

SPRING IS HERE... ARE YOU READY FOR THE SUMMER HIRING SEASON?

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It's the same thing every year. Spring takes its time getting here, yet summer comes quickly. Already, prom season is upon us and college students are starting to come home from school. For many employers, the few weeks left before summer signals the impending arrival of a glut of applications from high school and college students looking for summer jobs. Employers that routinely employ summer help need to be vigilant to ensure compliance with employment laws with respect to the student work force. Conducting some routine housekeeping measures now can help manage risk in the months ahead.

Youth Work Rules

Youth work-rules are routinely enforced by both the New Hampshire and U.S. Departments of Labor, and the Massachusetts Attorney General's office. Consequently, employers must be aware of the youth employment rules that apply to their companies as compliance with State and Federal youth employment laws are essential. Employers should ensure that any individuals responsible for summer hiring are aware of the State and Federal rules pertaining to youth employment and that all supervisors are properly trained with respect to the scope of appropriate work for minors, as well as with respect to scheduling issues.

Age Restrictions

Generally, New Hampshire law prohibits employers from hiring or employing minors under the age of 12 (unless they are employed at work defined as "casual" or in the door-to-door delivery of newspapers). N.H. R.S.A. 276-A:4, V. Under Federal law and Massachusetts law, however, the minimum age for employment in most non-agricultural work to 14. 29 C.F.R. § 570.2. Again, there are exceptions for casual work and newspaper delivery. Thus, most non-agricultural employers may not hire any minor under the age of 14. The burden of showing compliance with this age restriction will be on the employer, not the minor. Employers must take steps to ensure that

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only minors of the appropriate age are hired. Note: While the minimum age requirements do not apply for children who work for their parents, grandparents or guardians, minors working for their parents are still prohibited from engaging in certain occupations and must comply with restrictions on working hours.

Papering the File

Under New Hampshire law, minors under the age of 16 must obtain a New Hampshire Youth Employment Certificate. N.H. RSA 276-A:4, II. This certificate is issued by the minor's school or superintendent's office after the minor is offered a job and must be kept on file by the employer.

New Hampshire employers cannot employ a 16 or 17 year old without written permission from a parent or legal guardian giving them permission to work. Employers are required to keep this signed written document on file. N.H. RSA 276-A:4, VIII.

Under Massachusetts law, all minors must obtain a work permit before starting employment. 14 and 15 year olds must also obtain a Physicians Certificate of Health before s/he may obtain a work permit. M.G.L. ch. 149 § 86. In order to obtain a work permit, both the employer and the minor's parents must complete paperwork to be presented to the minor's superintendent's office. Once the work permit is issued, the employer must maintain the permit on file for the duration of the minor's employment. M.G.L. ch. 149 § 86. Employers must return the work permit to the superintendent's office (or the school committee that issued the permit) within two days after a minor's termination from employment. M.G.L. ch. 149 § 86.

Age Appropriate

Employers must also be careful to employ minors only in age-appropriate occupations. Under Federal law, children under 18 are prohibited from working in certain dangerous or hazardous jobs, including, but are not limited to, operating power-drive hoisting apparatus, mining, meat packing or processing, using power-drive circular saws or band saws, wrecking, demolition or shipbreaking operations, roofing, or excavation. See Id., 29 C.F.R. §§570.50-570.68.

Appropriate work for minors between the ages of 14 and 16 are even more limited. Under Federal law, suitable work for minors under 16 include work in offices, retail stores, restaurants, movie theaters, amusement parks and gasoline service stations. See 29 C.F.R. §§ 570.2; 570.33; 570.34. However, minors under 16 cannot work in warehouse, communications or public utilities jobs, construction or repair jobs, or jobs in which they drive a motor vehicle or operate power-driven machinery or hoisting apparatus (other than typical office machines). They cannot bake, cook (except with gas or electric grilles that do not involve cooking over an open flame), work with freezers or meat coolers, or work in meat processing areas, or operate, set-up, adjust,

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clean, oil or repair power-drive food slicers, grinders, choppers, cutters, or bakery mixers. See Id., 29 C.F.R. §§570.50-570.68. In addition, even in permitted retail, food service and gasoline service establishments, certain dangerous work is prohibited. See 29 C.F.R. §570.34(b).

While New Hampshire law is consistent with Federal law, Massachusetts law imposes even greater restrictions on the types of work minors may perform. For example, Massachusetts law specifically prohibits work in public bowling alleys or billiard rooms, and all cooking, except at soda fountains, lunch counters, snack bars, and cafeteria counters. M.G.L. ch. 149 §§ 60-61. Employers in the retail, service and hospitality industries should take the time to review the state and federal rules and regulations that specify the types of jobs minors can work.

