

**LEGAL/LABOR CONSIDERATIONS:  
COVERAGE OF THE  
CHILD LABOR PROVISIONS**

**Activity:**

Address state and federal labor standards and child labor requirements.

**Introduction**

As school-to-work partnerships are formed and as local initiatives are implemented, questions will arise about whether students' work-based learning experiences are covered under the federal Fair Labor Standards Act (FLSA). The FLSA mandates certain standards of wage payment, record keeping, and the treatment of children under the age of 18. When certain conditions are met, then the FLSA applies and the student must be paid no less than the federal minimum wage, receive no less than 1 1/2 times the regular rates of pay for each hour worked in excess of 40 per workweek and be employed in accordance with child labor laws.

When conditions are not met, then the employer would not be required to pay wages to the student. Federal child labor laws also would not apply. (Your school-to-work partnership should, however, adhere to child labor laws with regard to hazardous working conditions.)

Participation in a school-to-work partnership does not involve any extra compliance obligations under the FLSA. Working with school-to-work students is just like working with other minors.

School-to-work initiatives cover a range of activities. Some of these activities are subject to the FLSA, while others are not. Under the School-to-Work Opportunities Act, no waivers of the FLSA are permitted. While Title V of the Act allows for the possibility of waivers for certain statutory and regulatory requirements, these do not apply to the FLSA. However, participation in a school-to-work partnership does not involve any extra compliance obligations under the FLSA. Working with school-to-work students is just like working with other minors.

The concepts that follow incorporate text from the publication, *School-to-Work*

*Opportunities and the Fair Labor Standards Act: A Guide to Work-Based Learning, Federal Child Labor Laws, and Minimum Wage Provisions*, produced by the Office of School-to-Work Opportunities of the United States Departments of Education and Labor. These concepts should provide an overview of child labor requirements as they relate to school-to-work initiatives. They are not intended to serve as an official interpretation of child labor requirements. If you have questions, contact the appropriate U.S. Department of Labor Wage and Hour Division. (See Appendix A.)

**State and Local Laws**

Where differences exist among federal or state laws or regulations, or municipal ordinances, the stricter standard applies. For example, a state may have no minimum wage law. In this case, the federal minimum wage applies. If a state's minimum wage is higher than the federal minimum wage, the state's wage applies.

In Oklahoma, the state laws and regulations are not as restrictive as those enforced by the federal government. Oklahoma has no child labor restrictions beyond the age of 16 but does restrict the occupation and hours of work for children under the age of 16 and requires that they be permitted rest periods after five consecutive hours of work.

Oklahoma also requires the parents or guardians of children under 16 to procure from their local school an "Employment Certificate of Age and Schooling" (also known as a "work permit"). This certificate must be retained by the employer and produced if requested by labor officials or truant officers. This certificate is also recognized by the U.S. Department of Labor as a "proof of age" and is issued for Oklahoma children up to the age of 18 years for that purpose. The Oklahoma Department of Labor's publication entitled *Minimum Wage Act and Prohibition of Discriminatory Wages, Crimes and Punishments, Protection of Labor, and Child Labor* contains detailed information about state requirements and their relationship to federal provisions.

### **Definition of Work-Based Learning**

The work-based learning component of a school-to-work partnership includes:

- work experiences;
- a coherent sequence of job training and work experiences that are coordinated with the activities in the school-based learning component;
- workplace mentoring;
- instruction in general workplace competencies such as positive work attitudes, employability skills, and participatory skills; and
- broad instruction in all aspects of a business or industry.

Work-based learning may include paid work experience, job shadowing, school-sponsored enterprises, and on-the-job training for academic credit. Not all work-based learning experiences are subject to the Fair Labor Standards Act (FLSA). Activities that take place in the workplace that do not involve the performance of work are not considered "employment" subject to the FLSA. Examples of such activities include career awareness and exploration, field trips to a work site, and job shadowing (where a student follows and observes an employee but performs no work).

### **Elements of a School-to-Work Learning Experience**

A learning experience at an employer's work site has four elements. It is important that these elements are present in a school-to-work learning experience to clarify the employment relationship. The learning experience

- is a planned program of job training and work experience for the student, appropriate to the student's abilities, which includes training related to preemployment and employment skills to be mastered at progressively higher levels that are coordinated with learning in the school-based learning component and lead to the awarding of a skill certificate;
- encompasses a sequence of activities that build upon one another, increasing in complexity and promoting mastery of basic skills;

- has been structured to expose the student to all aspects of an industry and promotes the development of broad, transferable skills; and
- provides for real or simulated tasks or assignments which push students to develop higher-order critical thinking and problem-solving skills.

### **When the FLSA Applies**

Employee status under the federal Fair Labor Standards Act (FLSA) is not the same as employee status under other laws such as workers' compensation, unemployment insurance, and state and federal taxes, among others. Whether trainees or students are employees of an employer under the FLSA depends upon all of the circumstances surrounding their activities on the premises of the employer.

To be subject to the provisions of the FLSA, (1) the school-to-work work-based learning experience must represent an employment relationship, and (2) the enterprise or the student must be "covered" under the FLSA. Both conditions must be met for the FLSA to apply.

### **Determining Employment Relationships**

Students participating in a learning experience (as described above) would not be considered employees under the FLSA if all of the following criteria apply:

- (1) the student receives on-going instruction at the employer's work site and receives close on-site supervision throughout the learning experience, with the result that any productive work that the student would perform would be offset by the burden to the employer from the training and supervision provided;
- (2) the placement of the student at a work site during the learning experience does not result in the displacement of any regular employee — i.e., the presence of the student at the work site cannot result in an employee being laid off, cannot result in the employer not hiring an employee the employer would otherwise hire, and cannot result

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in an employee working fewer hours than the employee would otherwise work; training and supervision provided;

- (3) the student is not entitled to a job at the conclusion of the learning experience (although employers should not be discouraged from offering employment to successful graduates); and
- (4) the employer, student, and parent or guardian understand that the student is not entitled to wages or other compensation for the time spent in the learning experience (although the student may receive a stipend for expenses such as books or tools).

