

2023 SENATE WORKFORCE DEVELOPMENT

SB 2170

2023 SENATE STANDING COMMITTEE MINUTES

Workforce Development Committee Fort Lincoln Room, State Capitol

SB 2170
2/16/2023
9:01 AM

Relating to minors working in construction.

9:01 AM **Chairman Wobbema** called the hearing to order. **Senators Wobbema, Axtman, Elkin, Larson, Sickler, Piepkorn** were present.

Discussion Topics:

- Federal laws and rules for working minor's
- Pre-apprentice program
- Employment opportunities
- Journeymen supervision

9:02 AM **Senator Magrum** introduced the bill in favor verbally.

9:12 AM **Tom Schimelfenig** testified in favor #20979.

9:13 AM **Travis Greff, Commercial Estimator, HA Thompson & Sons**, testified in favor #20971.

9:21 AM **Brian Schimelfenig, Contractor**, verbally testified in favor.

9:24 AM **Jason Ehlert, President, North Dakota Building and Construction Trade Council**, testified in opposition #20848.

9:29 AM **Kayla Pulvermacher, CEO, North Dakota Association of Builders**, testified in opposition #20962.

9:31 AM **Landis Larson, President, North Dakota AFL-CIO**, testified in opposition #20961.

9:32 AM **Nathan Svihovec, Labor Commissioner, Department of Labor and Human Rights**, testified neutrally #20938.

9:37 AM **Russ Hanson, Associated General Contractors of North Dakota**, testified neutrally #20992.

9:38 AM **Wayde Sick, State Director, Department of Career and Technical Education**, testified neutrally #20954, 20955.

9:45 AM **Jason Ehlert** provided additional information verbally.

Additional written testimony:

Dale Larson, North Dakota Regional Director, Associated Builders and Contractors Minnesota North Dakota, in favor #20852.

James Schmidt, Executive Director, North Dakota State Electrical Board
in favor #20977.

Senator Wobbema neutral #20985, 20986.

9:47 AM **Chairman Wobbema** closed the hearing.

Patricia Lahr, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Workforce Development Committee Fort Lincoln Room, State Capitol

SB 2170
2/16/2023
11:39 AM

Relating to minors working in construction.

11:39 AM **Chairman Wobbema** called the meeting to order. **Senators Wobbema, Axtman, Elkin, Larson, Sickler, Piepkorn** are present.

Discussion Topics:

- Minimum age
- Pre-Apprentice program

11:42 AM **Senator Piepkorn** moved **DO NOT PASS**.

11:42 AM **Senator Axtman** seconded.

11:42 AM Roll Call Vote

Senators	Vote
Senator Michael A. Wobbema	Y
Senator Michelle Axtman	Y
Senator Jay Elkin	Y
Senator Diane Larson	Y
Senator Merrill Piepkorn	Y
Senator Jonathan Sickler	Y

Motion passed 6-0-0

Senator Elkin carries.

11:43 AM **Chairman Wobbema** closed the meeting.

Patricia Lahr, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2170: Workforce Development Committee (Sen. Wobbema, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2170 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2170

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2170
3/15/2023

A Bill for an Act to provide for a legislative management study of construction labor laws for minors.
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Chairman Louser called meeting to order 11:00 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

Discussion Topics:

- Expanding construction jobs to minors
- Limiting construction
- Continued study of federal laws
- Training opportunity for youth
- OSHA and Workers Compensation Mandates
- Workforce safety
- Parent waiver to protect employers
- Continued training of employees

In Favor:

Senator Jeffery Magrum, District 8, Hazelton, ND, testimony, and proposed amendment, #25275, LC #23.0285.03001

Jason Hovdenes, Local contractor, Carrington, ND (no written testimony)

Tom Schilmelfenig, construction business, Bowdon, ND, #25276

Opposed:

Jason Ehlert, President, ND State Building and Construction Trades Council, #24435

Neutral:

Nathan Svihovic, Commissioner, ND Dept of Labor and Human Rights (no written testimony)

Russ Hanson, Director, Association of General Contractors #25534

Kayla Pulvermacher, ND Association of Builders, (no written testimony)

Chairman Louser adjourned the meeting 12:02 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2170
3/28/2023

A Bill for an Act to provide for a legislative management study of construction labor laws for minors.
--

Chairman Louser called meeting to order 3:09 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

Discussion Topics:

- Apprenticeship program
- Education
- Authorized workplace

Nathan Svihovic, Commissioner, ND Dept of Labor and Human Rights (no written testimony)
Wayde Sick, Depart of Career and Technical Education, ND Department of Public Instruction (no written testimony)

Representative Ruby moved a do not pass
Representative Warrey seconded.

Representative Ruby rescinds his motion.

Chairman Louser adjourned the meeting 3:30 PM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2170
4/11/2023

A Bill for an Act to provide for a legislative management study of construction labor laws for minors.
--

Chairman Louser called meeting to order 11:00 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

Member absent: Representative Christy

Discussion Topics:

- Apprenticeship programs
- Student learners
- Workplace learning

Nathan Svihovec, Commissioner, ND Labor, and Human Rights (no written testimony)
Wayde Sick, State Director of Career and Technical Education, NDDPI (no written testimony)

Representative Koppelman presented amendment language #27442.

Chairman Louser adjourned the meeting 11:16 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

SB 2170
4/12/2023

A Bill for an Act to provide for a legislative management study of construction labor laws for minors.
--

Chairman Louser called meeting to order 9:30 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

Member absent: Representative Christy

Discussion Topics:

- Committee work

Representative Koppelman presented amendment, #27499, #27498, LC #23.0285.03002 and moved to further amended, #27518, LC #23.0285.03003.

Representative Johnson seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	N
Representative Josh Christy	AB
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	AB

Motion passed 11-1-2

Representative Schauer moved a do pass as amended.
Representative Koppelman seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	N
Representative Josh Christy	AB
Representative Hamida Dakane	N
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	AB

Motion passed 10-2-2

Representative Schauer will carry the bill.

Chairman Louser adjourned the meeting 9:37 AM

Diane Lillis, Committee Clerk

April 12, 2023

DR
121
4-12-23

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2170

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 34-07 of the North Dakota Century Code, relating to minors working in hazardous occupations; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 34-07 of the North Dakota Century Code is created and enacted as follows:

Minors working in hazardous occupations.

A minor who is at least sixteen years of age may be employed or permitted to work in a hazardous occupation if the minor is in a registered apprenticeship program or is a student learner of an approved career and technical education program. Under this section, a parental signature is required for the minor to participate as an apprentice or student learner. This section does not limit the ability of a minor who is at least sixteen years of age to work in an occupation already permitted by law.

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - STATE OFFICE OF APPRENTICESHIP. During the 2023-24 interim, the legislative management shall consider studying the feasibility and desirability of creating a state office of apprenticeship. The study must include consideration of the advantages and disadvantages of creating the office in comparison to apprenticeships remaining solely under the control of the federal department of labor. The study must identify areas in which the state may exercise more control over the federal labor law to provide more flexibility as it applies to minors at least sixteen years of age. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2170, as engrossed: Industry, Business and Labor Committee (Rep. Louser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2170 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 34-07 of the North Dakota Century Code, relating to minors working in hazardous occupations; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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SECTION 2. LEGISLATIVE MANAGEMENT STUDY - STATE OFFICE OF APPRENTICESHIP. During the 2023-24 interim, the legislative management shall consider studying the feasibility and desirability of creating a state office of apprenticeship. The study must include consideration of the advantages and disadvantages of creating the office in comparison to apprenticeships remaining solely under the control of the federal department of labor. The study must identify areas in which the state may exercise more control over the federal labor law to provide more flexibility as it applies to minors at least sixteen years of age. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

2023 CONFERENCE COMMITTEE

SB 2170

2023 SENATE STANDING COMMITTEE MINUTES

Workforce Development Committee
Fort Lincoln Room, State Capitol

SB 2170
4/21/2023
Conference Committee

Relating to minors working in hazardous occupations; and to provide for a legislative management study.