To the extent minors work in establishments in which prohibited equipment may be in use, employers must specifically tell minors to avoid those work areas and that they are forbidden from using any such equipment. Other employees and supervisors should also be aware of those restrictions. For more information about jobs suitable for minors, see Prohibited Occupations for Non-Agricultural Employees.

Scheduling

Under New Hampshire law, minors under 16 years of age may not start work before 7 a.m. or work later than 9 p.m. N.H. RSA 276-A:4, IV. However, from Labor Day through May 31st, Federal law restricts minors under 16 years of age from working past 7 p.m. See, 29 C.F.R. § 570.35. Massachusetts imposes similar restrictions. See M.G.L. ch. 149 § 65.

Under Federal, Massachusetts and New Hampshire child labor laws, 14 and 15 year olds are restricted from working more than 3 hours per day on a school day and 8 hours a day on non-school days. Federal law prohibits minors under 16 from working more than 18 hours per week during the school year and more than 40 hours per week during vacations and summer breaks. See, 29 C.F.R. § 570.35.

Although there are no Federal restrictions on hours worked for 16 and 17 year olds, both Massachusetts and New Hampshire laws impose restrictions on the hours 16 and 17 year olds may work. New Hampshire limits 16 and 17 year olds from working more than 30 hours during a school week, and more than 6 consecutive days. During vacations and summer breaks, 16 and 17 year olds may not work more than 48 hours per week. N.H. RSA 276-A:4, VI-VII. Massachusetts also restricts 16 and 17 year old employees from working more than 48 hours in a week during non-school weeks, but also limits them to working no more than 9 hours per day. See M.G.L. ch. 149 § 67.

Massachusetts restricts 16 and 17 year olds from working before 6 a.m. or after 10 p.m. on nights preceding a regularly scheduled school day. On nights not preceding a regularly scheduled school day, 16 and 17 year olds may work until 11:30 p.m. Massachusetts law creates an exception from



these hour restrictions for restaurants and racetracks, which allows minors to work until midnight on nights not preceding a regularly scheduled school day. See M.G.L. ch. 149 § 66.

In Massachusetts, after 8 p.m., **all minors** must be under the direct and immediate supervision of an adult supervisor who is located in the workplace and is reasonably accessible to the minor, unless the minor works at a kiosk, cart or stand in the common area of an enclosed shopping mall that has security from 8:00 p.m. until the mall is closed to the public. See M.G.L. ch. 149 § 66. This means that employers cannot schedule any employee under the age of 18 to work by him/herself after 8 p.m., unless s/he is employed in a common area of a mall.

Employers should remind any scheduling supervisors about these restrictions and keep a watchful eye on minors who switch shifts with co-workers or who are on the worksite before or after a scheduled shift. Ultimately, it is the employer's responsibility to ensure, not only that minors are not scheduled for hours restricted under State or Federal law, but that they do not work those hours.

Additionally, in New Hampshire, employers are required to post in a conspicuous place in every room where youths are employed a printed notice stating the hours of work, the time allowed for dinner or other meals, and the maximum number of hours any youth is permitted to work in any one day. See N.H. RSA 276-A:20.

Penalties

Employers violating youth employment laws risk criminal and civil penalties, including fines and imprisonment. Under Federal law, Employers are subject to a civil money penalty of up to \$11,000 per worker for each violation of the child labor laws. In addition, employers are subject to a civil money penalty of \$50,000 for each violation that causes the death or serious injury of any minor employee and that penalty may be doubled, up to \$100,000, when the violations are determined to be willful or repeated.

Federal law also provides for a criminal fine of up to \$10,000 upon conviction for a willful violation of child labor laws. For a second conviction for a willful violation, the Act provides for a fine of not more than \$10,000 and imprisonment for up to six months, or both.

Under Massachusetts law, fines for violating youth employment laws range up to \$5,000 per violation. M.G.L. ch. 149 § 78. In addition, minors injured on the job receive double compensation under Massachusetts Workers' Compensation laws. M.G.L. ch. 152 § 28. Fines in New Hampshire can be assessed at up to \$2,500 per violation.

Other Considerations

Teenagers and young adults often have limited work experience and may not understand what is appropriate or "normal" behavior in the workplace.



As such, young workers may be more susceptible or vulnerable to sexual harassment and discrimination in the workplace and may not understand how to report such conduct.

Employers should consider taking special care to train young employees on company policies and reporting procedures for discrimination and harassment upon hire. By encouraging young employees to come forward and report any problems as they arise, employers will have the opportunity to take appropriate action before the situation grows worse.

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