When all four of the above criteria are met, then no employment relationship exists and the FLSA does not apply. Payment of a stipend is optional, but the stipend may not be used as a substitute for wages. Learning experiences that do not satisfy all four of the listed criteria represent employment relationships.

For students with disabilities, separate criteria may apply. (See Appendix B.)

**Determining Coverage**

The FLSA covers student employees (as defined above) who are performing work for any one type of enterprise that is either engaging in interstate commerce; producing goods for interstate commerce; or handling, selling, or otherwise working on goods or materials that have been moved or produced for such commerce.

Coverage of the FLSA extends to virtually all employers and applies to all "employees" as defined by the FLSA. For work-based learning components where participants are employees, school-to-work partners should presume that the FLSA applies.

Student employees can be covered, even if the enterprise is not, depending

on the nature of their work. If an employee is engaged in interstate commerce, the employee is covered and the provisions of the FLSA apply to that employee. Examples include: taking or placing out-of-state telephone calls; sorting or sending out-of-state mail; receiving papers coming from out of state; and handling, shipping, and receiving products that are moving in interstate commerce.

For more information on coverage, see the *Handy Reference Guide to the Fair Labor Standards Act* (WH Publication 1282) or contact the appropriate Wage and Hour Division office.

**Employing Minors**

When an employment relationship exists and is covered by the Fair Labor Standards Act (FLSA), certain standards and limitations apply to the employment of school-to-work students according to their age. This is to ensure their safety. Safety issues are addressed in the next activity. (See Appendix C.)

**Exceptions**

Exceptions to the standards exist for student-learners and apprentices. A student-learner is a student who is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a licensed private school. An apprentice is a participant in an apprenticeship program legally registered by the U.S. Department of Labor, Bureau of Apprenticeship and Training (BAT), or by an authorized state agency. To qualify as an apprentice, a student must obtain the appropriate certificate from the local BAT office or an approved state office.

The Work Experience and Career Exploration Program (WECEP) also includes special provisions that permit 14- and 15-year-old school-to-work participants to be employed during school hours and in occupations otherwise prohibited by regulation. (See Appendix C.) In addition, a

subminimum wage certificate issued by the Wage and Hour Division allows a school or business to pay a subminimum wage to the following individuals: students with disabilities participating in a school-related work program; student-learners in a vocational education program; and full-time students in retail or service establishments, agriculture, or higher education institutions.

For more information, consult the Code of Federal Regulations (CFR), 29 CFR Part 519 ("Employment of Full-Time Students at Subminimum Wages") and Part 520 ("Employment of Student-Learners"). You can also contact your Wage and Hour Division office. (See Appendix A.)

### **Students Under Age 14**

Students under age 14 may participate in education and training activities. Such activities may include, but are not limited to, presentations in the classroom by employers and employees, field trips to businesses, and job shadowing (where a student follows and observes an employee but performs no work). In general, students under age 14 may not be employed in nonfarm jobs under the FLSA; employment subject to the FLSA may not be a component of their program.

### **Agricultural Activities**

Agricultural activities may be included in school-to-work programs. However, the standards for agricultural programs differ by student age. School-to-work participants under age 16 may be employed on farm jobs, but the child labor regulations limit their employment and generally limit work to periods outside local public school hours. Students 16 years old and older may be employed in any farm job at any time. (See Appendix C for the child labor requirements for farm jobs.) For more information, contact the appropriate Wage and Hour Division or see the publication, *The Child Labor Requirements in Agriculture Under the Fair Labor Standards Act* (Child Labor Bulletin No. 102).

### **Driving Restrictions**

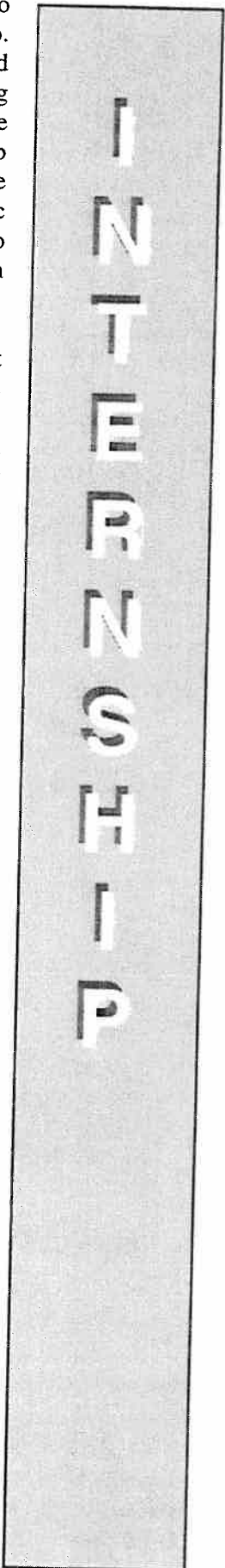
Minors are not allowed to drive on the job. For nonfarm jobs, Hazardous Occupations Order 2 prohibits almost all driving of motor vehicles on public roads and highways. (See Appendix C.)

The driving restriction applies to student-learners and apprentices, too. For example, a roofer apprentice would be allowed to perform some roofing work, but would not be allowed to drive a company vehicle to and from job sites. For farm jobs, minors may drive on the farm but not on a public highway. Certain restrictions apply to minors under age 16 driving farm equipment.

The Fair Labor Standards Act (FLSA) allows driving that is "occasional and incidental." Driving is "occasional" if the minor drove (a single episode of operating a motor vehicle on public roads or highways as part of the student's employment) on average no more often than once in a workweek or four times in a calendar month. "Incidental" driving is limited to no more than 20 percent of the minor's work in any workday and does not exceed 5 percent of the minor's work time in any work week when performed. No restrictions are placed on home-to-work driving for students who have valid driver's licenses and are driving their personal vehicles. Such activity is outside of work hours and thus not covered by the FLSA.

