

Employment of Minors

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Introductory Note

This section of the Handbook covers three areas of federal and state laws concerned specifically with the employment of minors in agriculture. The section covers:

1. The Federal Fair Labor Standards Act provisions for child labor. The child labor section of the Act is concerned with ages at which minors can be employed.
2. Jobs in agriculture declared hazardous by the U.S. Secretary of Labor and the associated employment restrictions for minors.
3. Jobs in agriculture prohibited by Ohio Code and other general Ohio employment restrictions for minors.

The three areas are closely related. However, separate regulations for each area affect employment of minors. **Where state and federal regulations are both applicable, the more stringent standard applies.**

Objectives

The objectives of the laws and regulations affecting employment of minors are to provide for the health, safety, and welfare of employed youths and to prevent their exposure to certain hazardous jobs.

Coverage

Employment of minors under age 16 is subject to federal requirements set by the Fair Labor Standards Act, most recently amended in 1996. The requirements for agriculture are fewer than those for other industries. Employment of children by their parents or by persons standing in the place of their parents on a farm owned or operated by such parents or persons is exempt from the Act. There are some other specific exemptions to coverage discussed in the employer provisions section below.

Effective February 1, 1967, the U.S. Secretary of Labor declared certain jobs in agriculture hazardous for the employment of children under the age of 16 years. The exemption for children employed by their parents or by persons standing in the place of parents on a farm owned or operated by such parent or person applies to hazardous occupation regulations. There are also specific exemptions for youth having completed a tractor and farm machinery certification course. Extension agents and/or vocational agriculture teachers conduct this course. Student-learners enrolled in a bona-fide vocational education training program in agriculture are also exempt from some of the hazardous occupation regulations.

In addition to the federal hazardous occupation regulations, there are applicable state regulations. For most Ohio laws, a person under the age of 18 is considered a minor. The Ohio Revised Code (Section 4109.05) specifically prohibits minors from working in certain hazardous jobs related to agriculture. The Ohio list of hazardous occupations is the same as the federal list. The Ohio code section and related regulations state that the Ohio hazardous occupation list applies to those *under age 16*.

Several sections of the Ohio Revised Code concerned with the employment of minors do not apply for minors employed on farms. These include obtaining an age and schooling certificate (except for children of migrant workers); keeping a list of minor employees; and paying the minimum wage.

Employer-Employee Provisions

Federal Child Labor Regulations in Agriculture

(from Fair Labor Standards Act)

There are no regulations in the Fair Labor Standards Act affecting children age 16 and older.

Children **14 and 15 years old** can be employed in any non-hazardous agricultural occupation outside school hours.

Children **under 14 years old** may be employed in agriculture if one or more of the following conditions are met:

1. Children **12 or 13 years old** can be employed outside school hours if one of the following is met:
 - a. the parents give written consent (or a person standing in the place of the parents),
 - or
 - b. employment is on the same farm where the parents are employed (or a person standing in the place of the parents).

NOTE: Ohio law requires age and schooling certificates for minors working in agriculture who reside in a labor camp. Such certificates cannot be issued to minors under age 14.

2. Children **under 12 years old** can be employed if one of the following is met:
 - a. employed by their parents (or a person standing in place of the parents) on a farm owned or operated by their parents,
 - or

- b. employed with the parents' written consent on a farm where employees are exempt from federal minimum wage provisions under the 500 man-day test (see minimum wage section of this handbook).

The U.S. Secretary of Labor is authorized by the Act to grant a waiver from these employment restrictions for local children **10 and 11 years old**. In such case, the children must be employed as hand harvesters in an agricultural operation that has been, and is customarily paid on a piece-rate basis. The employment of the children cannot be for more than 8 weeks in any calendar year. A single employer or a group of employers may apply to the Secretary for the waiver. The Secretary may not issue a waiver unless data are provided by the applicant to demonstrate that:

1. the crop to be harvested is one with a particularly short harvesting season;
2. the child labor provisions of the Act would cause severe economic disruption to the industry;
3. the employment of the children would not be deleterious to their health or well-being;
4. the level and type of pesticides and other chemical used would not have an adverse effect on the health of the children;
5. individuals age 12 and above are not available to harvest the crop;
6. children under 12 years of age have been traditionally and substantially employed in the industry without displacing substantial job opportunities for individuals over 16 years of age.

If the Secretary grants a waiver, it shall require that the children:

1. be employed outside of local school hours;
2. must commute daily from their permanent residence to the farm where employed;
3. be employed for not more than 8 weeks between June 1 and October 15 of any calendar year and in accordance with any other terms and conditions prescribed by the Secretary.