2:06 PM **Chair Wobbema** opened the conference committee. **Senators Wobbema, Sickler, Piepkorn** and **Representatives Koppelman, Kasper, Dakane** were present.

Discussion Topics:

- Proposed amendment
- Conference committee decision

Chairman Wobbema called for discussion.

2:14 PM **Barry Dutton, ND State Director, US Department of Labor/Office of Apprenticeship**, provided information, neutral. #27795

Committee discussion SB 2170.

Representative B. Koppelman moved Senate accede to House amendments.

Representative Kasper seconded the motion.

Roll call vote-motion carried 4-2-0.

Representative Koppelman is the House bill carrier.

Senate Wobbema is the Senate bill carrier.

2:33 PM **Chairman Wobbema** closed the conference committee meeting.

Patricia Lahr, Committee Clerk

REPORT OF CONFERENCE COMMITTEE

SB 2170, as engrossed: Your conference committee (Sens. Wobbema, Sickler, Piepkorn and Reps. Koppelman, Kasper, Dakane) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ pages 1659-1660 and place SB 2170 on the Seventh order.

Engrossed SB 2170 was placed on the Seventh order of business on the calendar.

TESTIMONY

SB 2170



© SCRU 280-C

NORTH DAKOTA STATE BUILDING AND CONSTRUCTION TRADES COUNCIL

2901 Twin City Dr. Suite 201
Mandan, North Dakota 58554
(701) 663-8821

February 16, 2023

To the Honorable Michael Wobbema and Member Senators of the Workforce Development Committee

RE: Senate Bill 2170; Employment of minors in construction.

Representing workers in the commercial, industrial, and residential construction industries from foundation to finish, we are committed to promoting, recruiting, and developing careers for all workers in the skilled trades in North Dakota. Construction is a rewarding career, and we are fully committed to passing this industry along to younger generations in the most suitable and coordinated manner. Though it is a rewarding career, it is an industry with serious risks, that without safeguards, controls, and oversight can lead to serious injuries and fatalities. As such, we are in opposition to Senate Bill 2170.

Employing sixteen-year-olds and seventeen-year-olds in construction without proper training and education to all its inherent hazards will lead to increased incidents of injuries and even worse, fatalities. This can be seen in the August 2022 report from the Center for Disease Control identifying the rate of work-related injuries treated in emergency departments for workers, ages 15-24, was 1.5 times greater than the rate for workers 25 years of age and older.¹ Although contractors, industry, and labor continuously strive to eliminate these terrible incidents, the involvement of heights, power-driven machines and tools, excavations, ladders, and scaffolds are very real dangers and cannot be disregarded because of the shortage of available workers. Employing minors without proper training, education, and safety instruction will lead to increased risks while not meeting the goal of promoting the construction industry as a viable career pathway. There needs to be more definitions and prohibitions in SB 2170 that mirror the Fair Labor Standards Act for the employment of sixteen- and seventeen-year-olds in hazardous industries. Utilizing these established regulations allows these age groups to experience the construction industry in a controlled, safe manner thereby promoting careers in construction in a purposeful strategy.

As an alternative, sixteen- and seventeen-year-olds can explore the construction industry through controlled environments, such as Career and Technical Education classrooms where there is supervised education with training specific to construction.

¹ Young Worker Safety and Health; August 3, 2022; Centers for Disease Control and Prevention, The National Institute for Occupational Safety and Health (NIOSH); <https://www.cdc.gov/niosh/topics/youth/default.html>.

Minors can also be employed as seventeen-year-olds if they are participating in a Registered Apprenticeship Program through the Office of Apprenticeship, U.S. Department of Labor. Within these educational programs there are clear expectations and prohibitions for what this age group can and cannot perform that has a third-party entity oversight ensuring accountability.

Going further, without defined and rigorous third-party oversight, is another reason for our objection to this legislation. We feel the North Dakota Department of Labor and Human Rights (Department) needs to be tasked with the regulatory framework included in the structure of this legislation to oversee employers employing minors in construction. Further, the Department should be appropriated funding it to investigate, record, and levy monetary violations to employers who employ minors of these age groups who are found in violation of the prohibitions for minors in construction. This appropriation should also be in perpetuity for as long as SB 2170 is in the Century Code if it were to be adopted.

Because of the serious hazards of the construction industry and without robust third-party oversight, the North Dakota State Building and Construction Trades Council is in opposition for SB 2170.

Sincerely, I am

A handwritten signature in black ink, appearing to read "Jason Ehlert". The signature is fluid and cursive, with the first name "Jason" and last name "Ehlert" clearly distinguishable.

Jason Ehlert
President



February 15, 2023

Senate Workforce Development Committee

On behalf of the Associated Builders and Contractors MN/ND Chapter and our 330 construction industry members who help build North Dakota's commercial, industrial, and energy projects, we ask the committee to support SB 2170, which will conform state law to federal youth employment laws related to minors working in construction and a permit to do so is signed by a parent or guardian.

A career in construction is one that is rewarding, pays well, and can provide family-supporting wages and benefits to those willing to work.

Our contractor members throughout North Dakota in all areas of construction are always looking for the next generation of craft professionals to hire, train, and retain. Allowing this age group of young adults to explore careers in construction while still in high school is very important for our industry. U.S. Department of Labor Wage and Hour Division rules currently allow 16- and 17-year-olds to work on construction projects in a number of different trades. There are, for good reason, several hazardous occupations that federal rules prohibit anyone under 18 years old from working in. These hazardous occupations include operating heavy equipment and motor vehicles, roofing, power tools and saws, excavation work, and more.

For those 16 and 17-year-old North Dakotans who have sought out careers in construction in the past but have been told to wait until they turn 18, SB 2170 opens the door for them to gain hands-on experience working in the construction industry and to do so safely within existing federal law.

Associated Builders and Contractors MN/ND recommends a **Do Pass** on Senate Bill 2170.

Regards,

Dale Larson

Dale Larson
ND Regional Director
Associated Builders and Contractors MN/ND

68th Legislative Assembly
Regular Session (2023)

S.B. 2170

Senate Workforce Development Committee

Sen. Michael A. Wobbema, Chairman

Sen. Michelle Axtman, Vice Chairman

Testimony of Nathan Svihovec

Commissioner of Labor

N.D. Department of Labor and Human Rights

NEUTRAL

February 16, 2023

I. Introductory Summary

Chairman Wobbema, Vice Chairman Axtman, and members of the Senate Workforce Development Committee, my name is Nathan Svihovec and I was appointed as the North Dakota Department of Labor and Human Rights Commissioner beginning December 2022. I am a licensed attorney in the State and prior to my appointment, primarily practiced in labor and employment law as well as other civil litigation areas. I have been fortunate to formerly represent the Department as an Assistant Attorney General and to represent private businesses and individuals before the Department while I was in private practice.

Chapter (Ch.) 34-05 of the North Dakota Century Code (N.D.C.C.) created the North Dakota Department of Labor and Human Rights and prescribes the powers and duties of the Commissioner of Labor (Labor Commissioner). The Department's statutory duties can be most concisely summarized as ensuring citizens can live, work, and prosper in North Dakota. It is my deeply held belief that the mission of the Department is an essential service to the public.

II. Current Law

North Dakota's child labor laws are codified under [N.D.C.C. ch. 34-07](#). In general, minors under the age of 14 are prohibited from employment except in farm labor, domestic service, or while under the supervision of the minor's parent, guardian, or grandparent. A minor under the age of 14 is further restricted from employment during public school hours.

Minors aged 14-15 have reduced restrictions. With the exceptions of domestic services and farm labor, minors aged 14-15 may not work before 7:00 a.m. or after 7:00 p.m. From June 1 through Labor Day, minors aged 14-15 may work between the hours of 7:00 a.m and

9:00 p.m. They also may not work more than 18 hours during school weeks or more than 40 hours in non-school weeks.