### **Proof of Age**

The Fair Labor Standards Act (FLSA) requires employers to keep on file the date of birth of every employee under age 19. Because a minor could provide an employer with a false date of birth, causing the employer to unknowingly violate the minimum age standards of the FLSA, employers in a school-to-work partnership should obtain an official age certificate. (Some states have laws requiring the employer to keep the official age certificate on file.) The certificate may be (1) a federal certificate of age issued by the Wage and Hour Division, or (2) a state certificate issued by the appropriate state agency.



An age certificate may be known by different names in different states. For example, it may be called a “work permit.”

In Oklahoma, the age certificate is called the “employment certificate of age and schooling.” A child’s parent or guardian must obtain the work permit from the state Department of Labor. Employers must keep the permit on file for inspection by state Department of Labor representatives, truant officers, or other authorities identified in Oklahoma statutes.

See Appendix D for Oklahoma resources.

School-to-work partners should ensure that all participants covered under the FLSA have an appropriate age certificate to provide to participating employers.

#### Recommended Practices

The following practices can help employers and schools comply with the requirements of the Fair Labor Standards Act (FLSA).

- Pay at least the state or federal minimum wage per hour for every hour worked (whichever wage is higher).

Pay overtime pay of 1 1/2 times the agreed rate of pay for all time over 40 hours in a work week. Hours for children under age 16 are limited.

- Keep records.

4. NOTE: The FLSA requires employers to keep records on wages, hours, and other items as specified in Department of Labor recordkeeping regulations. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations.

The records do not have to be kept in any particular form and time clocks need not be used.

- Adhere to child labor laws with regard to hazardous working conditions. While federal child labor laws do not apply if an employment relationship does not exist, school-to-work partnerships should follow them. Such laws offer guidance to school-to-work partnerships in determining hazardous jobs or working conditions for students.

#### Assistance Resources

In addition to the Fair Labor Standards Act (FLSA), states also have wage payment and child labor laws. State provisions will rarely become an issue for school-to-work partners unless an employer fails to pay a participant the wage agreed upon for the work.

The following resources are available from the U.S. Department of Labor, Wage and Hour Divisions. (See Appendix A for addresses.)

- *Employment Relationship Under the Fair Labor Standards Act* (WH Publication 1297). This publication contains detailed information about determining whether the employment relationship exists. It represents official guidance from the U.S. Department of Labor.
- *Handy Reference Guide to the Fair Labor Standards Act* (WH Publication 1282)
- *Regulations, Part 520: Employment of Student-Learners* (WH Publication 1343). Under these regulations an employer, a school, and a student-learner may jointly apply for a certificate authorizing employment at 75 percent of the minimum wage for “one school year” while enrolled in a “bona fide vocational training program.”
- *Child Labor Requirements in Nonagricultural Occupations Under the Fair Labor Standards Act* (Child Labor Bulletin No. 101).

This publication contains detailed information about coverage of the child labor provisions of the FLSA, age standards for employment, exemptions, employment standards for 14- and 15-year-olds (including hour-time standards, permitted occupations, and exceptions for work experience and career exploration programs), and hazardous occupations orders and guidelines for exemptions from hazardous orders for apprentices and student learners.

- *The Child Labor Requirements in Agriculture Under the Fair Labor Standards Act* (Child Labor Bulletin No. 102)
- *Request for Assistance in Preventing Deaths and Injuries of Adolescent Workers* (DHHS Publication No. 95-125). This booklet is available from the National Institute for Occupational Safety and Health (NIOSH) by phone at 1-800-356-4674 or by fax at (513) 533-8573.
- *Occupational Safety and Health Program Individual Study Guide*. This workbook was developed by the Oklahoma Department of Vocational and Technical Education and the Oklahoma Department of Labor. The Study Guide generally follows a safety and health management model developed by the Occupational Safety and Health Administration (OSHA). It explains why and how to implement each of the four elements of a safety and health program. This resource is available from the Curriculum and Instructional Materials Center, 1500 West Seventh Avenue, Stillwater, Oklahoma 74074-4364 (phone 1-800-654-4502 or fax 1-405-743-5154).

See Appendix D for a list of additional resources in Oklahoma and the advice they can provide.

**Activity:**

Address insurance and liability issues.

**Importance**

School-to-work participants (students) must be conducted safely through their school-to-work experiences at the school and at the work site. Educational institutions and employers must also

be protected from unnecessary liability. Participants' in-school activities do not require special insurance coverage—these activities are already covered in the liability policy of the school or school district.

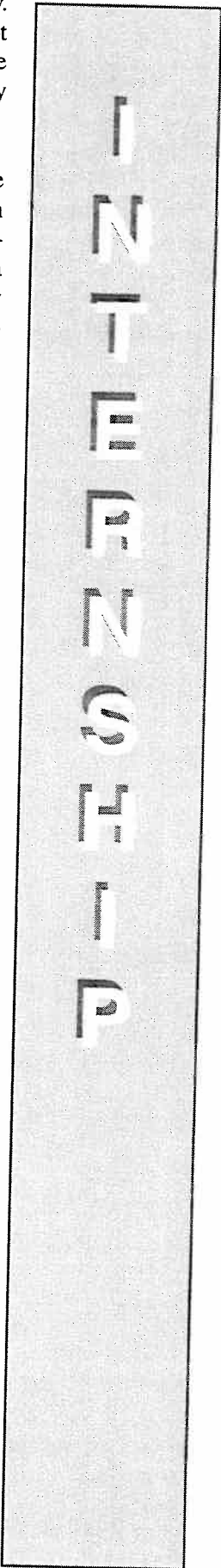
Questions of liability become more complex when students participate in work-based learning experiences. Work-based learning is a vital component in a comprehensive school-to-work model. It may include paid work experience, job shadowing, school-sponsored enterprises, and on-the-job training for academic credit.

