

Retailers Must Ensure Compliance With Federal, State Child Labor Regulations

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The end of the school year and the beginning of summer will bring a surge of school-age workers into the workplace as government scrutiny over employment of young workers is increasing. The Department of Labor (DOL) and Department of Health and Human Services (HHS) have a Memorandum of Agreement to combat unlawful child labor practices.

In fiscal year 2022 (Oct. 1 to Sept. 30), the DOL investigated and found 835 child labor violation cases involving 3,876 children. The DOL also found that the number of minors unlawfully employed in FY 2022 had increased 37 percent from FY 2021 and was 283 percent higher than in FY 2015. The overall increases in child labor violations have the DOL ratcheting up its own efforts and joining forces with HHS to combat unlawful child labor practices. Their partnership also includes a joint, interagency task force dedicated to evaluating enforcement strategies and collaborating in child labor investigations.

Retail employers are covered by the child labor provisions of the Fair Labor Standards Act for nonagricultural occupations and applicable state laws. Common violations in the retail industry are for employees working over the statutory hours limits, during prohibited hours, working in prohibited duties and being under the legal age of employment.

While federal regulations do not require work permits for minors, some states (such as Pennsylvania) require permits (often known as “working papers”) and impose serious penalties for non-compliance. Similarly, while federal regulations do not restrict the number of hours employees aged 16 or older may work, many states regulate those work hours. Knowing who they are employing and the ages of their minor employees will help employers identify what type of work and hours each minor employee may undertake. In essence, it is vital that a retailer understand in each state in which minors are employed, inter alia, permitted hours of work, working paper requirements, scheduling notice and posting requirements, hours limitations, meal and break requirements specific to minors, record retention requirements, posting requirements and prohibited duties. In many states, some or all of these obligations differ for minors under age 16 and minors aged 16 and over.

Moreover, employers have to stay vigilant with changing state laws as many states are enacting or considering changes to their own child labor laws. For instance, Arkansas and Tennessee have changed important thresholds for minor workers. The new Arkansas law removes a requirement that children under 16 provide proof of parental consent to work; the new Tennessee law allows 16- and 17-year-olds to work in restaurants that bring in more than a quarter of their revenue from alcohol.

Employers should prepare now to make sure that they understand the applicable limits of employing minors and that their hiring and employment practices comply with state and federal laws.

Please contact a Jackson Lewis attorney with any questions.

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