



Electronic Dispatch

# Labor and Employment Law Information Memo

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## DEPARTMENT OF LABOR ISSUES FINAL REGULATIONS CONCERNING CERTAIN CHILD LABOR RULES

On December 16, 2004, the United States Department of Labor ("DOL") issued final regulations concerning certain child labor rules. The final regulations implement two amendments to the Fair Labor Standards Act ("FLSA") – the Compactors and Balers Safety Standards Modernization Act (August 6, 1996) and the Drive for Teen Employment Act (October 31, 1998) – and make additional revisions to certain other regulations. The final regulations make changes in a number of areas involving employment of minors, including cooking, driving, roofing operations, and loading of certain paper-products machines. The new rules go into effect February 14, 2005.

### Employment of 14- and 15-year-olds and Cooking Duties of Such Minors

The child labor provisions of the FLSA establish a minimum age of 16 years for employment in non-agricultural occupations. However, the Secretary of Labor is authorized to identify by regulation work suitable for 14- and 15-year-olds, when such work will not interfere with their schooling or health and well-being. These regulations limit the hours and times of day that 14- and 15-year-olds may work and identify prohibited and permissible occupations for such minors. In general, the regulations permit the employment of such minors in certain retail, food service, and gasoline service establishments, performing non-hazardous activities such as office work, cashiering, bagging groceries, stocking goods, pumping gasoline, and washing cars. These minors are not authorized to work in more hazardous occupations (e.g., manufacturing, mining, construction, warehouse work).

The current, longstanding regulation of the DOL permits 14- and 15-year-old workers to perform some kitchen work, including work involved in preparing and serving food and beverages, and operating machines and devices used in such preparation and service (e.g., operating a dishwashing machine, toaster, milk shake blender, or coffee grinder). However, under existing regulations, 14- and 15-year-olds are prohibited from all cooking and baking activities "except at soda fountains, lunch counters, snack bars, or cafeteria serving operations." With regard to permissible cooking activities, over time the DOL developed an "in plain view" interpretation of the regulation, permitting cooking duties by 14- and 15-year-olds where such duties were performed within customers' sight, such as at a soda fountain or lunch counter. The rationale for the "in plain view" interpretation was that a cooking activity was likely to be less hazardous to the minor where it was performed within the view of customers.

With the demise of soda fountains and lunch counters and the rise of fast-food enterprises, the DOL's "in plain view" standard for permissible cooking activities gradually became inapplicable. Further, this interpretation sometimes led to confusion as to what was permissible: at a restaurant where all cooking was performed "in plain view" of the customers, 14- and 15-year-olds could perform most cooking jobs, even those that might be considered hazardous for a minor to perform, while at another establishment with a "closed" kitchen, the identical jobs could not be performed.

The new regulations eliminate the "in plain view" distinction for cooking duties. Instead, the new rule prohibits all cooking and baking by 14- and 15-year-olds, regardless of whether it is performed within customers' sight. However, these minors may cook with an electric or gas grill (with no open flame). Additionally, 14- and 15-year-olds are permitted to operate deep fryers that are equipped with devices that automatically raise and lower the basket. Thus, while the final regulations eliminate the "in plain view" distinction, these minor employees are authorized to perform cooking tasks that have long been associated with employment at the local lunch counter or soda fountain.



The new rule notes that 14- and 15-year-old employees are not authorized to cook with equipment such as rotisseries, broilers, pressurized equipment including frylators, and cooking devices that operate at extremely high temperatures such as "Neico broilers." These minors are authorized to clean kitchen equipment, including equipment with hot oil or grease, but only where the equipment, surfaces, containers, and liquids do not exceed 100° F.