The school-to-work legislation does not create new causes of action, does not increase the amount of potential damages, and does not change the responsibilities of any school-to-work partner with respect to common law, workers' compensation, child labor and the Fair Labor Standards Act, equity issues, and occupational safety and health.

**Liability and the STWOA**

Some employers may decide not to participate in the work-based learning component. They may believe that their participation increases their liability. However, the School-to-Work Opportunities Act of 1994 (STWOA) does not change or increase the liability of any school-to-work partner. The liability that exists today also existed before the STWOA.

In addition, the school-to-work legislation does not create new causes of action, does not increase the amount of potential damages, and does not change the responsibilities of any school-to-work partner with respect to common law, workers' compensation, child labor and the Fair Labor Standards Act, equity issues, and occupational safety and health. Participation in a school-to-work initiative involves no liability obligations beyond those already existing. Insurance agents and their associations are good resources, should you have specific questions.



### **Definitions**

Employment is defined differently under different laws. For example, laws dealing with child labor, workers' compensation, occupational safety and health, and others include definitions that are specific to those laws. You should consult an attorney about the relevant definitions for school-to-work activities.

A tort is a legal injury or wrong to another person resulting from actions other than a breach of contract.

Negligence means failure to use a reasonable amount of care when such failure results in injury or damage to another.

### **Liability of Educational Institutions and Employees**

Exposure to liability for educational institutions and their employees is divided between (1) injury to the participant (the student), and (2) injury caused by the participant to another person or to property belonging to another person.

#### **Injury to the Participant**

When a student is an employee of the educational institution (such as an employee of a school-based enterprise), state workers' compensation laws generally apply. In this case, coverage under workers' compensation is the student's exclusive remedy.

When a student is not an employee of the educational institution, and the institution or its employees are negligent and cause an injury to the student, the same common law tort issues apply as if the student was a member of the general public. Having students on-site as a part of school-to-work activities does not expand the issues involved or increase the educational institution's liability.

Damages recoverable here for injuries to the student, who is not an employee of the educational institution, are limited by the provisions of the Governmental Tort Claims Act. (The Governmental Tort Claims Act — 51 Oklahoma Statutes, Section 151 et seq. — limits the liability of a school district or other

government entity to a specified amount and generally provides immunity for school employees. It does not apply to private employers participating in school-to-work activities.) Pursuant to these provisions, the employees of the educational institution could not be sued; only the "political subdivision" (the educational institution) could be sued. Check your state's laws that may limit liability or causes of action.

#### **Injury by the Participant to Another Person or Another's Property**

Educational institutions will not typically be liable for damages caused by a school-to-work participant. The School-to-Work Opportunities Act of 1994 did not change the legal relationships in this matter.

#### **Liability of Employers**

The issue of liability arises whenever any business entity has individuals on its work site. The type of liability will depend on whether the school-to-work participant (the student) is considered an employee or an invitee of the business. The employer's exposure to liability is usually no different than that which already exists relative to its employees and the general public (such as persons invited to the work site).

#### **Remedies for Employees**

A participant (student) who is considered an employee and whose injury arises out of and in the scope of the participant's job duties is subject to the exclusive remedies provided through the workers' compensation benefit delivery system. With few exceptions, all claims must be brought before the Oklahoma Workers' Compensation Court. (Other states may process workers' compensation claims differently.)

#### **Remedies for Non-Employees**

If a participant (student) is not an employee of the business and is injured on the work site, a lawsuit can be filed. This remedy exists for any non-employee, not just for school-to-work participants.

Employers participating in school-to-work activities do not incur greater liability or liability of a different character as a result of school-to-work participants on the employers' work site.

The business can protect itself by obtaining insurance or by determining with its insurance carrier whether its insurance is sufficient to cover participants on the work site. Insurance agents and their associations are good resources, should you have specific questions.

Even though the public institution that places the participant in the work site is protected by limits on liability according to the Governmental Tort Claims Act, private employers' liability is not similarly limited.

### **Injuries or Damages Caused by Students**

Businesses that sponsor work-based learning activities may be liable for the damages or injuries caused by the participants (students) involved in such programs if the student is

- acting on behalf of the participating business; or
- acting with the actual or apparent authorization of the business; and
- the student is negligent; and
- that act results in injury to customers, passersby, visitors or the general public; or damage to the property of customers, passersby or the general public.

If a student does something that causes injury to an employee in the workplace, that injury would typically be covered by workers' compensation and subject to the benefits provided by compensation coverage.

### **Student Medical Malpractice**

In the case of student malpractice in a health care setting, coverage can be obtained through a blanket liability insurance policy. Such a policy usually covers students for malpractice related to their normal curriculum requirements. It may provide coverage for real or alleged medical incidents, payment of court costs, and legal counsel.

A blanket policy may also extend coverage to all students and faculty of a school or health care department.

### **Recommended Practices**

Address insurance and liability issues

- Consult an attorney about the range of legal issues and their application.
- Involve insurance industry partners early in your design of work-based learning experiences.
- Address employer concerns: invite experts (such as attorneys and state department of labor officials) to answer employer questions about insurance and liability in a workshop or in a letter to potential employer-partners.
- State in your stump speech to interested employers that the School-to-Work Opportunities Act of 1994 does not change or increase the liability of any school-to-work partner. (See Module 10 for the outline of a stump speech.)

### **Confirm Workers' Compensation Coverage**

The following list of practices is intended to ensure that students involved in work-based learning as employees are covered by appropriate compensation coverage in the event they are injured on the job. These practices can also protect employers and schools from liability. School-to-work partners should:

- Presume that workers' compensation coverage is required in the case of work-based learning components where the participant is an employee.
- Confirm employers' workers' compensation coverage with the appropriate legal authority. Insurance carriers, including private insurance companies and the Oklahoma State Insurance Fund, can provide a "certificate of insurance." Carriers provide these certificates routinely to a variety of businesses and individuals. When requesting them, you may also ask carriers to notify you of cancellation or lapsed coverage.