All minors under the age of 16, however, are prohibited from certain work deemed too hazardous or detrimental to a child. Those include work involving the use of power-driven machinery, certain construction work duties, logging operations, sawmills or planing mills, explosives, operation of steam generating apparatuses, laundry machinery, acids, paints or white lead manufacturing, freight elevators, mines or quarries, immoral goods, elevated surfaces such as ladders or scaffolds, security, door-to-door sales, fertilizers and other chemicals, medical wastes, blood or bodily fluids, cooking, warehouses or storage, or commercial driving.

Minors ages 16-17 have no limitations under state law. Federal law under the Fair Labor Standards Act of 1938 ("FLSA"), however, does have limitations on minors 16-17 years of age. In the construction context, minors under the age of 18 may not be engaged in any roofing duties under the FLSA. This includes duties not only on a roof, but upon or in close proximity to a roof such as gutters, heating and ventilation equipment, or other duties that would require standing on a ladder or scaffold. Other limitations to a minor's use of certain power tools, power-driven hoist machines, and trenching/excavation machines are prohibited under the FLSA as well.

III. Bill Effect

This bill would add a requirement under state law that minors aged 16-17 years old obtain signed permission from the minor's parent or guardian. Upon receipt of the signed

permission, the Department would then issue a permit authorizing the minor to work in construction.

IV. Recommendation

I suspect the intention of this bill was to make it less restrictive for minors to work in construction jobs. Based on current state law, however, this bill actually makes it more difficult, not less, for a minor aged 16-17 years old to work in a construction job.

If the intent truly was to make it more restrictive and ensure a parent or guardian has authorized their child to work in a construction job, this bill certainly accomplishes that goal.

V. Fiscal Impact

At this time, it is difficult to estimate the number of minors aged 16-17 years old who will apply for these positions in North Dakota. I do not currently anticipate a fiscal impact or require additional FTEs to accomplish implementation of this bill.

VI. Conclusion

Thank you for your service to North Dakota. I would happily address any questions you have at this time.

Summary of Work Opportunities for Students Age 16-17

Young Workers | U.S. Department of Labor (dol.gov)

<https://dol.gov/agencies/whd/youthrules/young-workers>

Students ages 16-17 may work in non-hazardous jobs such as:

- Agricultural Jobs ● Office Jobs ● Food Service ● Lifeguards and Swim Instructors
- Retail ● Kitchen work involving the preparation of food and beverages

Students ages 16-17 may NOT work in jobs deemed hazardous, as listed on the U.S. Department of Labor Website - [19939 .pdf \(dol.gov\)](#) - Page 8, UNLESS they are part of a Registered Apprenticeship and/or classified as a Student-Learner.

Guidelines for registered Apprenticeship and Qualified Student-Learner are listed on - [Electronic Code of Federal Regulations \(eCFR\)](#). These guidelines are also summarized on page 2.

Student-Learners may participate in the following hazardous occupations as stated in the Child Labor Provisions for Nonagricultural Occupations under the Fair Labor Standards Act – [19939 .pdf \(dol.gov\)](#) - Page 8:

Hazardous Occupation Exemptions for Student-Learners and/or Registered Apprenticeships	Resource 19939 .pdf (dol.gov)
Motor-Vehicle Occupations – Limited Exemptions – Refer to Requirements	Page 10
Fire Fighting services as listed – Limited Exemptions – Refer to Requirements	Page 11
Power-Driven Woodworking Machine Occupations	Page 14
Power-Driven Metal Forming, Punching, and Shearing Machine Occupations	Page 16
Limited Occupations in Mining – Limited Exemptions – Refer to Requirements	Page 17
Occupations in the Operation of Power-Driven Meat-Processing Machines and Occupations Involving Slaughtering, Meat and Poultry Packing, Processing, or Rendering	Page 18
Limited Bakery Machine Occupations – Limited Exemptions – Refer to Requirements	Page 19
Occupations Involved in the Operation of Balers, Compactors, and Paper-Products Machines	Page 20
Occupations Involving the Operation of Circular Saws, Band Saws, Guillotine Shears, Chain Saws, Woodchippers, and Abrasive Cutting Discs	Page 22
Occupations in Roofing Operations and All Work On or About a Roof	Page 23
Occupations in Excavation Operations	Page 23

A Youth Apprenticeship or Student-Learner Program can give a 16 or 17-year-old the opportunity to work in the following situations:

- The youth is employed under a written Registered Apprenticeship agreement with U.S. DOL.
OR
- The youth is in a Student-Learner Program and is employed under a Student-Learner Agreement while enrolled in a course of study and training in a CTE training program under a recognized State or local education authority.

The Youth Apprenticeship must meet the following criteria:

The youth must be employed in a craft recognized as an apprentice-able trade. (12432 of 4 DLR 4/2018)

- The hazardous work is incidental to the youth's training.
- The hazardous work is intermittent and for short periods of time; (less than 20% of time spent in hazardous work)

- The hazardous work is performed under the direct and close supervision of a journeyman
AND
- The youth is:
 - ➔ registered by the Bureau of Apprenticeship and Training of the U.S. DOL as employed in accordance with the standards established by the Bureau.
 - ➔ registered by a State agency as employed in accordance with the standards of the State apprenticeship agency recognized by U.S. DOL, found by U.S. DOL to conform substantially with Federal or State standards.

The Student-Learner Program must meet the following criteria:

- The student-learner is enrolled in a course of study and training in a cooperative CTE 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.
- Such student-learner is employed under a written agreement which provides documentation that;
 - ➔ the hazardous work is incidental to the youth's training.
 - ➔ the hazardous work is intermittent and for short periods of time (less than 20% of time spent in hazardous work);
 - ➔ the hazardous work is performed under the direct and close supervision of a qualified and experienced person.
 - ➔ that safety instruction shall be given by the school and correlated by the employer with on-the-job training.
 - ➔ that a schedule of organized and progressive work processes to be performed on the job shall have been prepared.

- Each such written agreement shall contain the name of the student- learner and shall be signed by the parent/guardian, 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 there under.

[WBL Guidance](#)



**Senate Workforce Development
SB2170**

February 16, 2023

Chairman Wobbema and members of the Senate Workforce Development Committee, for the record my name is Wayde Sick, State Director for the Department of Career and Technical Education. I am submitting testimony in a neutral capacity for SB2170.

The reason I am submitting neutral testimony is because I would like to inform the committee of opportunities for employers, schools, and students to work together, to address workforce shortages.

I presented to this committee earlier in the session on Career and Technical Education and the programs and new initiatives we are working on. Currently, we have Building Trades programs across the state, primarily located at our Area Career and Technical Centers and larger school districts. Currently, over forty school districts have access to a building trades program. Within these programs, students learn basic technical and safety skills and provide career exploration opportunities to learn if a career in the construction field is the direction they wish to follow. To continue to expand on CTE, one of our major initiatives is the expansion of Work-Based Learning Experiences.

In this work, we have had multiple conversations with employers and school administrators alike, on the inability to place minor students in the community, on job sites, that are deemed hazardous. A document we reference often is the Child Labor Provisions for

Nonagricultural Occupations under the Fair Labor Standards Act, also known as Child Labor Bulletin 101. Child Labor Bulletin 101 outlines what occupations a student under the age of 18 can participate in. You can imagine several of the restrictions are those that SB2170 is attempting to permit.

Child Labor Bulletin 101 also provides exemptions for what the United States Department of Labor defines as apprentices and student-learners. Starting on page 24, the bulletin states that an individual, under the age of 18, can participate in certain activities, in a hazardous occupation if they are either a registered apprentice that is enrolled in a registered apprenticeship program or is a student learner. I would like to touch more on the student learner category. A student learner is a student enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local education authority or in a course of study in a substantially similar program conducted by a private school and the student learner is employed under a written agreement between the school, employer, and student.

