry products. Clarifies that minors under 18 may not clean power-driven meat processing equipment, or the parts of such equipment, even when the equipment is assembled and disassembled by an adult.</p>

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<p><u>HO 11</u> (Power-Driven Bakery Equipment)—Currently, minors may not operate portable counter top mixers that are similar to those used in private homes.</p>	<p><u>HO 11</u> Allows minors to operate portable counter top mixers that are similar to those used in private homes. Also incorporates into the regulations a Department of Labor enforcement position that allows minors to operate certain pizza-dough rollers under specific conditions.</p>
<p><u>HO 12</u> (Balers and Compactors, and paper products processing machines)—Current HO prohibits minors from operating and unloading certain scrap paper balers and paper box compactors and contains a limited exemption that permits minors to load certain balers and compactors under specified conditions.</p>	<p><u>HO 12</u> Final Rule expands the hazardous order to prohibit the operation and loading of all balers and compactors, including those not designed or used to process paper; and clarifies the limited statutory exemption that permits minors to only load certain scrap paper balers and paper box compactors, and then only in accordance with the provisions of FLSA section 13(c)(5).</p>
<p><u>HO 14</u> (Band Saws, Circular Saws, Guillotine Shears)—Current rule prohibits minors from operating or helping to operate band saws, circular saws, and guillotine shears.</p>	<p><u>HO 14</u> Final Rule expands the prohibited equipment to include chain saws, reciprocating saws, wood chippers, and abrasive cutting discs. These prohibitions apply regardless of the materials being processed by the named equipment.</p>

- The Final Rule also incorporates into the regulations two long standing Departmental enforcement positions that permit 16- and 17-year-olds to operate, under specified conditions, power-driven pizza-dough rollers and portable, countertop food mixers.
- The Final Rule also updates the child labor provisions to better reflect the modern workplace. These changes include:
 - It permits greater opportunities for the development of the technology-based skills that are increasingly in demand in a competitive 21st century labor market.
 - The Final Rule establishes a new work-study program for 14- and 15-year-old students who wish to use their school-supervised work experience as a means to realize their academic potential and obtain a college education.
 - It prohibits 14- and 15-year-olds from engaging in youth peddling activities or non-charitable door-to-door sales.
 - It clarifies the work hours and time-of-day limitations for 14- and 15-year-olds and defines the term *school hours* as it applies to nonagricultural employment.
 - It establishes a minimum age of 15 years for employment as a life guard at traditional swimming pools.

Where to Obtain Additional Information

For additional information, visit our Wage-Hour website: <http://www.wagehour.dol.gov> and/or call our Wage-Hour toll-free information and helpline, available 8am to 5pm in your time zone, 1-866-4USWAGE (1-866-487-9243).

**CHILD LABOR FINAL RULE, NONAGRICULTURAL EMPLOYMENT 14- AND 15-
YEAR-OLDS – MAJOR CHANGES**

<p><u>CURRENT RULE</u> CHILD LABOR REG. NO 3 Title 29 CFR 570, Subpart C Prior to July 19, 2010</p>	<p><u>FINAL RULE</u> CHILD LABOR REG. NO 3 Title 29 CFR 570, Subpart C Effective on July 19, 2010</p>
<p>Reg. 3 at §§ 570.33 and 570.34—Statute is clear that 14- and 15-year-olds may do only those tasks the Secretary of Labor declares they may do, but the regulation is not as clear.</p>	<p>Reg. 3 at §§ 570.33 and 570.34—Regulation revised so that it is clear that 14- and 15-year-olds may do only what the Secretary of Labor has declared they may do. “If a task is not specifically permitted, it is prohibited.”</p>
<p>Reg. 3 at §§ 570.33 and 570.34—Currently, employment of 14- and 15-year-olds is generally restricted to only food service, retail, and gasoline service establishments. This precludes employment in several industries in which youth can be safely employed, such as state and local governments, banks, advertising agencies, etc. Current rule also has several “prohibitions” that apply only to the three industries named above, causing some employers to mistakenly believe such tasks may be performed in other industries.</p>	<p>Reg. 3 at §§ 570.33 and 570.34—The final rule reorganizes these sections so as to remove the distinction between retail, food service, and gasoline service establishments and other industries and permits the employment of 14- and 15-year-olds to perform safe tasks in other establishments. It also “consolidates” into a single section the permitted occupations and in a separate section identifies common prohibited occupations, whereas both were previously commingled in §§ 570.33 and 570.34.</p>
<p>Reg. 3 at §§ 570.33(c) and (f) and 570.34(a)—Rule does not specifically address when 14- and 15-year-olds may be employed to ride inside and outside of motor vehicles. Rule also prevents such youth from loading any items onto (or from) a motor vehicle—including personal hand tools and personal items.</p>	<p>Reg. 3 at §§ 570.33(f) and (k) and 570.34(k)—Clarifies when youth can ride inside and outside of passenger compartments of motor vehicles and coordinates rules with HO 2 (§ 570.52). Also allows youth to load and unload hand tools and personal items that he or she will use at the job site onto and from motor vehicles.</p>
<p>Reg. 3 § 570.34(b)(7)—Prohibits 14- and 15-year-olds from working inside meat coolers and freezers.</p>	<p>Reg. 3 § 570.33(i)—Clarifies the provisions regarding youth working inside meat coolers and freezers and allows youth, on an occasional basis, to momentarily enter a freezer (but not a meat cooler) to retrieve items.</p>

