

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

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Coverage of the Child Labor Provisions

Who Is Covered?

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by FLSA.

A covered enterprise is the related activities performed through unified operation or common control by any person or persons for a common business purpose and —

- (1) whose annual gross volume of sales made or business done is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated); or
- (2) is engaged in the operation of a hospital, an institution primarily engaged in the care of those who are physically or mentally ill or disabled or aged, and who reside on the premises, a school for children who are mentally or physically disabled or gifted, a preschool, an elementary or secondary school, or an institution of higher education (whether operated for profit or not for profit); or
- (3) is an activity of a public agency.

Construction and laundry/dry cleaning enterprises, which were previously covered regardless of their annual dollar volume of business, are now subject to the \$500,000 test.

Any enterprise that was covered by FLSA on March 31, 1990, and that ceased to be covered because of the increase in the enterprise coverage dollar volume test must continue to pay its employees not less than \$3.35 an hour, and continues to be subject to the overtime pay, child labor, and recordkeeping provisions of FLSA.

Employees of firms that are not covered enterprises under FLSA may still be subject to its minimum wage, overtime pay, and child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce. Such employees include those who work in communications or transportation; regularly use the mails, telephones, or telegraph for interstate communication, or keep records of interstate transactions; handle, ship, or receive goods moving in interstate commerce; regularly cross state lines in the course of employment; or work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce or in the production of goods for interstate commerce.

Domestic service workers such as day workers, housekeepers, chauffeurs, cooks, or full-time baby sitters are covered if they (1) receive at least \$50 in cash wages in a calendar quarter from their employers, or (2) work a total of more than eight hours a week for one or more employers.

In or About An Establishment Producing Goods for Commerce

Producers, manufacturers, or dealers are prohibited from shipping or delivering for shipment in interstate commerce any goods produced in an establishment in or about which oppressive child labor has been employed within 30 days prior to the removal of the goods. It is not necessary for the employees to be working on the goods that are removed for shipment in order to be covered.

Minimum Age Standards for Non-agricultural Employment

Oppressive child labor is defined as employment of children under the legal minimum ages.

Age 14 is the minimum age for employment in specified occupations outside school hours for limited periods of time each day and each week.

Age 16 is the basic minimum age for employment. At 16 years of age, youths may be employed in any occupation, other than a nonagricultural occupation declared hazardous by the Secretary of Labor.

Age 18 is the minimum age for employment in nonagricultural occupations declared hazardous by the Secretary of Labor.

- No minimum age for employment which is exempt from the child labor provisions of the Act.
- No minimum age for employment with respect to any employee whose services during the work week are performed in a workplace within a foreign country or within territory as limited by section 13(f) of the Act.

Exemptions From the Child Labor Provisions of the Act

The child labor provisions do not apply to:

- Children under 16 years of age employed by their parents in occupations other than manufacturing or mining, or occupations declared hazardous by the Secretary of Labor.
- Children employed as actors or performers in motion pictures, theatrical, radio, or television productions.
- Children engaged in the delivery of newspapers to the consumer.
- Homeworkers engaged in the making of wreaths composed, principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens).

Employment Standards for 14- and 15-Year-Olds

(These standards are published in Subpart C of Part 570 of Title 29 of the Code of Federal Regulations, Child Labor Regulation No. 3)

Employment of 14- and 15-year-old minors is limited to certain occupations under conditions which do not interfere with their schooling, health, or well-being.

Hours-Time Standards

14- and 15-year-old minors may not be employed:

1. *During school hours* except as provided for in Work Experience and Career Exploration Programs.
2. *Before 7 a.m. or after 7 p.m.* except 9 p.m. from June 1 through Labor Day (time depends on local standards).
3. *More than 3 hours a day*— on school days.
4. *More than 18 hours a week*— in school weeks.
5. *More than 8 hours a day* — on nonschool days.
6. *More than 40 hours a week*— in nonschool weeks.