In other words, if a student is enrolled in an approved CTE program, and a written agreement is in place that includes the student (with parental approval), school, and employer, the student can participate at the worksite. The Department has developed work-based learning guidance for local programs to utilize as they expand access to work-based learning experiences. Within the guidance is a WBL agreement template, to guide programs to meet this expectation. It is important to mention the primary focus of these experiences must be training and education and the individual must be under close supervision of a mentor.

In the summer of 2022, the Department started to train and endorse work-based learning coordinators, to be placed in CTE Centers and schools around the state, to serve as

the liaison between employers and educators. Our next step is to partner with Job Service North Dakota and the ND Department of Commerce, to inform more employers across the state of opportunities to partner with education.

If done correctly, we can place students on job sites. It is vital that prior to placing a student, they should possess basic technical, employability and safety skills, which can be accomplished by completing coursework in a CTE program. Let me also note that many Building Trades instructors come from industry, therefore possess industry knowledge. The foundation that can come through a CTE program and a quality work-based learning experience can create a pipeline of better prepared workers, to help address the workforce needs we see in our state.

To close, I have included a link to Child Labor Bulletin 101 for your review, as well as a one-pager, based on Child Labor Bulletin 101, the Department of Career and Technical Education created for local administrators to use when visiting with employers about work-based learning.

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/childlabor101.pdf>

This concludes my testimony; I will stand for any questions you may have.

Testimony of Landis Larson, ND AFL-CIO President
In Opposition to SB 2170
February 16, 2023

Chairperson Wobbema and members of the Workforce Development Committee:

My name is Landis Larson, President of the North Dakota AFL-CIO. The North Dakota AFL-CIO is the federation of labor unions in North Dakota, representing the interests of all working people in our state.

I am testifying on behalf of the North Dakota AFL-CIO in opposition to Senate Bill 2170.

Child labor should never be the answer to a workforce issue. Year after year, North Dakota ranks as one of the most dangerous states in which to work, with one of the highest fatality rates per 100,00 workers for more than a decade. Construction is a particularly dangerous industry. Minors do not belong on construction sites.

Every year on April 28th, labor councils around our state host worker memorial day commemorations, remembering the workers who died on the job in North Dakota. I've had the honor of participating in these commemorations, including reading the names and ages of those who died on the job in the last year. We get a list of names from OSHA every year, listing who they were, who they worked for and how they died. Many of these workers are already dying way too young in horrible and preventable accidents. Just last year a young man, barely an adult himself, was electrocuted while installing a 30 foot flagpole under a 28 foot power line in western North Dakota. It will only be a matter of time before we have to read a minor child's name at a workers memorial day if we pass this law.

I encourage you to give Senate Bill 2170 a DO NOT PASS.

TESTIMONY



FEBRUARY 16, 2023

SB 2170 SENATE WORKFORCE DEVELOPMENT COMMITTEE

Chairman and members of the committee:

My name is Kayla Pulvermacher and I represent the members of the North Dakota Association of Builders. NDAB stands in opposition of SB 2170.

NDAB believes that we as a state must increase our efforts on workforce development so that we may continue to provide affordable homes in North Dakota. In order to further expose students to our industry, we support efforts that will allow for businesses to bring students onto the worksite.

That said, we cannot in good faith support the bill before us. Simply passing a law on the state level that allows our members to bring students onto worksites does not negate the liability resulting from diminution of federal law.

Although this bill may not be the answer to our workforce challenges, we can use it as a vehicle to pull all of the resources the state has together, and to learn more about the obstacles that are still hindering further development of the trade's workforce. I would urge the committee to consider turning this bill into a study on how the state of North Dakota could work to provide more incentives, curriculums, and opportunities for those interested in the construction industry. And with career centers establishing a statewide presence, there has never been a better time to ascertain their best utilization.

Thank you, chairman and members of the committee, for your time this morning.



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February 16, 2023

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Chairman Wobbema

Members of Senate Workforce Development Committee

My name is Travis Greff. I am the Commercial Estimator for HA Thompson and Sons a plumbing and heating company located here in Bismarck. I serve on the board for Associated Builders and Contractors MN/ND Chapter. I am also the President of the North Dakota Association of Plumbing, Heating and Mechanical Contractors. I am here today to voice support to Senate Bill 2170 as an employer of workers in the construction industry as well as an advocate for workforce development in the plumbing and HVAC trades.

As with all businesses within the state of North Dakota, we are looking for good, hard-working employees to train and bring into our industry. In our state, most of the work occurs on construction projects in the summer months when weather is ideal for doing the work. This means that all the trades in construction are trying to get the manpower to perform as much work as possible during these months. Hiring 16 and 17-year-old students who are looking for summer employment is great resource for companies that need to fill this demand. Due to the current restrictions on this age group, most of the time it is not worth bringing them on to work.



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Page 2 of 2

Allowing this group of workers to be able to do more of the tasks needed on a project site will allow employers to fill the many smaller tasks that are required on a construction build while exposing our younger generation to different employment opportunities and making them more resourceful in the process. Our company requires all new employees to go through an OSHA 10 safety course through North Dakota Workforce Safety to make certain everyone on the project site is working in a safe manner.

The plumbing and heating industry has been talking non-stop for 20 years on how to get younger people more interested in the trades. It has been great to see the additional funding from our State Legislature to help improve vocational education at the high school level to help with the current shortage in construction workforce. This bill will allow the students involved in those programs to safely apply the knowledge in real world applications while helping fill a need within all the construction trades. Other states throughout the region have implemented similar legislation resulting in 16- and 17-year-olds gaining skills and knowledge that will stay with them for a lifetime.

Once again on behalf of Associated Builders and Contractors, the North Dakota Association of Plumbing, Heating and Mechanical Contractors and HA Thompson and Sons, I ask you to vote yes on SB 2170.

Thank you and at this time I would be happy to answer any questions you may have for me.

TESTIMONY in SUPPORT of SB 2170

PRESENTED BY JAMES SCHMIDT

EXECUTIVE DIRECTOR, NORTH DAKOTA STATE ELECTRICAL BOARD

Chairman Wobbeman and Members of the Work Force Development
Committee:

I am James Schmidt, executive director for the North Dakota State Electrical Board testifying in support of Senate Bill 2170.

SB 2170 offering a chance for younger person to enter into the trades easily is a great thing even if its for a summer job. This would help address the shortage of tradespeople and hopefully the electrical trade.

We recommend a do pass and I thank the bill sponsors and this committee for hearing my comments and I would be happy to answer any questions you may have.

February 16, 2023

**Senate Workforce Development Committee
Senate Bill 2170**

Good morning Chairman Wobbema and members of the Senate Workforce Development Committee:

My name is Tom Schimelfenig from Bowdon. I am here in support of Senate Bill 2170, which would reduce the minimum age for working in construction. I have been in the construction business for 45 years. My wife and I have raised five children, three boys and two girls. They all helped their father in the business in one way or another. My three sons were with me most of the time, learning the trade.

I feel it is important to get young people involved in this industry. It builds your knowledge and character. We need to get youth away from the video games, as most of them promote sex and violence.

I attended a meeting in Nashville in 2019 on the workforce problem in the onsite wastewater industry. It was stated that 80% of those people will be retiring the next five years. I am one of the 80%. Some of the discussions centered around this age group – how to get them involved and overcome the limitations set by our government. I believe this bill is an excellent step forward for North Dakota. I urge a “do pass” on SB 2170.

Thank you for allowing me to speak, and I will stand for any questions.