An individual employer or a group of employers may apply to the Secretary for the waiver. Applications for waiver are to be filed with the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. Applications should be filed at least 6 weeks prior to the time the waiver is to be in effect.

For each violation of the child labor provisions of the Fair Labor Standards Act, employers may be subject to a civil money penalty of up to \$10,000 per violation. Willful violation and offenses after conviction for a similar offense can result in fines up to \$10,000, up to 6 months imprisonment, or both.

Hazardous Occupations in Agriculture

(Federal Regulation)

Employers are prohibited from hiring children under 16 years of age in jobs declared hazardous by the Secretary of Labor. This same list of hazardous occupations has been adopted into Ohio law. Jobs designated as hazardous to youth under 16 years old include:

1. Operating a tractor of more than 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.

2. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
 - a. corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;
 - b. feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a non-gravity-type self-unloading wagon or trailer;
 - c. power post-hole digger, power post driver, or non-walking-type rotary tiller.
3. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines: trencher or earth moving equipment; fork lift; potato combine; or power-driven circular, band, or chain saw.
4. Working on a farm in a yard, pen, or stall occupied by: a bull, boar, or stud horse maintained for breeding purposes; or sow with suckling pigs, or cow with newborn calf (with umbilical cord present).
5. Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches.
6. Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of more than 20 feet.
7. Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper. (NOTE: An amendment related to driving on public roadways as part of a job for those employees under age 17 came into effect on October 31, 1998. The guidelines are very specific. The USDOL should be contacted for further information on compliance.)
8. Working inside a fruit, forage, or grain storage facility designed to retain oxygen deficient or toxic atmosphere; an upright silo within two weeks after silage has been added or when a top unloading device is in operating position; a manure pit; or a horizontal silo when operating a tractor for packing purposes.
9. Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq. as amended by the Federal Environmental Pesticide Control Act of 1972) as Category I of toxicity identified by the word "Danger" and/or "poison" and the "skull and crossbones" on the label; or Category II of toxicity, identified by the word "warning" on the label.
10. Handling or using a blasting agent, including but not limited to dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord.
11. Transporting, transferring, or applying anhydrous ammonia.

Minors aged 14 and 15 who have completed training and have received certification in a bona fide 4-H or FFA tractor operator course (Item #1 above) and machinery operator course (Item #2 above) can apply for and accept employment relating to these two areas within the limits indicated in Items 1 and 2. Certificate training programs are not available for those tasks listed

in Items 3 through 11. Employment of youths less than 16 years of age is prohibited for these jobs.

An exemption from the hazardous occupations items 1 through 6 is made for certain student-learners. Specifically, student learners in a bona fide vocational agriculture program may work in the occupations listed in items 1 through 6 of the hazardous occupations order under a written agreement which provides that the student-learner's work is incidental to training, intermittent, for short periods of time, and under close supervision of a qualified person; that safety instructions are given by the school and correlated with on-the-job training; and that a schedule of organized and progressive work processes has been prepared. The written agreement must contain the name of the student-learner, be signed by the employer and a school authority, each of whom must keep copies of the agreement.

Employers should check the specific level of certification for prospective employees who are 14 or 15 years old. If, for example, the youth has been certified for only Item #1 as indicated above, the youth cannot be hired to do tasks listed in Item #2. Employers who employ minors in positions that require training and certification must keep a copy of certificates of completion on file with the minor's employment records.

Employers are responsible for instructing employees on safe and proper operation of equipment. Employers are also required to supervise work where feasible and to make mid-morning and mid-afternoon checks where field work is involved.

Jobs Prohibited by Ohio Code

The Ohio Revised Code prohibits minors under age 16 from working in certain jobs related to agriculture. The prohibited jobs listed in the state regulations are the same as those termed hazardous occupations in agriculture in the federal regulations (listed in a preceding section).

Categories of minors not subject to the state hazardous occupation regulations include:

1. minors who have graduated from an accredited high school;
2. minors who are students participating in a vocational program approved by the Ohio Department of Education;
3. minors who are currently heads of household or are parents contributing to the support of their children;
4. minors who are employed or permitted to work on a farm operated by their parents, grandparents, or guardians where they are members of the guardians' household.

Minors residing in agricultural labor camps are not exempt.

Hours and Employment in Agriculture

Under federal regulations, minors under 16 years old may not be employed during school hours unless employed by their parent or a person standing in the place of their parents. Also, a crew leader who takes workers to an area where schools are open may not allow minors under 16 to work during the hours school is in session in the school district where the farm work is being

done. No provision permits the release of individual children or any class or grade to work in agriculture.