Permitted Occupations for 14- and 15-Year-Old Minors in Retail, Food Service, and Gasoline Service Establishments

14- and 15-year-old minors may be employed in:

1. *Office and clerical work* (including operation of office machines).
2. *Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping.*
3. *Price marking and tagging* by hand or by machine, *assembling orders, packing and shelving.*
4. *Bagging and carrying out customers' orders.*
5. *Errand and delivery work* by foot, bicycle, and public transportation.
6. *Cleanup work*, including the use of vacuum cleaners and floor waxers, and *maintenance of grounds*, but not including the use of power-driven mowers or cutters.
7. Performance of such work, such as, but not limited to, dishwashers, toasters, dumb-waiters, popcorn poppers, milk shake blenders, and coffee grinders.
8. *Work in connection with cars and trucks* if confined to the following:
Dispensing gasoline and oil.
Courtesy service on premises of gasoline service station.

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Car cleaning, washing, and polishing.
Other occupations permitted by this section.

But not including work:

Involving the use of pits, racks, or lifting apparatus or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring.

9. *Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing, and stocking goods* when performed in areas physically separate from areas where meat is prepared for sale and outside freezers or meat coolers.

In Any Other Place of Employment

14- and 15-year-old minors may be employed in any occupation except the excluded occupations listed below.

14- and 15-year-old minors may not be employed in:

1. Any *manufacturing* occupation.
2. Any *mining* occupation.
3. Any *processing* occupations such as filleting of fish, dressing poultry, cracking nuts, or laundering as performed by commercial laundries and dry cleaning (except in a retail, food service, or gasoline service establishment in those specific occupations expressly permitted there in accordance with the foregoing list).
4. Occupations requiring the performance of any duties in *workrooms or workplaces where goods are manufactured, mined, or otherwise processed* (except to the extent expressly permitted in retail, food service, or gasoline service establishments in accordance with the foregoing list).
5. *Public messenger service*.
6. *Operation or tending of hoisting apparatus or of any power-driven machinery* (other than office machines and machines in retail, food service, and gasoline service establishments which are specified in the foregoing list as machines which such minors may operate in such establishments).

7. *Any occupations found and declared to be hazardous.*

8. *Occupations in connection with:*

- a. *Transportation* of persons or property by rail, highway, air, on water, pipeline, or other means.
- b. *Warehousing* and storage.
- c. *Communications* and *public utilities*.
- d. *Construction* (including repair).

Except Office or Sales Work in connection with a., b., c., and d. when not performed on transportation media or at the actual construction site.

9. *Any of the following occupations in a retail food service or gasoline service establishment:*

- a. *Work performed in or about boiler or engine rooms.*
- b. *Work in connection with maintenance or repair of the establishment, machines, or equipment.*
- c. *Outside window washing* that involves working from window sills, and all work requiring the use of *ladders, scaffolds,* or their substitutes.
- d. *Cooking* (except at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and *baking*.
- e. Occupations which involve *operating, setting up, adjusting, cleaning, oiling, or repairing* power-driven *food slicers and grinders, food choppers and cutters,* and *bakery-type mixers*.
- f. *Work in freezers and meat coolers* and all work in *preparation of meats* for sale (except wrapping, sealing, labeling, weighing, pricing, and stocking when performed in other areas).
- g. *Loading and unloading goods* to and from trucks, railroad cars, or conveyers.
- h. All occupations in *warehouses* except office and clerical work.

Exceptions

Work Experience and Career Exploration Programs (WECEP)

Some of the provisions of Child Labor Regulation No. 3 are varied for 14- and 15-year-olds in approved school-supervised and school-administered Work Experience and Career Exploration Programs (WECEP). Enrollees in WECEP may be employed:

- During school hours.
- For as many as 3 hours on a school day.
- For as many as 23 hours in a school week.
- In occupations otherwise prohibited for which a variation has been granted by the Administrator of the Wage and Hour Division.

The State Educational Agency must obtain approval from the Administrator of the Wage and Hour Division before operating a WECEP program.

Hazardous Occupations Orders in Nonagricultural Occupations

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

Hazardous Occupations Orders

The Fair Labor Standards Act provides a minimum age of 18 years for any nonagricultural occupations which the Secretary of Labor "shall find and by order declare" to be particularly hazardous for 16 and 17-year-old persons, or detrimental to their health and well-being. This minimum age applies even when the minor is employed by the parent or person standing in place of the parent.