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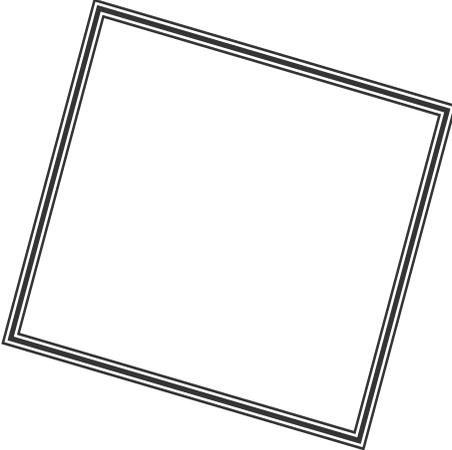
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DHHS (NIOSH) Publication No. 2004-113

December 2003

**Safe Work for
Youth in
Construction**

**Information for
Employers**



DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Disease Control and Prevention
National Institute for Occupational Safety and Health

The Concern

Youth who are under 18 years old can be an asset to your workforce. They are enthusiastic and eager to learn. However, like other new and inexperienced workers, these young workers can be injured on the job when they don't receive adequate safety training and supervision. Some injuries have a lifelong impact, and some are even fatal. Furthermore, on-the-job injuries to young workers can be costly.

Young workers get hurt when:

- They take on jobs for which they're not trained — sometimes without being asked
- They don't have appropriate supervision
- They work with dangerous tools or equipment
- They perform tasks that violate youth employment laws

Work on a construction site is especially hazardous. In fact, the construction industry, which employs less than 3% of all young workers, ranks 3rd in the number of work-related fatalities to youth — at 14% of all occupational deaths to youth under 18.

In 2000, a 16-year-old male framing construction crew member died after falling 27 feet from the third story of a residential dormitory construction site. The boy was standing on an 8-inch wide structural wooden beam while positioning roof trusses. Fall protection equipment was not being used. His head was struck by one of the 8-foot by 4-foot trusses that fell with him to the ground. He died from severe chest and head trauma.

Recommendations

#20985

★ Do	⊘
<ul style="list-style-type: none"> • Know the laws and check on your compliance. 	<ul style="list-style-type: none"> • Do not hire someone younger than 16 except for office or sales work.
<ul style="list-style-type: none"> • Train young workers on what job tasks they can and cannot legally do. 	
<ul style="list-style-type: none"> • Make sure young workers get clear instructions for each and every task. 	<ul style="list-style-type: none"> • Do not give young workers a job task if they have not been trained on how to do that specific task.
<ul style="list-style-type: none"> • Set a firm rule that young workers may ONLY work on tasks for which they're trained. 	
<ul style="list-style-type: none"> • Make sure young workers know the federal and state youth employment rules; some of these rules can be found inside this pamphlet. 	<ul style="list-style-type: none"> • Do not establish work schedules that violate laws. Federal laws, and some state laws, prohibit certain young workers from working too long or too late.
<ul style="list-style-type: none"> • Recognize that language may be a barrier for young workers who are not fluent in English. • Ask young workers to demonstrate that they understand what was said. 	
<ul style="list-style-type: none"> • Provide young workers with appropriate and properly sized personal protective equipment (PPE); e.g., steel-toed shoes and hard hats. 	<ul style="list-style-type: none"> • Do not give young workers tasks that require PPE for extreme hazards (e.g., tasks requiring respirator use) or PPE that may not be designed for smaller youth proportions (e.g., tasks requiring fall protection use).
<ul style="list-style-type: none"> • Provide adequate supervision. • Correct mistakes. • Stress safety to supervisors. • Encourage supervisors to set a good example for safety attitudes and safe work habits. 	

More Tragedies

In 2001, a 14-year-old male laborer, working for a small construction company owned by his family, died when he was crushed under a 5-ton beam. At the time of the incident, the boy and two co-workers were using an airbag to lift the 79-foot metal beam. The boy was kneeling next to the beam when it rolled off the airbag, fell on top of his back, and pinned him against the ground. He was transported to a nearby hospital where he was pronounced dead.



In 1998, a 15-year-old roofer helper died after falling 16½ feet from a roof to the concrete below. At the time of the incident, the youth and a 16-year-old co-worker had been removing shingles from the roof of a house. While working to remove old shingles, the youth either struck a bundle of new shingles with his body or with the handle of a shovel. The bundle began to slide toward the back edge of the roof. In attempting to retrieve the bundle, the youth lost his balance and fell off the back edge of the roof, landing on his back and striking his head on the concrete. The boy died the following day of a closed head injury.

Laws to Know

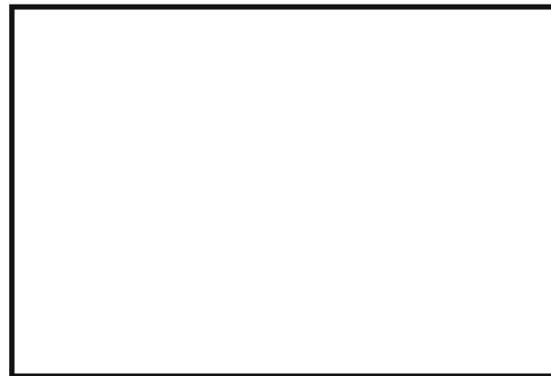
Fair Labor Standards Act (FLSA)

The federal FLSA establishes minimum wage, overtime pay, record keeping, and child labor standards affecting certain full-time and part-time workers in the private sector and in federal, state, and local governments.

Age and Hour Restrictions under FLSA

Youth under 16 years of age may only perform office or sales work in the construction industry. The federal rules also limit the number of hours and times of day that such youth may be employed.

Youth age 16 and 17 may work in the construction industry and on construction sites, but there are several tasks or jobs that are too hazardous for them to perform. There are no federal laws that restrict the number of work hours per day or per week. However, several states do restrict the number of hours and times of day that this age group may be employed. Be sure to check with your State Department of Labor.



Prohibited Jobs

Within FLSA, seventeen jobs are declared hazardous and are prohibited for youth under 18. Below is a partial list that may be particularly relevant for construction industry employers.

- Driving a motor vehicle
- Operating power-driven woodworking machines (including drills and nail guns)
- Operating forklifts, cranes, hoists or elevators
- Operating power-driven metal forming, punching, and shearing machines
- Operating power-driven circular saws, band saws, and guillotine shears
- Wrecking, demolition, and shipbreaking operations
- Roofing operations
- Excavation operations

FLSA Exemptions

If certain conditions are met, 16- and 17-year-old apprentices and student learners may be allowed to perform some of the above prohibited jobs. Youth enrolled in such programs are trained in occupational safety and health. You may wish to consider recruiting these young workers — you'll be providing them with work experience and may be rewarded with a safety-conscious employee.

Some other young workers are not fully covered by FLSA. For example, youth of any age are generally allowed to work for businesses entirely owned by their parents, except no one under 18 may be employed in the prohibited jobs that are partially listed above.

Even if FLSA doesn't apply, if you employ workers under 18 years old, be sure that:

- Tasks are appropriate for a worker's age
- Young workers are properly trained
- Young workers are supervised
- You know what tasks are prohibited for youth

Additional Laws and Information

OSHA Regulations

Remember, OSHA laws are designed to protect all employees, including young workers, from injury.

State Child Labor Laws

Although some states solely rely on the federal FLSA laws, most states have their own laws. For instance, states may have different minimum ages for employment, different hours of work restrictions, additional occupations identified as hazardous, and work permit requirements. If the employment falls under federal FLSA jurisdiction, then both federal and state laws apply — and the most restrictive law (whether it is the state or the federal) is followed.

Finally, even if all laws are followed, incidents can and do happen — being aware of the hazards and applying safety precautions may prevent a tragedy on your work site.

Information about federal child labor laws, apprentice and student learner programs, and links to state child labor laws may be obtained from the federal Department of Labor (DOL) website at www.youthrules.dol.gov (click on the employers link) or from DOL's Wage and Hour Division toll-free help line at 1-866-4US-WAGE (1-866-487-9243). TTY callers may call toll-free 1-877-889-5627.