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(Policies are often cancelled for non-payment of the premium.) Self-insured employers and members of a self-insurance group can provide copies of their authorization from the state Workers' Compensation Court. The Court will confirm the status of self-insurance authorization. (See Appendix D.)

- Presume that "Certificates of Non-Coverage" issued by the Oklahoma Department of Labor are not appropriate for work-based learning activities. These certificates are intended for sole proprietors, owners of major shares in a business, or truck owner-operators. Contact the Oklahoma Department of Labor if an employer proposes that a Certificate of Non-Coverage be recognized.

#### **Reduce the potential for injuries and liability**

The following list of practices is intended to (1) reduce the likelihood of an incident that might cause injury to school-to-work participants; (2) protect employers and schools from potential liability; and (3) remove barriers to employer participation resulting from the liability concerns of employers' liability insurance carriers. In the development of career exploration, career awareness, job shadowing, or unpaid work experience activities, school-to-work partners should:

- Create a written agreement specifying the purposes and limitations of the activity. This agreement should include:
  - the amount of time to be committed to the activity (limited to the time needed to achieve the desired objectives); and
  - the activities in which participants will engage.

NOTE: Specify in the agreement whether participants are intended to do productive work or to operate as employees in any way.

- Limit the risk to participants (students) by:
  - integrating safety and health training into all curriculum as a component of general workplace competencies (with substantial and meaningful industry involvement);
  - planning to provide industry-specific safety training to students as they progress in the school-to-work system;
  - providing activity-specific safety and health training to students ready to participate in the work-based learning component (provided either by the employer or by the employer and instructors together, depending on the work-based learning experience); and
- documenting all training provided.
- Reassure insurance carriers (often through the employer-partner) of the limited risk associated with the activity by:
  - providing a copy of the written agreement;
  - providing a copy (or description) of the employer's safety training program;

NOTE: If the employer does not have a safety training plan, recommend the *Occupational Safety and Health Program Individual Study Guide*. For ordering information, see the next Activity in this module.

- describing how the work-based learning activity will be supervised;
- documenting on-going efforts to improve safety and reduce risk; and
- providing industry information about the history of losses for comparable activity (statistics).

#### **Reduce the risk of work-related injuries**

Adolescents have a high risk for work-related injury compared with adults. Local school-to-work partnerships must recognize and address the potential for serious injury and death that may confront students participating in school-to-work opportunities.

Much of the information presented in this Activity is condensed from the National Institute for Occupational Safety and Health (NIOSH) booklet *Request for Assistance in Preventing Deaths and Injuries of Adolescent Workers* (May 1995).

### **The Need to Be Alert to Work-Related Injuries**

According to NIOSH, 68 adolescents under age 18 died from work-related injuries in 1993. An estimated 64,000 required treatment in hospital emergency rooms. The U.S. Bureau of Labor Statistics identified 136 work-related deaths of adolescents under age 18 in 1992 and 1993. Agricultural businesses and retail trade accounted for the most deaths. Many of the deaths of adolescents under age 16 occurred in family-owned businesses. Adolescent and adult workers have similar risks of fatal occupational injuries. NIOSH determined that in 1980-89, the risk of injury death for workers aged 16 and 17 was 5.1 per 100,000 full-time equivalent workers compared with 6.0 for adult workers aged 18 and older. This similarity in risk is cause for concern. Adolescents are employed less frequently in especially hazardous jobs, so the rate of fatal injuries among adolescents should be much lower than for adults.

Research also indicates that only one-third of work-related injuries are seen in emergency rooms. NIOSH estimates that nearly 200,000 adolescents suffer work-related injuries each year. Nearly six of every 100 full-time equivalent adolescent workers obtain treatment in hospital emergency rooms each year. In addition, 68 percent of occupationally injured 14- to 16-year-olds experienced limitations in their normal activities (including work, school, and play) for at least one day; 25 percent experienced limitations for more than a week. More than half of these adolescents reported that they had not received any training in how to prevent the injury they sustained. A supervisor was present at the time of the injury in only about 20 percent of the cases.

### **Hazardous Activities**

Federal child labor laws prohibit some work associated with large numbers of deaths and serious injuries, such as driving a motor vehicle and operating a forklift. Other hazardous activities, such as working alone in retail businesses and cooking, are typically permitted.

### **Working In or Around Motor Vehicles**

Motor vehicle-related deaths accounted for nearly one-fourth of the work-related injury deaths of 16- and 17-year-olds during the period 1980-89. These deaths include those of workers who were drivers and passengers in motor vehicles, pedestrians, and bicyclists involved in crashes with motor vehicles. The following jobs are examples of work that may be associated with motor vehicle-related deaths and injuries:

- Delivery of passengers or goods (such as furniture, appliances, parcels, messages, newspapers, pizzas, groceries, and pharmaceuticals)
- Services that require routine travel to provide home-based service (such as cable television installation and repair, appliance repair, and landscaping services)
- Residential trash pickup
- Road maintenance (such as operating sweepers)
- Work at road construction sites (including flagpersons)
- Work at gas stations, truck stops, and auto repair shops

### **Operating Tractors and Other Heavy Equipment**

Machine-related deaths were the second leading cause of work-related injury deaths for 16- and 17-year-olds for the years 1980-89. Tractors alone accounted for 44 percent of the machine-related deaths. The following items are examples of heavy equipment associated with deaths:

- Tractors used in farm settings and non-farm settings (such as construction)
- Forklifts
- Excavating machinery (such as backhoes, bulldozers, steam and power shovels, and trenchers)
- Loaders (such as bucket loaders, end loaders, and front-end loaders)

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- Road grading and surfacing machinery (such as asphalt and mortar spreaders, graders, levelers, planers, scrapers, road linemarking machinery, steam rollers, and road pavers)

**Working Near Electrical Hazards**

Electrocution was the third leading cause of work-related injury deaths among 16- and 17-year-olds for the years 1980-89. In addition, electrocution accounted for a greater proportion of work-related injury deaths in adolescents than in adults. More than 50 percent of the electrocutions resulted from contact with an energized power line.

