

Child Labor Requirements In Agricultural Occupations Under the Fair Labor Standards Act (Child Labor Bulletin 102)



U. S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH-1295
(Revised June 2007)



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FEDERAL CHILD LABOR LAWS

The Federal child labor provisions, authorized by the Fair Labor Standards Act (FLSA) of 1938, were enacted to ensure that when young people work, the work is safe and does not jeopardize their health, well-being or educational opportunities. By knowing, understanding and complying with these provisions, agricultural employers, parents, and teachers can help working teens enjoy those safe, positive, early work experiences that can be so important to their development.

CHILD LABOR BULLETIN No. 102

This booklet is a guide to the provisions of the FLSA (also known as the “Wage-Hour Law”) which applies to minors employed in *agricultural* occupations. In addition to child labor provisions, the FLSA contains provisions on minimum wage, overtime, and recordkeeping.

See *Child Labor Bulletin No. 101* for information regarding the employment of minors in nonagricultural occupations.

OTHER CHILD LABOR LAWS

Other Federal and State laws may have higher standards. When these apply, the more stringent standard must be observed. All States have child labor laws and compulsory school attendance laws, and also establish the minimum ages and conditions under which youths may operate motor vehicles.

Unless otherwise exempt, a covered minor employee is entitled to receive the same minimum wage, overtime, occupational safety and health, and non-discrimination protections as adult workers.

Coverage of the Federal Child Labor Provisions

The FLSA establishes minimum ages for covered employment in agriculture unless a specific exemption applies. Employees of farms are subject to FLSA's child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce. An employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof. In addition, all employees of a farm are covered under the FLSA on an enterprise basis if the annual gross volume of sales made or business done by the enterprise that owns the farm is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated) and the enterprise employs workers engaged in commerce, or the production of goods for commerce, or who handle goods that have moved in commerce. Such covered employees include workers employed directly by the farmer, or by a covered contractor hired by the farmer, who:

- cultivate the soil or grow or harvest crops;
- raise livestock, bees, fur-bearing animals, or poultry;
- perform work which is incidental to the farming operations of that farm (such as threshing grain grown on that farm);
- work off the farm as employees of the farmer performing work which is incidental to the farming operations of that farm (such as delivering produce to market by truck).

Migrant and seasonal agricultural employees, regardless of their age and whether hired directly by the farmer or provided by a farm labor contractor – when covered by the FLSA – are entitled to the same protections as other farm workers. Both the farmer and the farm labor contractor may be jointly responsible for compliance with the minimum wage and child labor provisions of the FLSA.

Some farm employees may not be performing agricultural work, but may still be subject to the provisions of the FLSA. Please check *Child Labor Bulletin 101, Child Labor Requirements in Nonagricultural Occupations under the Fair Labor Standards Act*, for additional information.

Young entrepreneurs who cut their neighbor's lawn or perform babysitting on a casual basis for farmers are not covered under the FLSA.

For more information regarding the coverage of farms under FLSA, see *Agricultural Employers under the Fair Labor Standards Act (FLSA), Fact Sheet No. 12*, located on the Department's Website at <http://www.dol.gov/whd/regs/compliance/whdfs12.htm>

The Federal Child Labor Provisions in Agriculture Do Not:

- require minors to obtain "working papers" or "work permits," though some States do;
- limit the number of hours or times of day (other than outside of school hours) that young farm workers may legally work, though a few States do.

Check with the applicable State Department of Labor for guidance concerning State laws. These Offices can be located at www.youthrules.dol.gov.

Parental Exemption from the Agricultural Provisions of the FLSA

A child of any age may be employed by his or her parent or person standing in place of the parent at any time in any occupation on a farm owned or operated by that parent or person standing in place of that parent.

Minimum Age Standards for Agricultural Employment

- 16** Minors who are at least 16 years of age may perform any farm job, including agricultural occupations declared hazardous by the Secretary of Labor, at any time, including during school hours.
- 14** Minimum age for employment outside of school hours in any agricultural occupation **except** those declared hazardous by the Secretary of Labor.
- 12** May be employed outside of school
- &** hours with written parental consent or
- 13** on a farm where the minor's parent or person standing in place of the parents is also employed.
- Under 12** May be employed outside of school hours with parental consent on a farm where employees are exempt from the Federal minimum wage provisions.

These requirements are published in Section 570.2(b) of Part 570 of Title 29 of the Code of Federal Regulations

Although Section 13(c)(4) of the FLSA contains provisions allowing the Secretary of Labor to consider granting requests for waivers from employers that would permit local minors 10 and 11 years of age to be employed outside of school hours in the hand

harvesting of crops under certain conditions, the Department has been enjoined from issuing such waivers (see National Ass'n of Farmworkers Organizations v. Marshall, 628 F.2d 604 [D.C. Cir. 1980]).

