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Hiring minor employees

Oftentimes employers hire high school students and sometimes even younger teen-agers to meet their employment needs and to give young people a chance to participate in the workforce and learn new skills, not to mention the opportunity to earn “real money” for saving or spending. Accordingly, it’s always a good idea to review fair labor standards and workers’ compensation laws applicable to employees under the age of 18.

Child labor standards

Employers should be aware that there are both federal and state child labor laws. These laws are designed to protect minors by restricting the types of jobs for which they may be hired and the number of hours they may work. In Minnesota, the provisions of the Child Labor Standards Act (Minn. Stat. §181A.01 – 12) and the rules promulgated there under are very similar in scope and coverage to the child labor restrictions contained in the federal Fair Labor Standards Act (see 29 U.S.C.A. §203 and 29 CFR Part 570) and are enforced by the Minnesota Department of Labor and Industry. The basic rules pertaining to hiring minors are outlined below. Also note MN Rule 5200.0910 (listing types of employment minors under age 18 CANNOT perform) and MN Rule 5200.0920 (listing types of employment minors under age 16 CANNOT perform).

Minimum age/proof of age

A minor under 14 years of age generally may not be employed outside the home, except:

- As a newspaper carrier (at least 11 years of age).
- In agriculture (at least 12 years of age with parental or guardian consent).
- As an actor, model or entertainer.
- As a youth athletic program referee (at least 11 years of age and with parental/guardian consent).

In Minnesota, an employer must maintain proof of a minor employee’s age as part of its payroll records. This

proof may be a copy of a birth certificate, a copy of a driver’s license, an age certificate issued by a school, or a U.S. Department of Homeland Security – Immigration and Customs Enforcement – Employment Verification Form I-9.

Hours of work

- During the school year, minors less than 16 years of age may not work later than 7 pm, more than 3 hours per day, or more than 18 hours per week.
- On school days during school hours, minors less than 16 years of age may not work without an employment certificate issued by the school district superintendent (Minn. Stat. §181A.05).
- Minors less than 16 years of age may not work before 7 am, with the exception of newspaper carriers.
- During summer vacation, 14 and 15-year-olds may not work after 9 pm, with the exception of newspaper carriers.
- During summer vacation, 14 and 15-year-olds may not work for more than 40 hours per week or more than 8 hours in a 24-hour-period, except in agriculture.

Prohibited jobs

Alcoholic beverages

Minors under the age of 18 are prohibited from serving, dispensing or handling intoxicating liquors and 3.2% malt liquors that are consumed on the employer’s premises and from working in rooms where alcoholic beverages are served or consumed, except that:

- 16-year-olds may perform bussing or dishwashing duties in a restaurant, hotel, motel or resort where the presence of alcoholic beverages is incidental to food service.
- 16-year-olds may work as waiters and waitresses in areas where the presence of 3.2 percent malt liquor is incidental to food service.

- 16-year-olds may provide musical entertainment in a restaurant.

In addition, minors under the age of 18 are generally prohibited from working in the following types of occupations:

Hazardous materials

- Where chemicals or other substances are present at high temperatures or in explosive, toxic or flammable quantities.
- Where explosives or fireworks are manufactured, stored, handled or fired.

Hazardous operations

- In logging or lumbering operations, paper mills, saw mills, lath mills or shingle mills.
- In mines, quarries or sand or gravel pits.
- In construction or building projects.
- In building maintenance or repair higher than 12 feet above ground or floor level.
- In oxyacetylene or oxyhydrogen welding.



Transportation

- Driving buses, cabs or other passenger-carrying vehicles.
- On boats or vessels used for commercial purposes, except if performing guide or other non-operational duties.
- In certain railway occupations.

Machinery

- Operating or assisting in the operation of power-driven machinery such as forklifts, meat saws and grinders, milling machines, punch presses, press brakes, shears and woodworking machinery.
- Operating any non-automatic elevator, lift or hoisting machine.
- Operating, erecting or dismantling rides or machinery in an amusement park, street carnival or traveling show, or in the loading or unloading of passengers on rides.