For state-specific youth employment information, contact your State Department of Labor.

U.S. Department of Labor
Wage and Hour Division



Child Labor Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations

This Fact Sheet provides general information about the Federal youth employment provisions applicable to [nonagricultural occupations](#). Different standards apply to [farm work](#).

The Department of Labor is committed to helping young workers find those positive and early employment experiences that can be so important to their development, but the work must be safe. The youth employment provisions of the FLSA were enacted to ensure that when young people work, the work does not jeopardize their health, well-being or educational opportunities. Employers are subject to the youth employment provisions generally under the same coverage criteria as established for the other provisions of the FLSA.

It is an unfortunate fact that children do get injured, even killed, in the workplace. The National Institute for Occupational Safety and Health estimates that 160,000 American children suffer occupational injuries every year—and 54,800 of these injuries are serious enough to warrant emergency room treatment.

Both Federal and State laws govern the employment of young workers and when both are applicable, the law with the stricter standard must be obeyed.

The Federal youth employment provisions **do not**:

- require minors to obtain "working papers" or "work permits," though many States do;
- restrict the number of hours or times of day that workers 16 years of age and older may be employed, though many States do;
- apply where no FLSA employment relationship exists;
- regulate or require such things as breaks, meal periods, or fringe benefits;
- regulate such issues as discrimination, harassment, verbal or physical abuse, or morality, though other Federal and State laws may.

Minimum Age Standards For Employment

The FLSA and the youth employment regulations issued at [29 CFR, Part 570](#), establish both hours and occupational standards for youth. Children of any age are generally permitted to work for businesses entirely owned by their parents, except those under age

16 may not be employed in mining or manufacturing and no one under 18 may be employed in any occupation the Secretary of Labor has declared to be hazardous.

18 Once a youth reaches 18 years of age, he or she is no longer subject to the Federal youth employment provisions.

16 Basic minimum age for employment. Sixteen- and 17-year-olds may be employed for unlimited hours in any occupation other than those declared hazardous by the Secretary of Labor.

14 Young persons 14 and 15 years of age may be employed outside school hours in a variety of non-manufacturing and non-hazardous jobs for limited periods of time and under specified conditions.

Under 14 Children under 14 years of age may not be employed in non-agricultural occupations covered by the FLSA. Permissible employment for such children is limited to work that is exempt from the FLSA (such as delivering newspapers to the consumer and acting). Children may also perform work not covered by the FLSA such as completing minor chores around private homes or casual baby-sitting.

OCCUPATIONS BANNED FOR ALL MINORS UNDER THE AGE OF 18

The Hazardous Occupations Orders (HO)

The FLSA establishes an 18-year minimum age for those nonagricultural occupations that the Secretary of Labor finds and declares to be particularly hazardous for 16- and 17-year-old minors, or detrimental to their health or well-being. In addition, Child Labor Regulation No. 3 also bans 14- and 15-year-olds from performing any work proscribed by the HOs. There are currently 17 HOs which include a partial or total ban on the occupations or industries they cover.

HO 1. Manufacturing or storing explosives—bans minors working where explosives are manufactured or stored, but permits work in retail stores selling ammunition, gun shops, trap and skeet ranges, and police stations.

HO 2. Driving a motor vehicle or work as an outside helper on motor vehicles—bans operating motor vehicles on public roads and working as outside helpers on motor vehicles, except 17-year-olds may drive cars or small trucks during daylight hours for limited times and under strictly limited circumstances (*see [Fact Sheet #34](#)* in this series for information about on-the-job driving).

HO 3. Coal mining—bans most jobs in coal mining.

HO 4. Occupations in forest fire fighting, forest fire prevention, timber tract, forestry service, and occupations in logging and sawmilling operations—bans most jobs in: forest fire fighting; forest fire prevention that entails extinguishing an actual fire; timber tract management; forestry services; logging; and sawmills.

HO 5. Power-driven woodworking machines—bans the operation of most power-driven woodworking machines, including chain saws, nailing machines, and sanders.*

HO 6. Exposure to radioactive substances and ionizing radiation—bans employment of minors where they are exposed to radioactive materials.

HO 7. Power-driven hoisting apparatus—bans operating, riding on, and assisting in the operation of most power-driven hoisting apparatus such as forklifts, non-automatic elevators, skid-steers, skid-steer loaders, backhoes, manlifts, scissor lifts, cherry pickers, work-assist platforms, boom trucks, and cranes. Does not apply to chair-lifts at ski resorts or electric and pneumatic lifts used to raise cars in garages and gasoline service stations.

HO 8. Power-driven metal-forming, punching and shearing machines—bans the operation of certain power-driven metal-working machines but permits the use of most machine tools.*

HO 9. Mining, other than coal—bans most jobs in mining at metal mines, quarries, aggregate mines, and other mining sites including underground work in mines, work in or about open cut mines, open quarries, and sand and gravel operations.

HO 10. Power-driven meat-processing machines, slaughtering and meat packing plants—bans the operation of power-driven meat processing machines, such as meat slicers, saws and meat choppers, wherever used (including restaurants and delicatessens). Also prohibits minors from cleaning such equipment, including the hand-washing of the disassembled machine parts. This ban also includes the use of this machinery on items other than meat, such as cheese and vegetables. HO 10 also bans most jobs in meat and poultry slaughtering, processing, rendering, and packing establishments.*

HO 11. Power-driven bakery machines—bans the operation of power-driven bakery machines such as vertical dough and batter mixers; dough rollers, rounders, dividers, and sheeters; and cookie or cracker machines. Permits 16- and 17-year-olds to operate certain lightweight, small, portable, counter-top mixers and certain pizza dough rollers under certain conditions.

HO 12. Balers, compactors, and power-driven paper-products machines—bans the operation of all compactors and balers and certain power-driven paper products machines such as platen-type printing presses and envelope die cutting presses. Sixteen- and 17-year-olds may load, but not operate or unload, certain scrap paper balers and paper box compactors under very specific guidelines (*see [Fact Sheet #57](#)*).*

HO 13. Manufacturing of brick, tile and related products—bans most jobs in the manufacture of brick, tile and similar products.

HO 14. Power-driven circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs—bans the operation of, and working as a helper on, the named types of power-driven equipment, no matter what kind of items are being cut by the equipment.*

HO 15. Wrecking, demolition, and ship-breaking operations—bans most jobs in wrecking, demolition, and ship-breaking operations, but does not apply to remodeling or repair work which is not extensive.

HO 16. Roofing operations and work performed on or about a roof—bans most jobs in roofing operations, including work performed on the ground and removal of the old roof, and all work on or about a roof* (*see [Fact Sheet #74](#)*)

HO 17. Trenching and excavation operations—bans most jobs in trenching and excavation work, including working in a trench more than four feet deep.*

*The regulations provide a limited exemption from HOs 5, 8, 10, 12, 14, 16 and 17 for apprentices and student-learners who are at least 16 years of age and enrolled in approved programs.

The term "operation" as used in HOs 5, 8, 10, 11, 12 and 14 generally includes the tasks of setting up, adjusting, repairing, oiling or cleaning the equipment.

HOURS OF WORK AND PERMITTED OCCUPATIONS FOR 14- AND 15-YEAR-OLDS IN NONAGRICULTURAL EMPLOYMENT

The Federal youth employment provisions limit the times of day, number of hours, and industries and occupations in which 14- and 15-year-olds may be employed.

Child Labor Regulation No. 3, [29 C.F.R. § 570.35](#), limits the hours and the times of day that 14- and 15-year-olds may work to:

- outside school hours;
- no more than 3 hours on a school day , including Fridays;
- no more than 8 hours on a nonschool day;
- no more than 18 hours during a week when school is in session;
- no more than 40 hours during a week when school is not in session;
- between 7 a.m. and 7 p.m.—except between June 1 and Labor day when the evening hour is extended to 9 p.m.