The 17 hazardous occupations orders now in effect apply either on an industry basis, specifying the occupations in the industry that are not covered, or on an occupational basis irrespective of the industry in which found.

The orders in effect deal with:

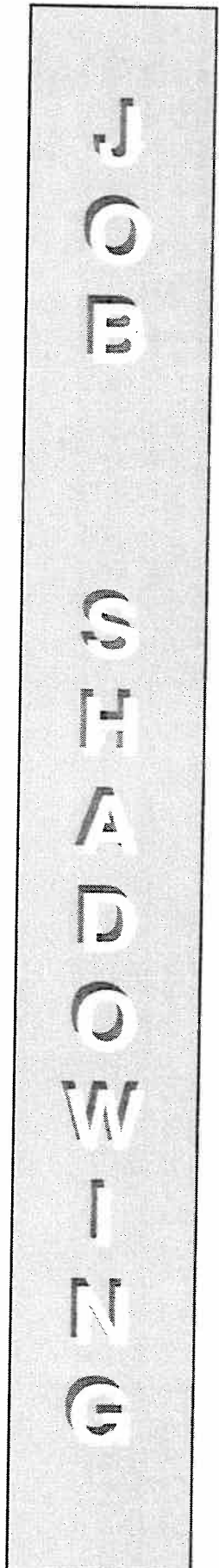
1. Manufacturing and storing explosives.
2. Coal mining.

3. Motor-vehicle driving and outside helper.
4. Logging and sawmilling.
5. Power-driven woodworking machines.
6. Exposure to radioactive substances.
7. Power-driven hoisting apparatus.
8. Power-driven metal-forming, punching, and shearing machines.
9. Mining, other than coal mining.
10. Slaughtering, or meat-packing, processing, or rendering.
11. Power-driven bakery machines.
12. Power-driven paper-products machines.
13. Manufacturing brick, tile, and kindred products.
14. Power-driven circular saws, band saws, and guillotine shears.
15. Wrecking, demolition, and ship-breaking operations.
16. Roofing operations.
17. Excavation operations.

Manufacturing or Storage Occupations Involving Explosives (Order No. 1)

The following occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components are prohibited:

1. All occupations in or about any plant or establishment (other than retail establishments or plants or establishments of the type described in subparagraph 2 of this paragraph) manufacturing or storing explosives or articles containing explosive components except where the occupation is performed in a "non-explosives area" as defined in subparagraph 3 of this section.
2. The following occupations in or about any plant or establishment manufacturing or storing small arms ammunition not exceeding .60 caliber in size, shotgun shells, or blasting caps when manufactured or stored in conjunction with the manufacture of small-arms ammunition:
 - a. All occupations involved in the manufacturing, mixing, transporting, or handling of explosive compounds



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in the manufacture of small-arms ammunition and all other occupations requiring the performance of any duties in the explosives area in which explosive compounds are manufactured or mixed.

- b. All occupations involved in the manufacturing, transporting, or handling of primers and all other occupations requiring the performance of any duties in the same building in which primers are manufactured.
- c. All occupations involved in the priming of cartridges and all other occupations requiring the performance of any duties in the same workroom in which rim-fire cartridges are primed.
- d. All occupations involved in the plate loading of cartridges and in the operation of automatic loading machines.
- e. All occupations involved in the loading, inspecting, packing, shipping, and storage of blasting caps.

Definitions

1. The term "plant or establishment manufacturing or storing explosives or articles containing explosive components" means the land with all the buildings and other structures thereon used in connection with the manufacturing or processing or storing of explosives or articles containing explosive components.
2. The terms "explosives" and "articles containing explosive components" mean and include ammunition, black powder, blasting caps, fireworks, high explosives, primers, smokeless powder, and all goods classified and defined as explosives by the Interstate Commerce Commission in regulations for the transportation of explosives and other dangerous substances by common carriers (49 CFR Parts 71-78) issued pursuant to the Act of June 25, 1948 (62 Stat. 739; 18 U.S.C. 835)

3. An area meeting all of the following criteria shall be deemed a "nonexplosives area":
 - a. None of the work performed in the area involves the handling or use of explosives;
 - b. The area is separated from the explosives area by a distance not less than that prescribed in the American Table of Distances for the protection of inhabited buildings;
 - c. The area is separated from the explosives area by a fence or is otherwise located so that it constitutes a definite designated area; and
 - d. Satisfactory controls have been established to prevent employees under 18 years of age within the area from entering any area in or about the plant which does not meet criteria a. through c.