The following types of work increase the risk for electrocution:

- Using poles, pipes, and ladders near overhead power lines during construction work, painting, and pool cleaning
- Working on roofs to perform jobs such as roofing, roof maintenance, cleaning rain gutters, installing and repairing heating and cooling equipment, installing and repairing television antennas, and cleaning chimneys and smoke stacks
- Operating or contacting vehicles with booms, such as bucket trucks, telescopic forklifts, and telescopic cranes
- Using grain augers and moving grain elevators and irrigation pipes near power lines
- Trimming trees
- Wiring electrical circuits and other work involving exposure to electrical circuitry, including work performed by electricians' helpers

**Working at Jobs with a High Risk for Homicide**

In 1993, assaults and violent acts accounted for about one-fourth of work-related injury deaths of adolescents. Most work-related homicides are associated with robbery. The following types of jobs increase the risk for work-related homicide:

- Working alone or in small numbers in businesses where money is exchanged with the public and the risk for robbery-related homicide is high — for example, in convenience stores, gas stations, restaurants, hotels, and motels
- Working alone in contact with large numbers of people where opportunities may exist for uninterrupted assaults — for example, working in motel housekeeping, delivering passengers or goods, and selling door-to-door

**Working with Fall Hazards**

Falls were the fifth leading cause of work-related injury deaths for 16- and 17-year-olds during the years 1980-89 and accounted for 8 percent of these deaths in 1993. Forty percent of fatal falls were from or out of a building or other structure. Fatal falls were documented for distances ranging from 10 feet to 14 floors.

The following types of jobs are associated with work-related falls:

- Using ladders and scaffolds to work at heights — such as in building construction, building maintenance (brick cleaning and window washing), painting, and harvesting fruit from trees
- Working on structures or near openings in building construction
- Working on roofs
- Trimming trees

**Cooking and Working Around Cooking Appliances**

Severe burns are a risk for adolescents involved in cooking. An estimated 5,200 adolescents sought emergency room treatment for work-related burns associated with cooking or working in a place where food was prepared during the 18-month period from July 1992 through December 1993. The following types of work involve burn hazards associated with cooking:

- Cooking in restaurants and other commercial settings

- Servicing cooking equipment — adding, filtering, and removing hot grease from fryers, and cleaning grills and fryers and their associated vents
- Working near cooking appliances where workers may slip into or against equipment

### **Hazardous Manual Lifting**

From July 1992 through December 1993, overexertion accounted for approximately 4,500 work-related injuries of adolescents treated in hospital emergency rooms. About 2,500 of these injuries were attributed to lifting. Although an individual's ability to safely lift objects varies, work for adolescents should not generally require them to lift objects weighing more than 15 pounds more than once per minute or to lift objects weighing more than 30 pounds. Tasks involving continuous lifting should never last more than two hours.

The following types of work may involve hazardous manual lifting:

- Working in warehouses
- Delivering furniture and appliances
- Retrieving, carrying, or stocking shelves with relatively heavy items
- Working in health care settings where patients are lifted and moved
- Installing or removing carpet or tile
- Baling hay

### **Other Hazardous Work**

Many jobs that are especially hazardous are prohibited by federal child labor laws. Other such work that is not typically prohibited includes work in petroleum and gas extraction, commercial fishing, many jobs that require the use of respirators, work in sewage treatment plants or sewers, work on industrial conveyors, many uses of compressed air or pneumatic tools such as nail guns, farm work using all-terrain vehicles, and work around many types of machines with power take-offs or similarly rotating drivelines.

### **Additional Health Concerns**

In addition to injuries, hazardous materials and working conditions are also a concern for adolescent workers. Less is known about them than the effects of injuries (which have an immediate impact and can be counted and classified).

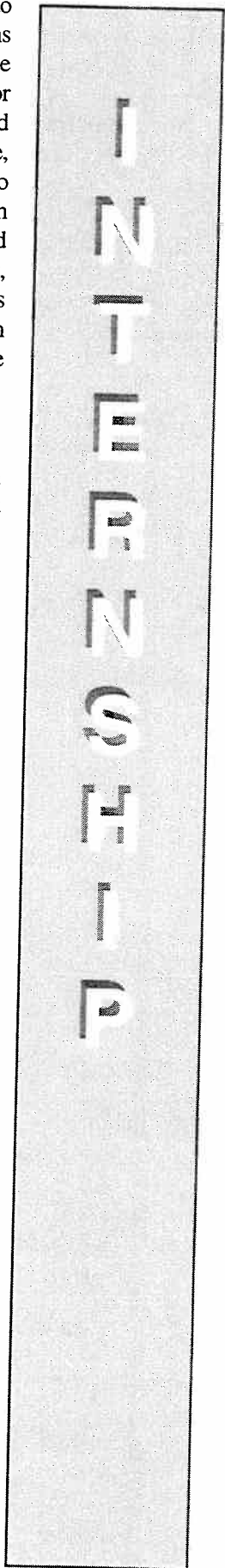
Exposures of adolescent workers to hazardous materials and working conditions may result in an immediate illness or one that might not be detected for months or years. Adolescent workers may be exposed to pesticides in farm work and lawn care, benzene at gasoline stations, lead in auto body repair, asbestos and silica in construction and maintenance work, and high levels of noise in manufacturing, construction, and agriculture. Concerns have also been raised that fatigue from balancing work and school may contribute to injuries among adolescent workers.

### **Existing Regulations**

Occupational safety and health regulations apply to adolescent and adult workers. Federal and state child labor laws provide additional protection for workers under age 18. When federal and state regulations differ on the same issue, the more protective law applies.

The Occupational Safety and Health Administration (OSHA) within the Department of Labor is the federal agency with primary responsibility for setting and enforcing standards to promote safe and healthful working conditions for all workers. OSHA standards may require specific conditions in the workplace or the use of specific practices, methods, or processes, to promote safe work. Employers are responsible for becoming familiar with standards that apply to their facilities. They are also responsible for ensuring a safe working environment.