### Driving by 17-year-old Employees

The final regulations implement the Drive for Teen Employment Act of 1998, which amends the FLSA to prohibit on-the-job driving by employees under the age of 17 on public roadways. The Drive for Teen Employment Act, however, permits employees 17 years of age to drive on public roadways if certain conditions are satisfied and such driving is only "occasional and incidental" to the employee's employment. The new rule provides that a 17-year-old employee may drive a car or truck in connection with his or her employment if all of the following conditions are met:

- The vehicle being driven does not exceed 6,000 pounds gross weight, is equipped with seat belts, and the employer has instructed the employee that such seat belts must be used;
- The driving is restricted to daylight hours;
- The 17-year-old holds a state license for the type of driving involved and has no records of moving violations at the time of hire;
- The 17-year-old has successfully completed a state approved driver education course;
- The driving does not involve towing; route deliveries or route sales; transportation for hire of property, goods or passengers; or the transporting at any one time of more than three passengers, including fellow employees;
- The driving does not involve urgent, time-sensitive deliveries;
- The driving does not involve more than two trips away from the primary place of employment in any single day for the purpose of delivering goods to a customer or for the purpose of transporting passengers, including fellow employees;
- The driving takes place within a 30-mile radius of the place of employment; and
- The driving is only occasional and incidental (defined to mean no more than one-third of an employee's work time in any work day and no more than 20 percent of an employee's work time in any work week).

According to the final regulations, the prohibition on driving that involves "urgent, time sensitive deliveries" restricts a 17-year-old employee from driving where certain factors might cause the driver to hurry in the completion of the delivery. The new rule notes that a 17-year-old employee would be prohibited from delivering pizzas or other prepared food to customers, delivering materials under a deadline (such as deposits to a bank at closing), and shuttling passengers to and from transportation depots to meet transport schedules.

The DOL notes that the employer bears the burden of establishing compliance with these conditions before a 17-year-old employee may drive a vehicle in connection with his or her employment. The regulations do not include, however, a recordkeeping requirement. Nevertheless, the DOL suggests that an employer may better prevent violations of the rule if it tracks on-the-job driving by 17-year-old employees through the use of a driving log. Such a log could record the following information: the name of the driver; the starting and stopping times of each trip; the destination; the purpose for the trip; the number of miles driven; the vehicle driven; and the number of passengers in the vehicle.

### Roofing Activities by 16- and 17-year-olds

Current regulations prohibit all work by minors under age 18 in occupations in roofing operations. Such work is considered particularly hazardous for minors to perform. The current form of the regulation, however, does not restrict minors from work on or near roofs, such as the installation of antennas or cable television equipment, or gutter and downspout work. The new rule

expands the prohibition of work by 16- and 17-year-olds to include all work "on or about" a roof. Work on or about a roof is defined to include all work performed "upon or in close proximity to a roof." This would include, for example, the painting and coating of existing roofs, working on gutters or downspouts, or installing or servicing television or communication equipment, such as cable or satellite equipment. The prohibition of the rule includes work by minors on ladders or scaffolding at or near the roof such as, for example, work to install roof flashing or gutters. The new rule continues the exemption for apprentices and student learners. Should the conditions for either an apprentice or student learner be satisfied, such minors may work in roofing operations.

**Loading of Scrap Paper Balers and Paper Box Compactors by 16- and 17-year-olds**

Existing regulations of the DOL generally prohibit minors under age 18 from working in occupations involving the operation of paper-products machines. The regulation prohibits the loading, operation, and unloading of scrap paper balers, including paper box balers and compacting machines, and other power-driven machines used in the remanufacture or conversion of paper or pulp into a finished product.

In 1996, President Clinton signed the Compactors and Balers Safety Standards Modernization Act, which amended the FLSA to permit 16- and 17-year-olds to load, but not operate or unload, scrap paper balers and paper box compactors if such machines are safe for 16- and 17-year-olds to load and cannot be operated while being loaded. The new regulations specify that a scrap paper baler or paper box compactor is safe for 16- and 17-year-olds to load if all of the following conditions are satisfied:

- The machine meets the applicable American National Standards Institute (ANSI) standard;
- The machine includes an on-off switch incorporating a key-lock system and the system is controlled by employees over age 18;
- The on-off switch of the machine is maintained in the off position when the machine is not in operation;
- The employer posts a notice on the machine stating: (1) that the machine meets the applicable industry safety standard and what that standard is; (2) that 16- and 17-year-old employees may only load the machine; and (3) that no employee under age 18 may operate or unload the machine.

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