State regulations pertaining to hours of employment for minors in agriculture are more restrictive than federal regulations. Unless a minor works on the farm of a parent, grandparent, or guardian (and is a member of the guardian's household); is participating in a State approved vocational program; is a head of household contributing to support of a child; has graduated from an accredited high school; or is otherwise exempted by the Ohio Revised Code (Section 4109.06), the minor is subject to the following restrictions.

1. No person under 16 years old is to be employed:
 - a. during school hours;
 - b. before 7:00 a.m. or after 9:00 p.m. from June 1 to September 1 or during any school holiday of five school days or more duration, or after 7:00 p.m. at any other time;
 - c. for more than three hours a day in any school day;
 - d. for more than 18 hours in any week while school is in session;
 - e. for more than eight hours in any day which is not a school day;
 - f. for more than 40 hours in any week that school is not in session.
2. No person under 16 years old is to be employed more than 40 hours in any one week nor during school hours unless the employment is incidental to a state approved program of vocational cooperative training, work-study, or other work-oriented program with the purpose of educating students.
3. No minor is to be employed for more than five consecutive hours without allowing the minor a rest period of at least thirty minutes. The rest period does not have to be included in determining the number of hours the minor has worked.

Age and Schooling Certificates

Agriculture has been granted an exemption from the requirement of obtaining age and schooling certificates. Chapter 4109 of the Ohio Administrative Rules and Regulations states that minors working in agriculture do not need to obtain an age and schooling certificate unless they reside in an agricultural labor camp. Age and schooling certificates are to be issued to minors between the ages of 14 and 18. Age and schooling certificates are not to be issued to minors under age 14. Certificates are not required for students age 16 and 17 during summer employment.

Record Keeping

Federal regulations require employers of minors under 16 years of age to maintain and to preserve records containing the following data about each minor employed:

1. Name in full.
2. Place where the minor lives while employed. If the minor's permanent address is elsewhere, both addresses should be given.
3. Date of birth.
4. Evidence in writing of any required consent of the parent or person standing in place of the parent.

Minors employed by a parent are exempt from these record-keeping requirements.

The Ohio Revised Code exempts agricultural employers from record keeping provisions related to minors. However, the Ohio Revised Code (Section 4109.10) requires an agreement as to wages for work to be performed be made between the employer and a minor before employment begins. For the protection of the employer, this agreement should be in writing and signed by both parties. The employer also must provide a written statement of earnings due and the amount to be paid to the minor on or before each payday.

Responsible Agencies

The federal agency responsible for enforcement of the Federal Child Labor Laws and Federal Hazardous Occupation Regulations is the U.S. Department of Labor, Wage and Hour Division. Area offices in Ohio are:

Cincinnati 525 Vine Street, Suite 880 Cincinnati, OH 45202-3268 513-684-2902	Columbus Room 646, Federal Office Building 200 North High Street Columbus, OH 43215-2475 614-469-5677
Cleveland Room 817, Federal Office Building 1240 East 9th Street Cleveland, OH 44199-2054 216-522-3892	The state agency responsible for enforcement of the Ohio Code as it relates to prohibited jobs for minors is: Ohio Bureau of Employment Services Wage & Hour Division 145 South Front Street Columbus, OH 43215 614-644-2450

Internet Resources

Ohio Revised Code on-line - view Chapter 4109 at: <http://orc.avv.com/title-41/home.htm>
US DOL Child Labor Resources: <http://www.dol.gov/dol/opa/public/summer/guide/flsa.htm>
US DOL Employment Standards Administration: Wage Hour Division:
<http://www2.dol.gov/dol/esa/public/regs/statutes/whd/summary.htm>

References

"Child Labor Requirements in Agriculture Under the Fair Labor Standards Act," Child Labor Bulletin No. 102, U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division. WH-1295, Revised July, 1990.

"Regulations, Part 575: Waiver of Child Labor Provisions for Agricultural Employment of 10- and 11-Year-Old Minors in Hand Harvesting of Short Season Crops," WH Publication 1438, U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, October 1980.

"Handy Reference Guide to the Fair Labor Standards Act," WH Publication 1282, Revised, April 1990. U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division.

"The Fair Labor Standards Act of 1938, as Amended," WH Publication 1318, Revised, April 1990. U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division.

Ohio Revised Code (Chapter 4109).

Ohio Administrative Code (Chapter 4101:9-2).

Further information regarding the 4-H Club and vocational agriculture certification programs can be secured from any county Cooperative Extension office or from any instructor of vocational agriculture.