Other

- As a lifeguard, except for a minor with a Red Cross lifesaving certificate who works under uninterrupted adult supervision.
- In any occupation or activity or on any site which is hazardous or dangerous to life, limb or health.

In addition to all of the occupations listed above, minors under 16 years of age are generally prohibited from engaging in any of the following activities:

Machinery

- Operating laundry, rug cleaning or dry cleaning equipment.
- Operating power-driven snowblowers, lawn mowers and garden equipment.
- Operating grinders, lathes and portable power-driven machinery such as drills, sanders, and polishing and scrubbing equipment for floor maintenance.
- Operating meat slicers, textile-making machines or bakery machinery.
- Oiling, cleaning or maintaining any power-driven machinery.
- Using pits, racks or any lifting apparatus at service stations or in mounting tires on rims.
- Working near mechanized conveyor lines in a car wash.

Transportation

- In or about an airport landing strip, taxi pick-up strip or maintenance aprons.
- As an outside helper on a motor vehicle.

Operations

- Welding of any kind.
- Working in a commercial warehouse, manufacturing plant or processing plant.
- In walk-in meat freezers or meat coolers, except for occasional entrance.
- Car wash or mechanical conveyor line.

Other

- Lifting, carrying or caring for patients in hospitals or nursing homes.

Exceptions

The Minnesota Department of Labor and Industry has adopted certain exceptions to the restrictions related to the employment of minors.

The following situations are exempt from the application and enforcement of these child labor laws:

- A minor who has reached the age of 17 and has graduated from high school.
- A minor being trained in a state-approved apprenticeship program or in a training program approved by the Division of Vocational-Technical Education, Minnesota Department of Children, Families and Learning.
- A minor employed by a business that is solely owned and daily supervised by one or both of his parents.
- Work done outside of hazardous areas.

Under Minn. Stat. §181A.07 the Commissioner of the Department of Labor and Industry may grant an exemption from any provision of the Child Labor Standards Act if such exemption is in the best interest of the minor involved. The minor's parent or guardian, a school official or youth employment specialist may request such an exemption.

Penalties

An employer who fails to comply with any provision of the Minnesota Child Labor Standards Act or of its accompanying rules may be assessed fines that range from \$250 (proof of age) to \$5,000 (hazardous employment). However, the majority of the fines are set at \$500 and \$1,000 (see Minn. Stat. §181A.12. Serious and repeat offenders may also be subject to criminal prosecution. The penalties for violating the child labor laws under the federal Fair Labor Standards Act are much more severe.

Workers' compensation benefits

Eligibility

Under the Minnesota Workers' Compensation Act, the definition of "employee" specifically includes a "minor." Minors are covered by the Act and, for workers' compensation purposes, have the same power as adults to enter into a contract, make an election of remedies and settle a workers' compensation claim, subject to a few exceptions.

If a minor employee seeks permanent total disability benefits, permanent partial disability benefits greater than \$3,000 (and which would be a permanent partial disability rating of at least 4%, receives or is entitled to dependency benefits or is offered a lump sum of more than five times the statewide average weekly wage, guardian or conservator must be appointed by the probate court to represent the minor's interest. However, a parent is presumed to be the guardian of the minor employee. See Minn. Stat. §176.092. However, under Minn. Stat. §176.521, subd. 1, any agreement with a minor to settle a workers' compensation claim is not valid if a guardian or conservator is required under the statute but has not been appointed. The costs and reasonable attorney fee associated with the appointment of the guardian or conservator, can with the approval of the probate judge be paid by the employer and insurer.

Amount of benefits

In all cases other than where the minor employee is an apprentice or is claiming permanent total disability, a minor's wage loss benefits under the Workers' Compensation Act are calculated in the same manner as an adult's and are based on the employee's average weekly wage at the time of the injury. However, should the employee at the time of the injury be an apprentice or

sustain a work-related injury that results in permanent and total disability, the minor employee's compensation rate in both cases then becomes the maximum rate for temporary total disability, which as of 10/1/2015 was \$1,009. See Minn. Stat. §176.101, subd. 6(b).

If you have any questions about the issues addressed in this *Legal Advisory*, please call Lynn, Scharfenberg & Hollick at (952) 838-4450.