Child Labor Regulation No. 3, [29 C.F.R. §§ 570.33](#) lists some of the jobs that 14- and 15-year-olds may not hold. The following is just a sample of prohibited occupations:

- They are prohibited from working in any of the Hazardous Orders or in most occupations involving transportation, construction, warehousing, communications and public utilities.
- They may **not** work in processing, mining, in any workroom or workplace where goods are manufactured or processed, in freezers, or in meat coolers.
- They may not operate or tend any power-driven machinery, except office machines.
- They may not perform any baking operations.
- They may **not** be employed in youth peddling, sign waving, or door-to-door sales activities.
- They may **not** work from ladders, scaffolds, or their substitutes.
- They may **not** be employed to catch or coop poultry.

Child Labor Regulation No. 3, [29 C.F.R. §§ 570.34](#) lists those jobs that 14- and 15-year-olds may hold. WHAT IS NOT PERMITTED IS PROHIBITED:

- They may work in most office jobs and retail and food service establishments.

- They may be employed in occupations such as bagging groceries, office work, stocking shelves, and cashiering.
- They may work in intellectual or artistically creative occupations such as teacher, musician, artist, and performer.
- They may perform limited kitchen work involving the preparation of food and beverages.
- They may perform only limited cooking duties (*see* Fact Sheet #58). They may cook over electric or gas grills that do not involve cooking over an open flame and they may cook with deep fryers that are equipped with and utilize a device that automatically lowers the baskets into the hot oil or grease and automatically raised the baskets from the hot oil or grease.
- They may clean cooking equipment and surfaces (not otherwise prohibited), and filter, transport, and dispose of grease as long as the temperature of the surfaces, containers, and grease do not exceed 100°F.
- Properly certified 15-year-olds may work as lifeguards and swimming instructors at traditional swimming pools and water amusement parks.

Special Provisions Permitting the Employment of 15-year-olds, but not 14-year-olds, as Lifeguards at Traditional Swimming Pools and Water Amusement Parks

Regulations, 29 C.F.R. § 570.34(l) permits the employment of 15-year-olds as lifeguards at traditional swimming pools and water amusement parks when such youth have been trained and certified by the American Red Cross, or a similar certifying organization, in aquatics and water safety. The federal child labor provisions require that a 15-year-old must acquire additional certification if he or she is to be employed as a swim instructor.

A traditional swimming pool means a water-tight structure of concrete, masonry, or other approved materials located either indoors or outdoors, used for bathing or swimming and filled with a filtered and disinfected water supply, together with buildings, appurtenances and equipment used in connection therewith.

A water amusement park means an establishment that not only encompasses the features of a traditional swimming pool, but may also include such additional attractions as wave pools; lazy rivers; specialized activities areas such as baby pools, water falls, and sprinklers; and elevated water slides. Properly certified 15-year-olds would be permitted to be employed as lifeguards at most of these water park features, but not as attendants or dispatchers at the top of elevated water slides.

Not included in the definition of a traditional swimming pool or a water amusement park would be such natural environment swimming facilities as rivers, streams, lakes, reservoirs, wharfs, piers, canals, or oceanside beaches. Lifeguards must be at least 16 years of age to be employed at such natural environment facilities.

For more information about these provisions, please read [Fact Sheet # 60: Application of the Federal Youth Employment Provisions of the Fair Labor Standards Act \(FLSA\) to the Employment of Lifeguards](#).

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 may be 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. 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 minor is also required to use personal protective equipment to prevent exposure to excessive levels of noise and sawdust (*see [Fact Sheet No. 55](#)* in this series for more information about this exemption).

Work Experience and Career Exploration Program (WECEP)

This program is designed to provide a carefully planned work experience and career exploration program for 14- and 15-year-old youths who can benefit from a career-oriented educational program designed to meet the participants' needs, interests and abilities. The program is aimed at helping youths to become reoriented and motivated toward education and to prepare them for the world of work.

State Departments of Education are granted approval to operate a WECEP by the Administrator of the Wage and Hour Division for a 2-year period. Certain provisions of CL Reg. 3 are modified for 14- and 15-year-old participants during the school term.

- They may work during school hours.
- They may work up to 3 hours on a school day; and as many as 23 hours in a school week.
- They also may work in some occupations that would otherwise be prohibited under a variance issued by the Administrator, but they may not work in manufacturing, mining or any of the 17 Hazardous Occupations.

Work-Study Programs (WSP)

Some of the provisions of Child Labor Regulation No. 3 are varied for 14- and 15-year-old participants in approved school-administered WSPs. A WSP participant must be 14 or 15 years of age, enrolled in a college preparatory curriculum, and be identified by authoritative personnel from his or her school as being able to benefit from a work-study program.

Employment of participants in WSPs shall be confined to not more than 18 hours in any one week when school is in session, a portion of which may be during school hours in accordance with the following formula that is based upon a continuous four-week cycle:

- In three of the four weeks, the participant is permitted to work during school hours on only one day per week, and for no more than for eight hours on that day.
- During the remaining week of the four-week cycle, the participant is permitted to work during school hours on no more than two days, and for no more than for eight hours on each of those two days.

The employment of WSP participants is still subject to the time of day and number of hours standards contained in 29 C.F.R. §§ 570.35(a)(2), (a)(3), (a)(4), and (a)(6). The superintendent of the public or private school system wishing to supervise and administer a WSP as discussed in this section must first receive permission from the Administrator of the Wage and Hour Division.

Enforcement and Penalties

Investigators of the Wage and Hour Division who are stationed across the U.S. enforce the youth employment provisions of the FLSA. As the Secretary of Labor's representatives, they have the authority to conduct investigations and gather data on wages, hours, and other employment conditions or practices in order to assess compliance with all the provisions of the FLSA.

An employer that violates the youth employment provisions may be subject to civil money penalties (CMPs). The amount of the CMP assessment, which may not exceed a cap set by statute, depends upon the application of statutory and regulatory factors to the specific circumstances of the case.

- As a general matter, child labor CMP assessments will be higher if the violation contributed to the injury or death of the youth involved in the violation. The severity of any such injury will be taken into account in determining the amount of a CMP.
- CMP assessments may be decreased based on the size of the business.
- CMP assessments will reflect the gravity of the violation and may be doubled if the violation is determined to be willful or repeated.

A CMP assessment for a violation that causes the death or serious injury of a minor is subject to a higher statutory cap.

- An injury qualifies as a “serious injury” for this purpose if it involves permanent or substantial harm. Both the significance of the injury and the duration of recovery are relevant in determining whether an injury is serious.
- If more than one violation caused a single death or serious injury, more than one CMP may be assessed.
- CMP assessments based on the death or serious injury of a minor may be doubled up to a higher statutory cap if the violation is determined to be willful or repeated.

For current maximum CMP amounts, please visit <https://www.dol.gov/WHD/flsa/index.htm>.

The FLSA prohibits the shipment in interstate commerce of goods that were produced in violation of the Act’s minimum wage, overtime, or youth employment provisions. The FLSA authorizes the Department of Labor to seek a court order enjoining the movement of such “hot goods.” The FLSA also authorizes the Department to obtain injunctions against violators of the youth employment provisions to compel their compliance with the law. Further violations could result in sanctions against such persons for contempt of court. Willful youth employment violators may face criminal prosecution and be fined up to \$10,000. Under current law, a second conviction may result in imprisonment.

Where to Obtain Additional Information

For more information on youth employment laws, visit the YouthRules! Web site at www.youthrules.dol.gov or call toll-free 1-866-4US-WAGE (1-866-487-9243).

For additional information on the Fair Labor Standards Act, visit the Wage and Hour Division Web site: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

When state youth employment laws differ from the federal provisions, an employer must comply with the higher standard. Links to your state labor department can be found at http://www.dol.gov/whd/contacts/state_of.htm.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
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WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet #43: Child Labor Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations

Revised December 2016

This Fact Sheet provides general information about the Federal youth employment provisions applicable to nonagricultural occupations. Different standards apply to farm work.