The Fair Labor Standards Act (FLSA) is the primary law governing the employment of workers under age 18. It is enforced by the Wage and Hour Division of the Employment Standards Administration within the Department of Labor. Child labor provisions of this Act are designed to protect the educational opportunities of minors.



They are also meant to prohibit their employment in jobs and under conditions that could harm the student's health or well-being.

Federal child labor laws restrict hours and type of work for 14- and 15-year-olds and set minimum ages for work declared hazardous under the law. Hazardous farm work is prohibited for adolescents under age 16. However, children working on family farms are exempt from federal child labor laws. Hazardous work in nonfarm businesses (including family businesses) is prohibited for adolescents under age 18. (See Appendix E.)

### Employers' Occupational Safety and Health Program

An occupational safety and health program is the employer's blueprint for protecting the safety and health of employees on the job (including school-to-work participants). A typical program contains four managerial elements, each with specific components. (FIGURE 1)



FIGURE 1

Some potential employer-partners may be reluctant to provide work-based learning opportunities due to concerns for student safety. During your stump speech with potential partners, you can suggest that the employer develop a safety and health program. Such a program will benefit not only students participating in school-to-work experiences but also the employer's employees over the long

term. (See Module 10 for a description of the stump speech.)

One resource you can recommend to employers is the *Occupational Safety and Health Program Individual Study Guide*, developed by the Oklahoma Department of Vocational and Technical Education and the Oklahoma Department of Labor.

The *Study Guide* generally follows a safety and health management model developed by the Occupational Safety and Health Administration (OSHA). It explains why and how to implement each of the four elements of a safety and health program. This resource is available from the Curriculum and Instructional Materials Center, 1500 West Seventh Avenue, Stillwater, Oklahoma 74074-4364 (phone 1-800-654-4502 or fax 1-405-743-5154).

### Steps to Protect Student Workers

School-to-work partners can take specific steps to protect adolescent students participating in work-site learning opportunities. As you work with your local partners, make them aware of the following steps they can take to protect students:

#### Employers

- Know and comply with child labor laws and occupational safety and health regulations that apply to your business. Post these regulations for employees to read.
- Establish an occupational safety and health program.
- Assess and eliminate the potential for injury or illness associated with tasks required of adolescents.
- Provide training to ensure that adolescents recognize hazards and are competent in safe work practices.
- Routinely verify that the adolescents continue to recognize hazards and employ safe work practices.
- Evaluate equipment that adolescents are required to operate. Ensure that such equipment is both legal and safe for use by adolescents.

- Supervise adolescents appropriately to prevent injuries and hazardous exposures.

NOTE: Some of the tasks listed above can become responsibilities of the work-site mentor.

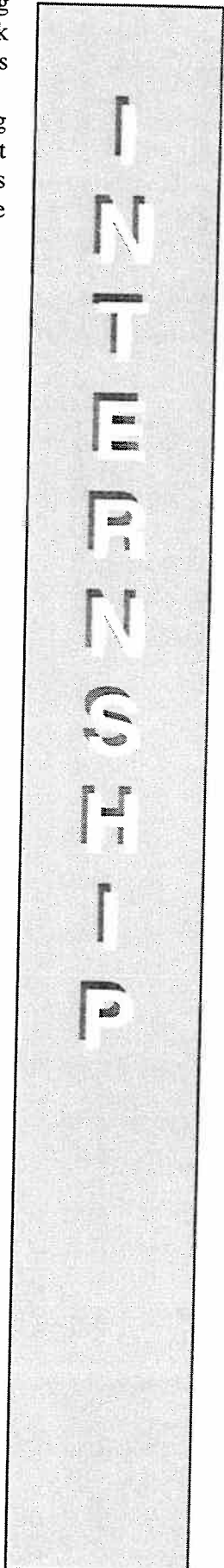
**Parents**

- Take an active role in the employment decisions of your children.
- Discuss the types of work involved and the training and supervision provided by the employer.

**Educators**

- If you are responsible for signing work permits, know the federal and state child labor laws.
- Talk to students about the safety and health hazards in the workplace, as well as their rights and responsibilities as employees.

- Ensure that school-to-work learning experiences provide students with work experience in safe and healthful environments free of recognized hazards.
- Ensure that school-to-work learning experiences incorporate information about employees' legal rights and responsibilities, as well as training in hazard recognition and safe work practices.



## APPENDIX C

### Standards for 16- and 17-Year-Olds

The following standards apply to 16- and 17-year-old youths employed in nonfarm jobs.

#### Hours Limitations

- None under FLSA: Federal law does not limit either the number of hours nor the time of day that youth 16 years of age and older may work.
- Some state laws do restrict the hours that 16- and 17-year-olds may work.

#### Occupation Limitations

Minors may perform all work except in 17 occupations considered too hazardous for all youth under the age of 18. The Hazardous Occupations Orders (HOs) are:

- HO 1 - Manufacturing and storing explosives;
- HO 2 - Motor-vehicle driving and outside helper, including driving motor vehicles or working as outside helpers on motor vehicles or driving as a part of any occupation;
- HO 3 - Coal mining;
- HO 4 - Logging and sawmilling;
- HO 5\* - Work using power-driven woodworking machines, including the use of saws on construction sites;
- HO 6 - Work where exposed to radioactive substances;
- HO 7 - Work involving the operation of power-driven hoisting devices, including the use of fork lifts, cranes, and nonautomatic elevators;
- HO 8\* - Work using power-driven metal forming, punching, and shearing machines (but HO 8 permits the use of a large group of machine tools used on metal, including lathes, turning machines, milling machines, grinding, boring machines, and planing machines);
- HO 9 - All mining other than coal mining, including work at gravel pits;
- HO 10\*- Work involving slaughtering or meat-packing, processing, or rendering, including the operation of power-driven meat slicers in retail stores;
- HO 11 - Work involving the operation of power-driven bakery machines;
- HO 12\*- Work using power-driven paper-products machines, including the operation and loading of paper balers in grocery stores;
- HO 13 - Work in manufacturing of brick, tile, and kindred products;
- HO 14\*- Work involving the use of circular saws, band saws, and guillotine shears;
- HO 15 - All work involving wrecking, demolition, and ship-breaking;
- HO 16\*- All work in roofing operations; and
- HO 17\*- All work in excavating, including work in a trench as a plumber.