Wage Payments to Young Workers on Farms

Minimum Wage

Covered minor employees must be paid at least the statutory minimum wage for all hours worked unless otherwise exempt or employed under conditions discussed below. The minor's pay may be computed on the basis of an hourly rate, a piece rate, a day rate, a salary, or any combination thereof – but the minor's hourly earnings must average at least the applicable minimum wage.

Employees under 20 years of age may be paid \$4.25 per hour during their first consecutive 90 calendar days of employment with an employer. Certain full-time students, student learners, apprentices and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.

Under Section 13(a)(6)(A) of the FLSA, any employer in agriculture who did not utilize more than 500 "man days" of agricultural labor in any calendar quarter of the preceding calendar year is exempt from the minimum wage and overtime pay provisions of the FLSA for the current calendar year. A "man day" is defined as any day during which an employee performs agricultural work for at least one hour.

Overtime

Agricultural employees are not subject to the overtime provisions of the FLSA [see Section 13(b)(12)].

School Hours and Employment in Agriculture

Minors under the age of 16 may not be employed during school hours unless employed by their parent or a person standing in place of their parent. The term *school hours* is defined as those set by the official calendar of the school district in which a minor is living while employed in agriculture. No exception may be made for the early release of individual children or any class or grade to work in agriculture. Work before or after school hours, during weekends, or on other days that the school does not assemble is considered outside school hours.

For example, if the school is in session from 9:00 a.m. until 3:00 p.m. in the school district where the minor is living while working on a farm, the minor may work only before 9:00 a.m. or after 3:00 p.m. on school days.

The requirement that minors be employed outside the school hours of the public school district in which the minor is living while employed in agriculture applies even if that minor does not attend public school. These hours apply when the minor attends a private or parochial school, is home schooled, or has completed his or her formal education.^Ψ

A crew leader who takes young *migrant* workers to an area where schools are open may not allow minors under 16 to work during the hours school is in session in the school district where the farm work is being done. *Seasonal* agricultural workers, who

^Ψ Minors are exempted from this provision and may work during school hours if (1) they have been excused from compulsory school attendance by the State or other jurisdiction on religious grounds once they have reached a certain age (at least 14) and/or attained a certain grade level, and (2) they are employed in compliance with all the requirements of the State school attendance law.

return to their residences at the end of the day, are governed by the hours of the school district in which they reside when performing the work.

These provisions are discussed in Regulations, 29 CFR Part 570.123
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The Hazardous Occupations Orders for Agricultural Employment (HO/As)

The FLSA provides a minimum age of 16 years for any agricultural occupations which the Secretary of Labor finds and declares to be particularly hazardous for persons under the age of 16, or detrimental to their health and well-being. The Secretary of Labor has found and declared that the following occupations are hazardous for minors under 16 years of age.

1. Operating a tractor of over 20 power-take-off (PTO) horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.
2. Operating or assisting to operate (including starting, stopping, adjusting, feeding or any other activity involving physical contact associated with the operation) any of the following machines:
 - a. corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, mobile pea viner;
 - b. feed grinder, crop dryer, forage blower, auger conveyer, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or
 - c. power post hole diggers, power post driver, or nonwalking type rotary tiller.
3. Operating or assisting to operate (including starting, stopping, adjusting,

- feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
- a. trencher or earthmoving equipment;
 - b. forklift;
 - c. potato combine; or
 - d. power-driven circular, band, or chain saw.
4. Working on a farm in a yard, pen, or stall occupied by a:
 - a. bull, boar, or stud horse maintained for breeding purposes;
 - b. a sow with suckling pigs, or a cow with a newborn calf (with umbilical cord present).
 5. Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches.
 6. Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.
 7. Driving a bus, truck, or automobile when transporting passengers or riding on a tractor as a passenger or helper.
 8. Working inside:
 - a. a fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;
 - b. an upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;
 - c. a manure pit; or
 - d. a horizontal silo while operating a tractor for packing purposes.
 9. Handling or applying toxic agricultural chemicals (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as

a flagman for aircraft applying such chemicals). Such toxic chemicals are identified by the word “poison,” or “warning,” or are identified by a “skull and crossbones” on the label.

10. Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or
11. Transporting, transferring, or applying anhydrous ammonia.

These Orders are published in Subpart E-1 of Part 570 of Title 29 of the Code of Federal Regulations.

