CHILD LABOR LAWS & WORK-BASED LEARNING
July 13, 2016

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Oregon Bureau of Labor and Industries
Technical Assistance For Employers

- Employer Assistance phone line and email service
- BOLI Website- www.oregon.gov/boli
- Seminars and On-site Trainings
- Publications and Posters
- Employer Advice Columns
- Annual Employment Law Conference

What is an Employee?

- Wage and hour laws apply exclusively to employment relationships
- “Employ” is broadly defined under state and federal law, meaning to “suffer or permit” another to perform work.

What is not an Employee?

- Independent Contractors
  - Must clearly meet the criteria
  - See www.oregon.gov/IC
- Volunteers
  - Services must be provided with no expectation of payment;
  - For community service, religious or humanitarian reasons;
  - For public employer, religious, charitable, educational, public service or similar nonprofit organization.
- Student Interns and Trainees
STUDENT WORKERS, INTERNS, TRAINEES

USDOL (and BOLI’s WHD) recognizes that certain interns and trainees are not considered employees PROVIDED they work for their own advantage on the premises of another, without any expressed or implied compensation agreement

Often, the worker will earn high school or college credit in exchange for the work performed.

CRITERIA FOR INTERNS

1. The training is similar to that which would be given in a vocational school
2. Training is for the benefit of the trainees or students
3. Trainees/students do not displace regular employees but work under their close supervision
4. Employer derives no immediate advantage and on occasion his operation may be impeded
5. Not necessarily entitled to a job at conclusion of training period and
6. No expectation of pay

STIPENDS

• Generally a modest amount provided to help defray expenses.
• May not be tied to quantity or quality of work.
WORKERS COMPENSATION

• Workers Comp insurance covers employees
• School or training organization will generally have an insurance policy covering a student or intern
• Contact the Workers Compensation Division for information

CIVIL RIGHTS PROTECTIONS

• Interns are covered under Oregon civil rights laws
• An intern may file a compliant with BOLI's Civil Rights Division for unlawful harassment or discrimination

OREGON SICK TIME

• All Oregon employers are covered by Oregon Sick Time law.
• Minors who are placed in jobs and are considered employees are covered by Oregon Sick Time and will receive protected sick time.
CHILD LABOR

EMPLOYMENT CERTIFICATE

• Oregon no longer requires minor employees (under 18 years of age) to obtain an individual employment permit.
• Employers must apply for and post a validated Employment Certificate in a conspicuous location prior to hiring any minor employee.

ANNUAL EMPLOYMENT CERTIFICATE

• Child Labor Unit – 971-673-0836 or www.oregon.gov/boli/whd/clu
• Denial of certificate based on:
  – Hazardous work assignments;
  – Assigning prohibited working hours.
AEC REQUIREMENTS

• Each state agency must apply
• May have multiple locations
• AEC must be conspicuously posted at each location where minors are employed
• Estimate number of minors to be employed
• Duties to be performed
• All power driven equipment used

AEC DENIALS

• BOLI’s Child Labor Unit will contact the employer if the application does not appear to comply with state or federal law
• Denials may be based on hazardous work or prohibited work hours
• AEC may be issued with restrictions

AEC RENEWALS

• BOLI’s Child Labor Unit will send a yearly renewal to all employers who have been issued an Annual Employment Certificate
AEC CHANGES

• Submit a “Notice of Change in Duties” form for changes:
  – Work location
  – Duties
  – Equipment or machinery used
  – Ages of minors

AGE VERIFICATION & RECORDKEEPING

• Employers must verify
  – the age of each minor hired.
  – a list of all minors hired.
  – additional records regarding the work day and maximum allowable hours for minors under 16.

WORKING CONDITIONS

• Child labor laws place limitations on the hours of work a minor employee may work in a given day or week.
• Additional restrictions apply to rest and meal period requirements as well as the provision of “adequate work” or “reasonable compensation” to minor employees.
STATE AGE STANDARDS AND WORKING CONDITIONS FOR 16-17 YEAR OLDS

- Limited to non hazardous occupations
- No limitations on time – hours limited to maximum 44 per week

OAR 839-021-0067

STATE AGE STANDARDS AND WORKING CONDITIONS FOR 14-15 YEAR OLDS

- During the school year hours limited to 3 per day, 18 per week
- No work earlier than 7 am or later than 7 pm
- No work when school is in session
- Only non-hazardous and non-manufacturing jobs allowed
- During summer vacation maximum of 40 hours per week between 7 am and 9 pm (June 1 – Labor day)

WAGE AND HOUR FOR MINORS

Same minimum wage and overtime rules apply to minors as apply to adults

OAR 839-021-0067
The 2016 Legislative Assembly passed a new law which provides three tiers of minimum wage in Oregon.