Motor Vehicle Occupations (Order No. 2)

The occupations of motor-vehicle driver and outside helper on any public road, highway, in or about any mine (including open pit mine or quarry), place where logging or sawmill operations are in progress, or in any excavation of the type identified in 29 CFR 570.68(a) are prohibited for minors between 16 and 18 years of age except as provided in the following exemptions:

Exemptions

1. Incidental and occasional driving. The finding and declaration in this Order shall not apply to the operation of automobiles or trucks not exceeding 6,000 pounds gross vehicle weight if such driving is restricted to daylight hours; provided, such operation is only occasional and incidental to the child's employment; that the child holds a state license valid for the type of driving involved in the job performed and has completed a state-approved driver education course; and provided further, that the vehicle is equipped with a seat belt or

similar device for the driver and for each helper, and the employer has instructed each child that such belts or other devices must be used. This exemption shall not be applicable to any occupation of motor-vehicle driver which involves the towing of vehicles.

2. School bus driving. The finding and declaration in this Order shall not apply to driving a school bus during the period of any exemption which has been granted at the discretion of the Secretary of Labor on the basis of an application filed and approved by the Governor of the state in which the vehicle is registered. The Secretary will notify any state which inquires of the information to be furnished in the application.

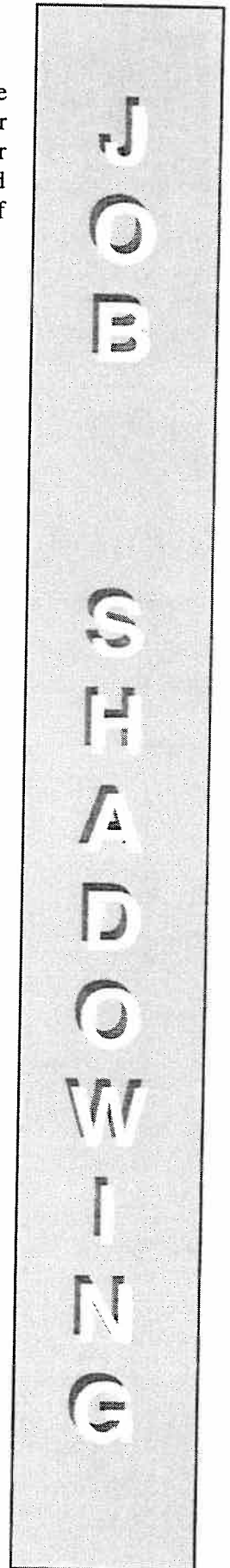
Neither shall the finding and declaration in this Order apply in a particular state during a period not to exceed 40 days while application for such exemption is being formulated by such state seeking merely to continue in effect unchanged its current program using such drivers, nor while such application is pending action by the Secretary.

Definitions

1. The term "motor vehicle" shall mean any automobile, truck, truck-tractor, trailer, semitrailer, motorcycle, or similar vehicle propelled or drawn by mechanical power and designed for use as a means of transportation but shall not include any vehicle operated exclusively on rails.
2. The term "driver" shall mean any individual who, in the course of employment, drives a motor vehicle at any time.
3. The term "outside helper" shall mean any individual, other than a driver, whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivering goods.
4. The term "gross vehicle weight" includes the truck chassis with lubricants, water, and full tank or tanks of fuel, plus the weight of the cab or driver's compartment, body, and special chassis and body equipment, and payload.

Coal Mine Occupations (Order No. 3)

All occupations in or about any coal mine are prohibited except the occupations of slate or other refuse picking at a picking table or picking chute in a tippie or breaker and occupations requiring the performance of duties solely in offices . . .



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