

Now that Summer is Here, What Are Your Legal Obligations to Your Youth Work Force?

Tara L. Tesmer, Esq.
Rembolt Ludtke LLP

Consider this: Several well-known movie theater chains allowed their youth workers to load and operate trash compactors, operate motor vehicles and operate dough mixers. In addition, the movie theaters scheduled several of their youth employees under the age of 16 to work past 9:00 p.m., and work more than three hours on a school day. If the facts of this case do not cause you to be alarmed, perhaps the thought of paying over \$277,000 in penalties for violations of the Fair Labor Standards Act (the "FLSA") will cause you to think about policies and procedures for your youth work force. (U.S. Labor Dept. News Release, March 1, 2011).

Child labor is regulated at both the state and federal levels. If state law and federal law overlap, the law which is more protective of the employee will apply. The Department of Labor is the sole federal agency that monitors child labor and enforces child labor laws. The Department of Labor authorizes only a few jobs for 14 and 15 year olds, and outlaws hazardous work for any youth up to the age of 18. The most sweeping federal law that restricts the employment and abuse of child workers is the FLSA. Child labor provisions under the FLSA are designed to prohibit youth employment in jobs that are detrimental to their health and safety. FLSA also restricts the hours that youth under 16 years of age can work and lists hazardous occupations too dangerous for young workers to perform. The FLSA sets 14 years of age as the minimum age for most non-agriculture employment.

Youths 14 and 15 years old may work outside school hours in various non-hazardous jobs only under the following conditions: no more than 3 hours on a school day, 18 hours in a school week, 8 hours on a non-school day, or 40 hours in a non-school week. Work may not begin before 7:00a.m., nor end after 7:00 p.m., except from June 1 through Labor Day (not "the summer" as some

Employment/Labor Law Practice Group

Mark A. Fahleson
mfahleson@remboltludtke.com

Tara L. Tesmer
ttesmer@remboltludtke.com

Rembolt | Ludtke LLP Attorneys at Law

MAIN OFFICE

1201 Lincoln Mall, Suite 102
Lincoln, NE 68508
Fax: 402 / 475-5087
402 / 475-5100

BRANCH OFFICES

125 South 6th Street
Seward, NE 68434
Fax: 402 / 643-3969
402 / 643-4770

3280 Woodridge Boulevard
Suite 160
Grand Island, NE 68801
308 / 384-6888

skillful counsel | successful clients

We Find the Way®

remboltludtke.com

employers believe). Permitted occupations for 14 and 15 year old employees include those such as cashier, office/clerical work, bagging orders, cleanup work, hand-cleaning vegetables, and other similar type jobs. Cooking and baking cannot generally be performed by minors under the age of 16.

Youths 16 and 17 years old may perform any non-hazardous job, for unlimited hours. Examples of equipment declared hazardous in many summer jobs at restaurants include power-driven meat processing machines (saw, patty forming machines, grinding, chopping, or slicing machines), commercial mixers, and certain power-driven bakery machines. Employees under 18 years of age are not permitted to operate, feed, set-up, adjust, repair, or clean such machines.

Generally, no employee under 18 years of age may drive or serve as an outside-helper on a motor vehicle on a public road. However, 17 year olds who meet a number of specific requirements may drive automobiles and trucks that do not exceed 6,000 pounds gross vehicle weight for limited amounts of time as part of their job. Minors are prohibited from making time sensitive deliveries (such as pizza deliveries or other trips where time is of the essence) and from driving at night.

The federal minimum wage for covered nonexempt employees, which are most youth workers, has increased to \$7.25 per hour effective July 24, 2009. Occupations such as babysitting are not subject to the minimum wage law. The FLSA requires a minimum of not less than \$4.25 per hour for employees under 20 years of age during their first 90 consecutive calendar days of employment with an employer. After 90 days of employment, or when the worker reaches 20 (whichever comes first), the worker must receive the minimum wage. Employers are prohibited from taking any action to displace employees in order to hire employees at the youth minimum wage. Also prohibited are partial displacements such as reducing employees' hours, wages, or employment benefits. Employers must remember that deductions made from wages for items such as cash shortages, required uniforms, or customer walk-outs are illegal if the deduction reduces the employee's wages below the minimum wage or cuts into overtime pay.

The vast majority of youth workers receive the majority of their wages through tips. However, an employer must pay not less than \$2.13 an hour in direct wages and make sure that the amount of tips received is enough to meet the remainder of the minimum wage. Employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.

Tipped employees who receive \$2.13 per hour in direct wages are also subject to overtime at one and one-half times the applicable minimum wage, not one and one-half times \$2.13.

Although wages and hours for youth workers should be of paramount concern, business owners should also be aware that young people are frequently targets of sexual harassment in the workplace. It is important that teenagers are trained, as well as those they work for, regarding your harassment policy, including the avenues for complaining without fear of retaliation. The United States Equal Employment Opportunity Commission has offered some of the following suggestions for businesses that employ youth workers:

- Establish a strong corporate policy for handling complaints;
- Post policies on discrimination and complaint processing in visible locations, such as near the time clock, or include the information in a young worker's first paycheck;
- Provide early training to managers and employees, especially front-line supervisors; and
- Provide alternate avenues to report complaints and identify appropriate staff to contact.

Not only are teens more susceptible to sexual harassment, but teens are also more likely to incur unique and substantial work-related injuries and illnesses because of their inexperience at work and their physical, cognitive, and emotional developmental characteristics. It is estimated that approximately 157,000 youth sustain work-related injuries and illnesses each year. As always, make sure your youth employees are familiar with your policies regarding work-related injuries and illnesses.

Tara Tesmer is an associate with the Lincoln-based law firm of Rembolt Ludtke LLP and may be reached at (402) 475-5100 or ttesmer@remboltludtke.com. This article is provided for general information purposes only and should not be construed as legal advice. Those requiring legal advice are encouraged to consult with their attorney.