

Bureau of Labor and Industries, Child Labor FAQs

The Employment Relationship

The Supreme Court has ruled that the Fair Labor Standards Act's (FLSA) definition of "employ" (to suffer or permit to work) does not necessarily make everyone working at your business an employee. For example, those who work without any express or implied compensation agreement may work for their own advantage on the premises of another. The exemptions for this sort of relationship are narrowly defined and usually apply only to student learners, and in some cases, volunteers or in-school placements.

Whether the FLSA sees *trainees* or *students* as *employees* depends on their activities on the premises of the employer. If all of the following criteria apply, the trainees or students are not employees within the meaning of the FLSA:

There must be a program that includes the following elements:

- A planned program of job training and work experience for the student, appropriate to the student's abilities, which includes training related to pre-employment and employment skills to be mastered at progressively higher levels that are coordinated with learning in the school-based learning component and lead to the awarding of a skill certificate.
- The learning experience encompasses a sequence of activities that build upon one another, increasing in complexity and promoting mastery of basic skills.
- The learning experience has been structured to expose the student to all aspects of an industry and promotes the development of broad, transferable skills.
- The learning experience provides for real or simulated tasks or assignments that push students to develop higher-order critical thinking and problem-solving skills.

The student receives ongoing instruction at the employer's work site and receives close on-site supervision throughout the learning experience, with the result that any productive work that the student performs is offset by the burden to the employer from the training and supervision provided.

The placement of the student at a work site during the learning experience does not result in the displacement of any regular employee. In other words, the presence of the student at the work site does not result in an employee being laid off, does not result in the employer not hiring an employee it would otherwise hire, and does not result in an employee working fewer hours than he or she would otherwise work.

The student is not entitled to a job at the completion of the learning experience--but this does not mean that employers are to be discouraged from offering employment to students who successfully complete the training.

The employer, student, and parent or guardian understand that the student is not entitled to wages or other compensation for the time spent in the learning experience--although the student may be paid a stipend for expenses such as books or tools.

When these criteria are continuously met, an employment relation does not exist and the minimum wage, overtime and child labor provisions of state and federal laws are not applicable.

Tip: Labeling a work site experience "internship," "mentorship," or "structured work-based learning," has absolutely no impact on whether or not there is an employment relationship. If the above criteria are met, the student is not an employee and the experience qualifies as training rather than employment. If, on the other hand, the above criteria are not met, the student would most likely be an employee and must be paid--even if the experience is promoted or labeled as "unpaid internship." There cannot be an employment relationship at any time while a student participates in the program. That is, the student cannot be an eligible participant in the program during school hours, assume an employment relationship after school hours, and resume the participation in the program the next day. Likewise, a student may not be a "trainee" during the school year, become a paid employee during the summer, and revert back to "trainee" status when school begins.

Q. Are there other situations in which individuals would not be employees, but may be "working" for their own advantage?

A. Yes. Examples are independent contractors, volunteers and in-school placements.

Volunteers

Any individual, including students, may serve as unpaid volunteers for public service, religious or humanitarian reasons. Volunteers must meet four criteria to be excluded from an employment relationship:

- The work must be for public service or a humanitarian act.
- The work must be at the volunteer's own initiative.
- There must be no expectation of pay.
- If the volunteer is an employee for other purposes, the volunteer duties may not be the same as his/her regular work duties, and the work must be performed outside the employee's normal work hours.

Tip: Schools should offer courses with a volunteer component as an elective. Mandatory courses that have a volunteer service requirement should include a variety of options such as a term paper, senior project, volunteer, etc.

In-School Placements

As part of an overall educational program, schools may permit or require students to engage in various school-related work programs within their school district. These programs are primarily for the benefit of the students and last for periods of no more than an hour per day, or an equivalent amount of overall time. The fact that a student may receive a minimal payment for participation in such activities would not necessarily create an employment relationship (source: U.S. Dept. of Labor Fact Sheet 4/94).

Examples of in-school placements

Students may help in school lunchrooms for 30 minutes to an hour per day, do occasional classroom clean-up, perform minor clerical work in the school office or library, or engage in school activities connected with dramatics, student publications, sports, and the like.

Q. Not all of my school-to-work placements can meet the conditions for "unpaid work experience." What rules should I follow for those students?

A. When a student is determined to be an employee, all of the employment related laws apply. These include workers' compensation, wage and hour (including child labor), civil rights, OSHA, and unemployment insurance, as well as any other laws that govern the relationship between the employer and employee.

When the employee is a minor, the child labor regulations, as part of the Wage and Hour Laws, must be complied with. For purposes of wage and hour law, a minor is any employee under the age of 18.

Child Labor Law

In Oregon, most employers are covered by federal and state laws governing the employment of minors. Many of the rules are exactly the same, but in instances in which state and federal laws differ on the same subject, the law considered to be the most beneficial to the employee must be followed. An example includes the minimum wage. The federal minimum wage is \$7.25 an hour, effective January 1, 2016, Oregon's minimum wage is \$9.25 an hour. If an employer is covered by both laws, the employee must receive \$8.95 an hour.