Exemptions from Hazardous Occupations Orders (HO/As) in Agriculture

These prohibitions on employment in hazardous occupations in agriculture do not apply to youths employed on farms owned or operated by their parents. In addition, the following limited exemptions from these prohibitions apply:

Student-Learners

Student-learners in a bona fide vocational agricultural program may work in the occupations listed in paragraph 1 through 6 of the hazardous occupations orders in agriculture under a written agreement which provides all of the following conditions:

1. The student-learner is enrolled in a course of study and training in a vocational education training program in agriculture under a recognized State or local educational authority or in a substantially similar program conducted by a private school.
2. Such student-learner is employed under a written agreement which provides:

- a. that the work of the student-learner is incidental to the training;
 - b. that such work shall be intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;
 - c. that safety instruction shall be given by the school and correlated by the employer with on-the-job training; and
 - d. that a schedule of organized and progressive work processes to be performed on the job shall have been prepared.
3. Each such written agreement shall contain the name of the student-learner, and shall be signed by the employer and by a person authorized to represent the educational authority or school.
 4. Copies of each agreement shall be kept on file by both the employer and either the educational authority or the school.

This exemption for the employment of student-learners may be revoked in any individual situation if it is found that reasonable precautions have not been observed for the safety of minors employed thereunder.

Although the regulations do not provide definitions of the terms *intermittent* and *short periods of time*, the Wage and Hour Division interprets those terms to mean that a student-learner may not be the principal operator of prohibited machinery. The minor must work under the close supervision of a fully qualified and experienced adult, such as a journeyman. Further, the duties assigned the minor may not be such that he or she is constantly operating the prohibited machinery during the work shift, but only doing so as part of the training experience. This would preclude a student-learner from being a production worker, responsible for

spending a significant portion of the workday operating prohibited machinery or performing prohibited tasks. The Wage and Hour Division considers the continuous performance of otherwise prohibited work that exceeds one hour a day to be more than *intermittent* and more than for *short periods of time*. The Wage and Hour Division also considers the performance of otherwise prohibited work which totals more than 20% of the student-learner's work shift to be more than for *short periods of time*.

The regulations do not define the term *direct and close supervision*. The Wage and Hour Division's interpretation of *direct and close supervision* as it applies to student-learners is based on guidance pertaining to apprentices received from the Bureau of Apprenticeship and Training (BAT) which is part of the U. S. Department of Labor's Employment and Training Administration. BAT establishes ratios governing the number of journeymen and apprentices that may be employed on the job site in order to ensure worker safety and that the apprentices receive both proper training and supervision. BAT has advised the Wage and Hour Division that the most widely used ratio is one apprentice for the first journeyman on-site, and one apprentice for every three additional journeymen thereafter. The Wage and Hour Division considers the requirement of *direct and close supervision* to be met when there is one experienced adult working with the first student-learner on-site, and at least three experienced adults working alongside each additional student-learner. Of course, the requirement for *direct and close supervision* applies only during the periods when the student-learner is actually performing work that would otherwise be prohibited by the HO/A.

The requirements regarding Student-Learners are published in Section 570.72(a), 29 CFR Part 570.
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4-H Federal Extension Service Training Program

Fourteen- and 15-year-old minors who hold certificates of completion of either the tractor operation or machine operation training program under 4-H may work outside school hours in the occupations for which they have been trained. Occupations for which these certificates are valid are covered by items 1 and 2 of the Hazardous Occupations Orders in Agriculture listed on page 4 of this publication. Farmers employing minors who have completed these programs must keep a copy of the certificates of completion on file with the minor's records.

These requirements are published in Section 570.72(b) of Part 570 of Title 29 of the Code of Federal Regulations.

Vocational Agriculture Training Program

Fourteen and 15-year-old minors who hold certificates of completion of either the tractor operation or machine operation program of the U.S. Office of Education Vocational Agriculture Training Program may work in the occupations for which they have been trained. Occupations for which these certificates are valid are covered by items 1 and 2 of the Hazardous Occupations Order in Agriculture listed on page 4 of this publication. Farmers employing minors who have completed these programs must keep a copy of the certificates of completion on file with the minor's records.

These requirements are published in Section 570.72(c) of Part 570 of Title 29 of the Code of Federal Regulations.

Age Certificates

Employers may protect themselves from unintentional violation of the child labor provisions by keeping on file an employment or age certificate for each minor employed to

show that the minor is the minimum age for the job. Certificates issued under most State laws are acceptable for purposes of the FLSA.

These requirements are published in Subpart B of Part 570 of Title 29 of the Code of Federal Regulations, *Certificates of Age*.