- Effective July 1, 2016;
- Minimum wage will be based on geographic location;
- Updates:
  - ORS 653.025 and
  - OAR 839-020-0004 – 0011

Region 1 – Green: Metro / Urban Growth Boundary
Region 2 – Blue: Statewide / General
Region 3 – Red: Rural / Non-Urban Counties

ORS 653.025 et seq.
SB 1532

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ORS 653.025 et seq.
SB 1532

Region 1: Statewide/General
   – Excludes Portland UGB and Rural/Non-urban counties

Region 2: Portland Metro/UGB
   – Location within the urban growth boundary of the metropolitan service district

Region 3: Rural/Non-Urban Counties

Note: Rates based on employer location*

Region 2 – Portland Metro
Urban Growth Boundary

Portions of Multnomah, Washington, and Clackamas Counties.
Identified by the Metropolitan Service District

2023 and Beyond

The Labor Commissioner will calculate the adjustment based on an increase, if any, in the U.S. City Average Consumer Price Index by April 30 each year to take effect on July 1

*Portland Metro/UGB MW will always be $1.25 more per hour than Statewide/General

*Rural/Non-Urban County MW will always be $1 less per hour than Statewide/General

The Big Issues (1)

Determining location

a. If the employee performs more than 50% of the work in a pay period at the employer’s fixed business location in Oregon, that location’s regional minimum wage rate is the applicable rate for all hours worked in that pay period.

b. If the employee makes deliveries as part of his/her job, and starts and ends work at the employer’s fixed business location in Oregon, the applicable minimum wage rate for all hours worked in that pay period is the regional rate where the employer’s business is located.

c. If the employee performs a significant amount of work in a region that is not the region of the employer’s fixed business location in Oregon, the region in which the employee performed the work is considered to be the employer’s location for purposes of determining the applicable minimum wage rate for all hours worked in that pay period.

d. If the employee works in more than one region in a pay period, the employer must either pay the applicable minimum wage rate for each hour worked in each different region or pay the highest regional rate required for the regions in which the employee worked for all hours worked in that pay period.
What’s Next?

Final rules are now available on the BOLI website:


Example

- Employer’s fixed business location is in Portland
- Employee works 21 hours in Portland (Region 2)
- Employee works 19 hours in Roseburg (Region 3)
- Employee is paid 40 hours at highest rate of $9.75

Another Example

- Employer’s fixed business location is in Portland
- Employee works 0 hours in Portland (Region 2)
- Employee works 40 hours in Roseburg (Region 3)
- Employee is paid 40 hours at Region 3 rate of $9.50
One More Example

- Employer’s fixed business location is in Portland
- Employee works 10 hours in Portland (Region 2)
- Employee works 15 hours in Roseburg (Region 3)
- Employee works 15 hours in Medford (Region 1)
- Employee is paid either
  - 15 hours at $9.50 (Region 3);
  - 10 hours at $9.75 (Region 2); and
  - 15 hours at $9.75 (Region 1) OR
  - 40 hours at $9.75

Recordkeeping Requirements

- If the employee is paid different rates during a pay period, as in the previous slide, the employer must keep a record of the location in which the employee worked hours each workday.
- Employers are not required to record the location of where work was performed if the employee is paid for all hours worked at no less than the applicable minimum wage for the highest rate of pay where work was performed.

Posters

- The Wage and Hour Division has developed minimum wage posters now that rules are finalized.
- Employers will be required to post the new poster on July 1 of each year.
- Technical Assistance will have new composite posters soon! Here’s a link to the postings page: http://www.oregon.gov/BOLI/ta/pages/Req_Post.aspx
MEAL AND REST PERIODS

• Meals must be given in shifts of 6 hours or longer
• Rules for meal periods for minors are the same as for adults, except that:
  No exceptional and unanticipated circumstances allowance for interrupted meal periods for minors 15 years of age and under. OAR 839-021-0072

• Rest breaks are 15 minutes in length

ADEQUATE WORK (SHOW UP PAY)

When a minor is called off work or sent home early the employer must provide either:

Adequate work:
• Sufficient work to earn at least ½ the amount the minor would have earned had the minor worked the hours previously agreed upon; or

Reasonable compensation:
• The minor’s regular rate of pay for ½ the hours previously agreed upon, or 1 hour, whichever is greater.

OAR 839-021-0087(5)(a)(b)
ADEQUATE WORK EXCEPTION

The adequate work rule does not apply when all the following conditions are met pertaining to notice not to report to work:

• The employer has a policy describing how notice not to report to work will be given to minors; and
• The employer posts its notice policy in a conspicuous place frequented by the employees at the worksite where minor is employed; and
• The employer communicates the policy prior to the minor’s first day or work; and
• The employer makes a good faith attempt to follow its policy to give the minor notice before leaving home to travel to work.

HAZARDOUS WORK

• Child labor laws prohibit the employment of minors in specific occupations deemed hazardous. Among these are restrictions which apply to all minor employees as well as a set of additional restrictions which only apply to minors under 16 years of age.

HAZARDOUS WORK EXAMPLES

• Manufacturing
• Motor Vehicle Operation
• Coal Mining
• Logging
• Sawmill operations
• Roofing
• Excavation
• Use of explosives
• Power driven machines:
  – Woodworking
  – Saws
  – Hoisting apparatus
  – Metal Forming machines
  – Metal punching/shearing machines
  – Meat processing equipment
  – Bakery machines
HAZARDOUS WORK

• Restrictions on employing minors in hazardous jobs apply under both state and federal law, see:
  – FLSA WH Publication 1330 - Child Labor Bulletin 101
  – FLSA Publication 1295 - Child Labor Bulletin 102
    (Agriculture)

OAR 839-021-0097 & OAR 839-021-0120, 0104

INDUSTRY SPECIFIC RESTRICTIONS

• Child labor laws also set out additional provisions regarding several specific industries where minors may be employed. These include:
  – Agriculture
  – Entertainment (e.g., work in movies, commercials)
  – Canneries
  – Door-to-Door Sales
  – Youth Camps

EXCEPTIONS TO CHILD LABOR LAWS

Employment excluded from child labor law includes:
• Minors working in or about the family home
• Newspaper carriers
• Minors employed in agriculture, unless they are operating farm machinery
Additional Questions?

• Contact Technical Assistance for Employers
  971-673-0824
  bolita@boli.state.or.us