



The Sounds of Summer: An Overview of the Youth Employment Laws

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Ah, the sounds of summer: tourists dropping change into the baskets at the Hampton tolls; hordes of hungry outdoor enthusiasts enjoying your restaurant's menu; the Department of Labor knocking on your door demanding youth employment certificates. Wait – no – that's not a sound of summer you want to hear!!

Few things raise the ire of the Department of Labor more than a violation of the Youth Employment laws. Rest assured, any violation of the youth employment laws, regardless of how small, will surely result in substantial fines to your business. The best advice: know which youth employment laws apply to your business and be meticulous about following all of them.

I. WHICH LAWS APPLY?

The **Federal Fair Labor Standards Act** applies to nearly every member of the New Hampshire Travel Council. The youth employment provisions can be found at [29 U.S.C. § 212](#) and the regulations at [29 CFR Part 570](#). The **New Hampshire Youth Employment Law** covers all employers in New Hampshire. The law can be found at [RSA 276-A](#) and the regulations at [LAB 1000](#).

Both laws (a) restrict the number of hours youth may work; (b) set limitations on which hours youth may work; (c) restrict the types of jobs youth may perform; and (d) require employers to obtain and keep certain documentation on file concerning their youth employees. However, the laws differ in many respects. Employers covered by both the FLSA and NH youth employment laws must analyze both laws and, where any part of the laws differ, apply the law that provides the greatest protection to the employee.

II. RESTRICTIONS ON HOURS

Employers covered by **both** the FLSA and the NH Youth Employment Law must carefully restrict the hours their young employees work. Employers must be watchful of employees who switch shifts or who stay longer than their scheduled shifts – the burden is on the *employer* to ensure the actual hours worked are in compliance with these laws.

Employees who are 14 & 15 cannot work:

- ✓ More than 8 hours on a non-school day or more than 3 hours on a school day.
- ✓ More than 40 hours in a non-school week or more than 18 hours in a school week.
- ✓ Before 7 am (any time during the year).
- ✓ After 7 pm from Labor Day – May 31st.
- ✓ After 9 pm from June 1st – Labor Day.
- ✓ More than an 8-hour shift in any week in which they have worked past 8 pm two or more nights.

Employees who are 16 & 17 cannot work:

- ✓ More than 30 hours in a school week or more than 48 hours in a non-school week.
- ✓ More than 6 consecutive days.

- ✓ More than an 8-hour shift in any week in which they have worked past 8 pm two or more nights.
- ✓ More than 10 hours in manufacturing or 10 ¼ hours in mechanical labor.

III. PROHIBITED JOBS

Both the state and federal youth employment laws also prohibit what types of jobs youth may perform. Thankfully, in this area the state and federal law are consistent. Again, employers must take steps to ensure their employees are not actually performing any of these tasks.

14 & 15 year olds may not:

- ✓ Operate or care for any power-driven machinery (including lawnmowers, trimmers and weed whackers).
- ✓ Work in manufacturing, mining, or processing.
- ✓ Perform any work in workrooms where goods are manufactured, mined or processed.
- ✓ Work in a public messenger service.
- ✓ Work in the following industries: transportation, warehousing & storage, communications, public utilities, or construction.

14 & 15 year olds working in **Retail, Food Service & Gasoline** Establishments also may not perform the following jobs or tasks:

- ✓ Cooking, except if on a gas or electric grill not over an open flame, or with deep fat fryers that automatically lower and raise the baskets into and out of the oil;
- ✓ Baking;
- ✓ Operating, setting up, adjusting, cleaning or repairing power-driven food slicers, grinders, choppers cutters or bakery-type mixers;
- ✓ Working in freezers or meat coolers;
- ✓ Performing maintenance or repair of the establishment, machines, or equipment;
- ✓ Washing outside windows if it requires working from the windowsills;
- ✓ Working from ladders or scaffolds;
- ✓ Loading/unloading goods to/from trucks, railroad cars or conveyors;
- ✓ In or near boiler or engine rooms;
- ✓ Preparing meats for sale;
- ✓ All occupations in warehouses *except* office and clerical work;
- ✓ With cars or trucks: cannot use pits, racks or lifting apparatus or inflate any tire mounted on a rim equipped with a removable retaining ring.