SOURCE: School-to-Work Opportunities and the Fair Labor Standards Act: A Guide to Work-Based Learning, Federal Child Labor Laws, and Minimum Wage Provisions, United States Departments of Education and Labor, July 1995.

## APPENDIX C (Cont.)

### Standards for 16- and 17-Year-Olds

The following standards apply to 16- and 17-year-old youths employed in nonfarm jobs.

#### Exceptions to Occupation Limitations

Special Provisions for Student-Learners and Apprentices - The seven HOs identified with an asterisk permit the employment of apprentices and student-learners in vocational education programs under certain conditions. Student-learners in STW programs will meet the student-learner exemption if the student is employed under a written agreement which provides that:

- (1) all hazardous work will be performed under the direct and close supervision of a qualified and experienced person;
- (2) safety instructions will be given by the school and reinforced by the employer with on-the-job training;
- (3) the job training follows a schedule which reflects organized and progressive skill developments; and
- (4) the work in the hazardous occupation is intermittent and for short periods of time and is under the direct and close supervision of a journeyman as a necessary part of such apprenticeship training.

The written agreement must be signed by the employer and placement coordinator (or school principal). Copies of the agreement must be kept on file by both the school and the employer.

NOTE: To qualify as an apprentice, one must obtain the appropriate certificate from the local U.S. Department of Labor Bureau of Apprenticeship and Training (BAT) office, or a state office approved by BAT.

## APPENDIX C (Cont.)

### Standards for 14- and 15-Year-Olds

The following standards apply to 14- and 15-year-old youths employed in nonfarm jobs.

#### Hours Limitations

The hours 14- and 15-year-olds may work are limited to:

- outside school hours,
- no more than 3 hours on a school day,
- no more than 18 hours in a school week,
- no more than 8 hours on a nonschool day,
- no more than 40 hours in nonschool weeks,
- between 7 a.m. and 7 p.m. (between June 1 and Labor Day they may work as late as 9 p.m.).

#### Occupation Limitations

In addition to the Hazardous Occupations listed that are prohibited for minors under the age of 18, 14- and 15-year-olds may not work in the following occupations:

- cooking, other than at lunch counters and snack bars, and within the view of the customer;
- manufacturing, mining, processing;
- most transportation jobs;
- work in warehouses and workrooms;
- on construction jobs except in the office;
- in any job involving hoists, conveyor belts, power-driven lawn mowers, and other power-driven machinery.

#### No Exceptions to Occupation Limitations

Occupation limitations are strictly enforced for 14- and 15-year-old youth, with no exceptions. The student-learner provisions applicable to some Hazardous Occupations for youth 16 and 17 years of age (as listed) do not apply to minors under the age of 16.

## APPENDIX C (Cont.)

### Special Provisions for 14- and 15-Year-Olds under WECEP

The Work Experience and Career Exploration Program (WECEP) includes special provisions that permit 14- and 15-year-old STW enrollees to be employed during school hours and in occupations otherwise prohibited by regulation.

WECEP is designed to provide a carefully planned work experience and career exploration program for 14- and 15-year-old youths, including youths in STW programs, who can benefit from a career-oriented educational program. WECEP is designed to meet the participants' needs, interests, and abilities. Among other things, the program helps dropout-prone youths to become reoriented and motivated toward education and helps to prepare them for the world of work.

A state education agency with a school-to-work program may obtain approval from the Department of Labor for STW enrollees participating in WECEP to be employed:

- up to 3 hours on a school day,
- up to 23 hours during a school week,
- any time during school hours,
- under variances granted by the Wage and Hour Administrator that permit employment of WECEP participants in otherwise prohibited activities and occupations.<sup>1</sup>

Any representative of the Governor who is interested in establishing a WECEP may forward a letter of application to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, NW, Washington, DC 20210. The provisions for WECEP are set by Regulations 29 CFR Part 570.35a. Approval to operate a WECEP is granted by the Administrator of the Wage and Hour Division for a two-year period.

NOTE: <sup>1</sup>The Regulations do not permit issuance of WECEP variances in manufacturing, mining, or in any of the 17 Hazardous Occupations orders listed.

## APPENDIX C (Cont.)

### Standards for Farm Jobs

The following standards apply to minors employed in farm jobs:

#### Hours Limitations

- Minors 16 years and older may be employed in any farm job at any time.
- Fourteen and 15-year-old farmworkers may be employed outside school hours in any occupation not declared hazardous. Children who move from a school district where schools have closed for the summer vacation and live in another district where the schools are still in session, may work during the hours that the school is in session in the new district. After May 15, it is assumed that school is closed for the summer.
- With written parental consent, 12- and 13-year-olds may be employed outside school hours in any nonhazardous job on the same farm where their parents are employed.
- Minors under 12 years of age may be employed outside school hours in any nonhazardous job with written parental consent but only on farms not subject to the minimum wage provisions of FLSA.
- Minors of any age may perform work at any time on a farm owned or operated by the minor's parents or persons standing in place of the parents.

#### Occupation Limitations

- Once teenagers reach age 14, they may perform the same agricultural work as an adult except occupations that involve the agricultural Hazardous Occupations orders.
- Agricultural Hazardous Occupations orders apply to minors under age 16. These orders are listed in Child Labor Bulletin 102 - The Child Labor Requirements in Agriculture under the Fair Labor Standards Act.

#### Exemptions

Exemptions from the agricultural Hazardous Occupations orders applicable to tractors and certain other farm machinery apply to 14- and 15-year-old student-learners enrolled in vocational educational programs and holders of certificates of completion of training under 4-H programs.