Q. If I am an employer, how do I know if I am covered by federal law, state law, or both?

A. In Oregon, any employer with one or more employees is covered by state wage and hour law, but it is fair to say, that in Oregon, most employers are covered by both state and federal laws.

Federal law may cover employees in a variety of ways including:

- Enterprise coverage (engaged in interstate commerce).
- Specifically named enterprises (public agencies, schools, hospitals, etc. including non-profits).
- Individual coverage.
- Annual dollar volume.
- Handling, selling, or otherwise working on goods or materials that have been moved or produced for interstate commerce.

Employment Certificates

Employers must first obtain a validated employment certificate from the Child Labor Unit, Wage and Hour Division, BOLI, 800 NE Oregon St. #1045, Portland, OR 97232. Phone: 971-673-0836 before employing a minor. Information about employment certificates is also available on BOLI's website.

Work Hours for Minors

Hours of work for 14- & 15-year-olds when school is in session:

- Not during school hours.
- 3 hours per day, 8 hours on non-school days.
- 18 hours per week maximum.
- May work between the hours of 7 a.m. and 7 p.m.
- Fourteen- and 15-year-olds are not allowed to be employed during the hours their school is in session.

Hours of work for 14- & 15-year-olds when school is not in session (from June 1 through Labor Day):

- 8 hours per day.
- 40 hours per week maximum.
- May work from 7am to 9pm.

Hours of work for 16- & 17-year-olds, any time of the year:

- Any hour of the day.
- 44 hour per week maximum.

Prohibited Work for Minors

Federal child labor law lists 17 occupations, in a document called "hazardous orders," that are particularly dangerous for minors. The orders restrict the use of certain power-driven machinery and employment in some high risk jobs in certain occupational areas. The Oregon Wage and Hour Commission has adopted the orders by administrative rule, adding an additional statutory prohibition restricting the hours a minor may be employed as a messenger or a delivery person.

In certain cases, youth apprentices and student-learners are exempt from hazardous occupations when such job duties are part of their training, but not part of their regular job duties. Both state and federal law include exemptions for student-learners and apprentices in Hazardous Order numbers 5, 8, 10, 12, 14, 16 and 17.

Tip: Fourteen- and 15-year-old employees may not work in any of the 18 hazardous occupations under any circumstances.

Exemptions to the orders (student learner, apprentice), are applicable only to the specific order in which they are named.

Apprentice Exemption to Hazardous Orders

All of the following conditions must be met in order to apply the exemption to Hazardous Occupation Orders numbers 5, 8, 10, 12, 14, 16 and 17:

- The apprentice is employed in a craft recognized as an apprenticeable trade.
- The work of the apprentice in the occupation declared particularly hazardous is incidental to his/her training.
- Such work is intermittent and for short periods of time and is under the direct and close supervision of a journeyman as a necessary part of such apprentice training.
- The apprentice is registered by the Bureau of Apprenticeship and Training, U.S. Department of Labor, or BOLI's Apprenticeship and Training Division.

Student Learner Exemption to Hazardous Orders

Hazardous Occupation Orders numbers 5, 8, 10, 12, 14, 16 and 17 contain exemptions for 16- and 17-year-old student-learners if they are enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school.

Student learners may work in the above hazardous occupations provided they are employed under a written agreement stipulating:

- That the work of the student-learner in the occupation declared particularly hazardous shall be incidental to the training.;
- That such work is intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person.
- That the school provides safety instructions that are correlated by the employer with on-the-job training.
- That the employer prepares a schedule or agreement of organized and progressive work processes to be performed on the job.

Each such written agreement must include the name of the student-learner, and be signed by the employer and the school coordinator or principal. This exemption of the employment of student-learners may be revoked in any individual situation if it is found that reasonable precautions have not been observed for the safety of minors employed thereunder.

Working Conditions for Minors

All employers doing business in Oregon must comply with the following:

- Provide unpaid meal periods of 30 minutes (no later than 5 hours and one minute after start). Sixteen- and 17-year-olds, however, may be required to remain on call when eating, if the nature of the work prevents the minor from being relieved from all duty, such as working alone in a convenience store. The entire time for that kind of activity must be paid.
- Provide rest periods of 15 minutes for every four hours of work (paid) should be given as near to the middle of the four hours as possible.
- Not require minors to lift excessive weights.
- Provide safe, sanitary work areas with adequate ventilation, lighting, washrooms and toilet facilities for all employees. Comfortable and safe seats, tables and benches must be provided where they are needed due to the nature of the work.
- Provide adequate work. If a minor employee is required to report to work he/she must be provided work for one-half the regular work shift hour, or in lieu of that, reasonable compensation.