Recordkeeping for Employment of Minors in Agriculture

Every employer of a minor under 18 years of age in agriculture shall maintain and preserve records containing the following information:

- Name in full.
- Place where the minor lives while employed. If the minor's permanent address is elsewhere, both addresses should be recorded (this is required for minor farmworkers – other than those employed by a parent or person standing in place of a parent – who are employed on days when school is in session or on any day when employed in an occupation found to be hazardous by the Secretary of Labor).
- Date of birth.
- The written consent of the parent or persons standing in place of the parent of the minor, if written consent is required to employ the minor on a farm.

Additional records may be required by Regulations, 29 CFR Part 516.2.

The FLSA does not require that a parent or person standing in the place of a parent employing his or her own children on a farm owned or operated by such a parent or person maintain records concerning the employment of his or her own children.

These requirements are published in Sections 516.2 and 516.33 of Part 516 of Title 29 of the Code of Federal Regulations, *Records to be Kept by Employers*.

Enforcement of the Federal Child Labor Provisions

The Department of Labor’s Wage and Hour Division administers and enforces the child labor, minimum wage, overtime, and recordkeeping provisions of the Fair Labor Standards Act. The Wage and Hour Division also has enforcement responsibility for programs covering such things as prevailing wages for government contracts, the payment of special minimum wages, farm labor, family and medical leave, immigration, and polygraph testing. The FLSA authorizes Wage and Hour Division Investigators to conduct investigations and gather data on wages, hours of work, and compliance with the child labor provisions.

These requirements are published in Sec. 11 of the Fair Labor Standards Act (29 U.S.C. §211)

Penalties for Violation

Civil Money Penalties

Employers may be subject to a civil money penalty of up to \$11,000 for each employee who is the subject of a child labor violation. When a child labor civil money penalty is assessed against an employer, the employer has the right, within 15 days after receipt of the notice of such penalty, to file an exception to the determination that the violation or violations of the child labor provisions occurred. When such an exception is filed with the office making the assessment, the matter is referred to the Chief Administrative Law Judge, and a formal hearing is scheduled. At such a hearing, the employer may, or an attorney retained by the employer may, present such witnesses, introduce such evidence, and establish such facts as the employer believes will support the exception. The determination of the amount of any civil money penalty becomes final if no exception is taken to the

administrative assessment thereof. If an exception is properly and timely filed, then the decision of the Administrative Law Judge, or the Department of Labor’s Administrative Review Board when applicable, becomes the final order.

These requirements are published in Part 579 of Title 29 of the Code of Federal Regulations, Child Labor Violations, Civil Money Penalties; and in Part 580 of Title 29 of the Code of Federal Regulations, *Civil Money Penalties - Procedures for Assessing and Contesting Penalties*.

Hot Goods Injunction

The FLSA authorizes the Department of Labor to seek injunctions to halt interstate shipment of goods tainted by “oppressive child labor.” FLSA Section 12(a)(29 U.S.C. §212(a)) prohibits interstate commerce in such “hot” goods, stating that “[n]o producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment in the United States in or about which within 30 days prior to the removal of such goods therefrom any oppressive child labor [as defined in FLSA Section 3(1), 29 U.S.C. 203(1)] has been employed.” It is not necessary for the employees to be working on the goods that are removed for shipment in order for those goods to be considered “hot goods.”

These requirements are published in Sec. 12(a) of the Fair Labor Standards Act (29 U.S.C. §212(a))

Injunction to Compel Compliance

The FLSA authorizes the Department of Labor to seek injunctions against violators of the child labor provisions to compel their compliance with the law. Further violations could result in sanctions against such persons for contempt of court.

These requirements are published in Sec. 17 of the Fair Labor Standards Act (29 U.S.C. §217)

Criminal Sanctions

The FLSA also provides that any person who willfully violates any of the youth employment requirements of Section 12 of the Act shall upon conviction thereof be subject to a fine of not more than \$10,000, or to imprisonment for not more than six months, or both. But no person shall be imprisoned under this provision until he or she is convicted of a second offense.

These requirements are published in Sec. 16(a) of the Fair Labor Standards Act (29 U.S.C. §216(a))
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Additional Information

Inquiries about the Fair Labor Standards Act or any other law administered by the Wage and Hour Division may be addressed to any local office of the Wage and Hour Division. Additional information is available on our Home Page located at:
<http://www.wagehour.dol.gov/>

To locate the Wage and Hour Division office nearest to you, telephone our toll-free information and helpline at 1-866-4US-WAGE (1-866-487-9243): a customer service representative is available to assist you with referral information from 8am to 5pm **in your own time zone**; or log onto the nationwide listing of Wage-Hour District Offices located at:
<http://www.dol.gov/WHD/america2.htm>