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<p><u>Youth Peddling</u>—Current rule has no provisions regarding door-to-door sales or youth peddling. Many injuries and even deaths have occurred to youth working as youth peddlers.</p>	<p><u>Reg. 3 § 570.33(j)</u>—Bans youth peddling and door-to-door sales by youth under 16 years of age. Also prohibits such youth from promotional employment as “sign wavers” unless performed directly in front of the employer’s establishment.</p>
<p><u>Poultry Catching</u>—Current rule has no language specifically prohibiting the employment of 14- and 15-year-olds in the catching and cooping of poultry for market or slaughter; but such work is prohibited because it is a “processing occupation.”</p>	<p><u>Reg. 3 § 570.33(l)</u>—Adds poultry catching and cooping as a named prohibited Reg. 3 occupation in order to clarify and facilitate compliance.</p>
<p><u>Intellectual or artistically creative occupations</u>—Reg. 3 currently does not contain provisions permitting 14- and 15-year-olds to perform certain tasks involving intellectual or artistic talents that involve industries and tasks that do not jeopardize the minor’s health, well-being, or education.</p>	<p><u>Reg. 3 § 570.34(b)</u>—Creates a new “permitted” occupation for work of an intellectual or artistically creative nature. Includes sufficient safeguards to ensure these young workers do not perform otherwise prohibited tasks or work during prohibited time periods.</p>
<p><u>Lifeguards</u>—Regulations do not currently permit minors under 16 to work as lifeguards. The Department has developed an enforcement position over the last 7 years that permits properly certified 15-year-olds, but not 14-year-olds, to perform most duties of a life guard at traditional swimming pools and water amusement parks—but not at natural environments.</p>	<p><u>Reg. 3 § 570.34(l)</u>—Creates a new “permitted” occupation allowing 15-year-olds to work as lifeguards and swimming instructors at swimming pools and water amusement parks if properly trained and certified. Places in the regulations the Department’s long standing position that prohibits anyone under 16 from working as a dispatcher on elevated water slides or as a lifeguard at natural environment swimming facilities (lakes, rivers, ocean beaches, quarries, piers).</p>
<p><u>FLSA Section 13(c)(7)</u>—This statutory child labor exemption, which is not yet incorporated into the regulations, allows certain youth to work inside and outside of businesses that use power-driven equipment to process wood products.</p>	<p><u>Reg. 3 § 570.34(m)</u>—Incorporates the provisions of FLSA Section 13(c)(7), enacted in 2004, which allows 14- and 15-year-olds to be employed inside and outside places of business that use power-driven machinery to process wood products under specific conditions. The final rule also changes HO 4 (§ 570.54) to accommodate the amendment.</p>

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<p><u>Reg. 3 § 570.35(a)(5)</u>—Current rule limits the number of hours 14- and 15-year-olds may work to 3 hours on a school day; but the rule does not specifically state “including Fridays.” This has caused some confusion among employers.</p>	<p><u>Reg. 3 § 570.35(a)(5)</u>—Clarifies that the 3-hour limit on employment on a school day includes Fridays. As amended, § 570.35 also clarifies that the prohibition on working during “school hours” refers to the hours that the local public school where the minor resides while employed is in session.</p>
<p><u>Reg. 3 § 570.35(b)</u>—Current regulations limit the number of hours 14- and 15-year-olds may work in a week, but do not define the term <i>week</i>. The Department has traditionally defined <i>week</i> to mean the 168 hour period beginning at 12:01 a.m. Sunday morning and ending at midnight of the next Saturday.</p>	<p><u>Reg. 3 § 570.35(b)</u>—Requires employers to use the same “week” (168 hour period) for determining compliance with the child labor provisions as it establishes for determining if employees are due overtime.</p>
<p><u>Work Study Program</u>—Regulations do not currently accommodate work study programs already in existence that help inner-city high school students obtain quality college preparatory educations from prestigious educational organizations.</p>	<p><u>Reg. 3 § 570.37</u>—Creates a work-study program (WSP) for academically oriented youth, similar to the existing Work Experience and Career Exploration Program (WECEP) contained in § 570.36, that would allow such youth to work during school hours, with sufficient safeguards to ensure that their employment does not interfere with their health, well-being or education.</p>