16 & 17 year olds may not:

- ✓ Work on or near a roof;
- ✓ Drive a motor vehicle or work as an outside helper on a motor vehicle;
- ✓ Be exposed to radioactive substances;
- ✓ Operate the following power-driven machines:
 - meat processing equipment, including meat slicers and other food slicers;
 - bakery machines including vertical dough or batter mixers;
 - paper-products machines including scrap paper balers and box compactors;
 - circular saws, bandsaws, and guillotine shears;
 - woodworking machines;
 - hoisting apparatus, including forklifts;
 - metal-forming, punching, and shearing machines.

- ✓ Work in the following occupations:
 - excavation, wrecking, demolition, or shipbreaking;
 - manufacturing of bricks, tile, and kindred products;
 - meat slaughtering, packing, processing, or rendering;
 - mining operations;
 - logging, sawmilling, mining;
 - manufacturing or storing of explosives.

IV. DEBUNKING THE MYTHS

Myth #1:

My business is an amusement/seasonal/recreational establishment, so we're exempt from the youth employment laws.

Fact:

Amusement, seasonal & recreational establishments are only exempt from the state and federal *minimum wage* laws (i.e., you don't have to pay overtime or minimum wage). All other protective legislation, including the youth employment law, applies to all businesses and even summer camps.

Myth #2:

It's OK to have kids work longer than the restricted hours as long as their parents give them permission to do so.

Fact:

Neither the youth employee nor their parent can waive the restrictions in the state or federal youth employment laws. The burden is always on the employer to make sure your youth employees don't work too many hours or perform prohibited tasks.

V. A WORD ABOUT FINES

As I said earlier, few things raise the ire of the Department of Labor more than a violation of the Youth Employment laws. The NH Department of Labor has the authority to fine \$2500 per violation and the US Department of Labor can fine up to \$10,000. Tack on to that all the productivity you'll lose while the Inspector is pawing through your files, the cost of the Advil you'll be taking after you read the Inspector's report, and the attorney's fees you'll incur to fight the fines, and we're talking about some serious damage.

Consider this scenario:

You have two fifteen-year-old dishwashers in your restaurant. They are scheduled to work from 2 pm – 9 pm six days per week. However, during the busy 4th of July weekend, the kitchen manager tells them they need to stay until all the dishes are done and the kitchen is clean. They don't leave until almost 11 pm three nights that weekend. When the Department of Labor inspector is on-site, the kids tell her they helped unload the food delivery truck and stocked the freezer at least once a week for the past 4 weeks.

What does the NH Department of Labor inspector see?

- ✓ **Two employees under 16 worked past 9 pm on three separate nights.**
3 violations x 2 workers = 5 violations x \$2500 each = \$12,500 fine
- ✓ **Two employees under 16 worked more than 8 hours in a day on three days.**
3 violations x 2 workers = 5 violations x \$2500 each = \$12,500 fine
- ✓ **Two employees under 16 stocked the freezer once a week for a month.**
1 violation x 2 workers x 4 weeks = \$20,000 fine
- ✓ **Two employees under 16 unloaded a truck once a week for a month.**
1 violation x 2 workers x 4 weeks = \$20,000 fine

Of course, the inspector will also want to see all of your youth employment certificates. Only then do you remember that you never did get the parental permission form back from Johnny (one more violation at \$2,500). All in all, NH DOL can assess \$67,500 in fines in this scenario. So much for your profit margin this summer!

In future articles, I'll write about how to best deal with a Department of Labor inspection, what steps to take if you are fined, and how to know when you just need to call your attorney. The best method for staying in DOL's good graces, however, is always prevention. Know what laws apply to your business and put adequate policies & procedures in place to ensure you're in compliance. Happy Tourist Season!



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