

## Special Provisions Permitting the Employment of Certain Minors in Places of Business that Use Machinery to Process Wood Products

Section 13(c)(7) of the FLSA permits the employment of certain minors between the ages of 14 and 18, inside and outside of places of businesses where machinery is used to process wood products. This exemption applies only to a minor who is:

1. exempt from compulsory school attendance beyond the eighth grade either by statute or judicial order, and,
2. is supervised in the work place by an adult relative or adult member of the same religious sect or division as the minor.

Although a minor meeting these requirements maybe employed inside and outside of places of businesses that use machinery to process wood products—activities normally prohibited by Child Labor Regulation No. 3 and HO 4—the minor is still prohibited from operating, or assisting to operate, any power-driven woodworking machines. This prohibition includes the starting and stopping of the machines and the feeding of materials into the machines as well as the off-bearing of materials from the machines.

Such minors are also prohibited from cleaning, oiling, setting-up, adjusting and maintaining the machines. Minors 14 and 15 years of age must be employed in compliance with the remaining occupations and hours standards of CL Regulation No. 3. In addition, such minors must be protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation. The minors are also required to use personal protective equipment to prevent exposure to excessive levels of noise and sawdust.

## Exemptions from Certain HOs for Apprentices and Student-Learners

Hazardous Occupations Orders Nos. 5, 8, 10, 12, 14, 16, and 17 contain exemptions for 16- and 17-year-old apprentices and student-learners provided they are employed under the following conditions:

### Apprentices:

1. the apprentice is employed in a craft recognized as an apprenticeable trade;
2. the work of the apprentice in the occupations declared particularly hazardous is incidental to his or her training;
3. 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; and
4. the apprentice is registered by the Bureau of Apprenticeship and Training of the U. S. Department of Labor as employed in accordance with the standards established by that Bureau, or is registered by a state agency as employed in accordance with the standards of the state apprenticeship agency recognized by the Bureau of Apprenticeship and Training, or is employed under a written apprenticeship agreement and conditions which are found by the Secretary of Labor to conform substantially with such federal or state standards.

### Student-Learners:

1. the student-learner is 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; and
2. such student-learner is employed under a written agreement which provides:
  - a. that the work of the student-learner in the occupations declared particularly hazardous shall be incidental to the training,
  - b. that such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person,
  - c. that safety instruction shall be given by the school and correlated by the employer with on-the-job training, and
  - d. that a schedule of organized and progressive work processes to be performed on the job shall have been prepared.

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Each such written agreement shall contain the name of the student-learner, and shall be signed by the employer and the school coordinator or principal. Copies of each agreement shall be kept on file by both the school and the employer. This exemption for the employment of student-learners may be revoked in any individual situation where it is found that reasonable precautions have not been observed for the safety of minors employed thereunder.

A high school graduate may be employed in an occupation in which training has been completed as provided in this paragraph as a student-learner, even though the youth is not yet 18 years of age.

Although the regulations do not provide definitions of the terms *intermittent* and *short periods of time*, the Wage and Hour Division interprets those terms to mean that an apprentice or student-learner may not be the principal operator of prohibited machinery. He or she must work under the close supervision of a fully qualified and experienced adult, such as a journeyman. Further, the duties assigned the minor may not be such that he or she is constantly operating the prohibited machinery during the work shift, but only doing so as part of the training experience. This would preclude an apprentice or student-learner from being a production worker, responsible for spending a significant portion of the workday operating prohibited machinery or performing prohibited tasks. The Wage and Hour Division considers the continuous performance of otherwise prohibited work that exceeds one hour a day to be more than *intermittent* and more than for *short periods of time*. The Wage and Hour Division also considers the performance of otherwise prohibited work which totals more than 20% of the student-learner's work shift to be more than for *short periods of time*.

The regulations do not define the term *direct and close supervision*. The Wage and Hour Division's interpretation of *direct and close supervision* as it applies to apprentices and student-learners is based on guidance received from the Bureau of Apprenticeship and Training (BAT) which is part of the U. S. Department of Labor's Employment and Training Administration. BAT establishes ratios governing the number of journeymen and apprentices that may be employed on the job site in order to ensure worker safety and that the apprentices receive both proper training and supervision. BAT has advised the Wage and Hour Division that the most widely used ratio is one apprentice for the first journeyman on-site, and one apprentice for every three additional journeymen thereafter. The Wage and Hour Division considers the requirement of *direct and close supervision* to be met

when there is one journeyman or experienced adult working with the first apprentice/student-learner on-site, and at least three journeymen or experienced adults working alongside each additional apprentice/student-learner. Of course, the requirement for *direct and close supervision* applies only during the periods when the apprentice/student-learner is actually performing work that would otherwise be prohibited by the HO.

## Age Certificates

Employers may protect themselves from unintentional violation of the child labor provisions by keeping on file an employment or age certificate for each minor employed to show that the minor is the minimum age for the job. Although the Wage and Hour Division no longer issues age certificates, certificates issued under most state laws are acceptable for purposes of the FLSA.

## Enforcement of the Federal Child Labor Provisions

The Wage and Hour Division, which is part of the Department of Labor, administers and enforces the child labor, minimum wage, overtime and recordkeeping provisions of the Fair Labor Standards Act. The Wage and Hour Division also has enforcement responsibility for programs covering such things as prevailing wages for government contracts, the payment of special minimum wages, farm labor, family and medical leave, immigration and polygraph testing. Wage and Hour Division Investigators, who are stationed across the United States, are authorized to conduct investigations and gather data on wages, hours of work, and compliance with all the provisions of the FLSA, including the child labor provisions.