The Department of Labor is committed to helping young workers find those positive and early employment experiences that can be so important to their development, but the work must be safe. The youth employment provisions of the FLSA were enacted to ensure that when young people work, the work does not jeopardize their health, well-being or educational opportunities. Employers are subject to the youth employment provisions generally under the same coverage criteria as established for the other provisions of the FLSA.

It is an unfortunate fact that children do get injured, even killed, in the workplace. The National Institute for Occupational Safety and Health estimates that 160,000 American children suffer occupational injuries every year—and 54,800 of these injuries are serious enough to warrant emergency room treatment.

Both Federal and State laws govern the employment of young workers and when both are applicable, the law with the stricter standard must be obeyed.

The Federal youth employment provisions **do not**:

- require minors to obtain "working papers" or "work permits," though many States do;
- restrict the number of hours or times of day that workers 16 years of age and older may be employed, though many States do;
- apply where no FLSA employment relationship exists;
- regulate or require such things as breaks, meal periods, or fringe benefits;
- regulate such issues as discrimination, harassment, verbal or physical abuse, or morality, though other Federal and State laws may.

Minimum Age Standards For Employment

The FLSA and the youth employment regulations issued at 29 CFR, Part 570, establish both hours and occupational standards for youth. Children of any age are generally permitted to work for businesses entirely owned by their parents, except those under age 16 may not be employed in mining or manufacturing and no one under 18 may be employed in any occupation the Secretary of Labor has declared to be hazardous.

18 - Once a youth reaches 18 years of age, he or she is no longer subject to the Federal youth employment provisions.

16 - Basic minimum age for employment. Sixteen- and 17-year-olds may be employed for unlimited hours in any occupation other than those declared hazardous by the Secretary of Labor.

14 - Young persons 14 and 15 years of age may be employed outside school hours in a variety of non-manufacturing and non-hazardous jobs for limited periods of time and under specified conditions.

Under 14 - Children under 14 years of age may not be employed in non-agricultural occupations covered by the FLSA. Permissible employment for such children is limited to work that is exempt from the FLSA (such as delivering newspapers to the consumer and acting). Children may also perform work not covered by the FLSA such as completing minor chores around private homes or casual baby-sitting.

OCCUPATIONS BANNED FOR ALL MINORS UNDER THE AGE OF 18

The Hazardous Occupations Orders (HO)

The FLSA establishes an 18-year minimum age for those nonagricultural occupations that the Secretary of Labor finds and declares to be particularly hazardous for 16- and 17-year-old minors, or detrimental to their health or well-being. In addition, Child Labor Regulation No. 3 also bans 14- and 15-year-olds from performing any work proscribed by the HOs. There are currently 17 HOs which include a partial or total ban on the occupations or industries they cover.

HO 1. Manufacturing or storing explosives—bans minors working where explosives are manufactured or stored, but permits work in retail stores selling ammunition, gun shops, trap and skeet ranges, and police stations.

HO 2. Driving a motor vehicle or work as an outside helper on motor vehicles—bans operating motor vehicles on public roads and working as outside helpers on motor vehicles, except 17-year-olds may drive cars or small trucks during daylight hours for limited times and under strictly limited circumstances (see [Fact Sheet #34](#) in this series for information about on-the-job driving).

HO 3. Coal mining—bans most jobs in coal mining.

HO 4. Occupations in forest fire fighting, forest fire prevention, timber tract, forestry service, and occupations in logging and sawmilling operations—bans most jobs in: forest fire fighting; forest fire prevention that entails extinguishing an actual fire; timber tract management; forestry services; logging; and sawmills.

HO 5. Power-driven woodworking machines—bans the operation of most power-driven woodworking machines, including chain saws, nailing machines, and sanders.*

HO 6. Exposure to radioactive substances and ionizing radiation—bans employment of minors where they are exposed to radioactive materials.

HO 7. Power-driven hoisting apparatus—bans operating, riding on, and assisting in the operation of most power-driven hoisting apparatus such as forklifts, non-automatic elevators, skid-steers, skid-steer loaders, backhoes, manlifts, scissor lifts, cherry pickers, work-assist platforms, boom trucks, and cranes. Does not apply to chair-lifts at ski resorts or electric and pneumatic lifts used to raise cars in garages and gasoline service stations.

HO 8. Power-driven metal-forming, punching and shearing machines—bans the operation of certain power-driven metal-working machines but permits the use of most machine tools.*

HO 9. Mining, other than coal—bans most jobs in mining at metal mines, quarries, aggregate mines, and other mining sites including underground work in mines, work in or about open cut mines, open quarries, and sand and gravel operations.

HO 10. Power-driven meat-processing machines, slaughtering and meat packing plants—bans the operation of power-driven meat processing machines, such as meat slicers, saws and meat choppers, wherever used (including restaurants and delicatessens). Also prohibits minors from cleaning such equipment, including the hand-washing of the disassembled machine parts. This ban also includes the use of this machinery on items other than meat, such as cheese and vegetables. HO 10 also bans most jobs in meat and poultry slaughtering, processing, rendering, and packing establishments.*

HO 11. Power-driven bakery machines—bans the operation of power-driven bakery machines such as vertical dough and batter mixers; dough rollers, rounders, dividers, and sheeters; and cookie or cracker machines. Permits 16- and 17-year-olds to operate certain lightweight, small, portable, counter-top mixers and certain pizza dough rollers under certain conditions.

HO 12. Balers, compactors, and power-driven paper-products machines—bans the operation of all compactors and balers and certain power-driven paper products machines such as platen-type printing presses and envelope die cutting presses. Sixteen- and 17-year-olds may load, but not operate or unload, certain scrap paper balers and paper box compactors under very specific guidelines (see [Fact Sheet #57](#)).^{*}

HO 13. Manufacturing of brick, tile and related products—bans most jobs in the manufacture of brick, tile and similar products.

HO 14. Power-driven circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs—bans the operation of, and working as a helper on, the named types of power-driven equipment, no matter what kind of items are being cut by the equipment.^{*}

HO 15. Wrecking, demolition, and ship-breaking operations—bans most jobs in wrecking, demolition, and ship-breaking operations, but does not apply to remodeling or repair work which is not extensive.

HO 16. Roofing operations and work performed on or about a roof—bans most jobs in roofing operations, including work performed on the ground and removal of the old roof, and all work on or about a roof^{*} (see [Fact Sheet #74](#)).

HO 17. Trenching and excavation operations—bans most jobs in trenching and excavation work, including working in a trench more than four feet deep.^{*}

* The regulations provide a limited exemption from HOs 5, 8, 10, 12, 14, 16 and 17 for apprentices and student-learners who are at least 16 years of age and enrolled in approved programs.

The term "operation" as used in HOs 5, 8, 10, 11, 12 and 14 generally includes the tasks of setting up, adjusting, repairing, oiling or cleaning the equipment.

HOURS OF WORK AND PERMITTED OCCUPATIONS FOR 14- AND 15-YEAR-OLDS IN NONAGRICULTURAL EMPLOYMENT

The Federal youth employment provisions limit the times of day, number of hours, and industries and occupations in which 14- and 15-year-olds may be employed.

Child Labor Regulation No. 3, 29 C.F.R. § 570.35, limits the hours and the times of day that 14- and 15-year-olds may work to:

- outside school hours;
- no more than 3 hours on a school day, including Fridays;
- no more than 8 hours on a nonschool day;
- no more than 18 hours during a week when school is in session;
- no more than 40 hours during a week when school is not in session;
- between 7 a.m. and 7 p.m.—except between June 1 and Labor day when the evening hour is extended to 9 p.m.

Child Labor Regulation No. 3, 29 C.F.R. §§ 570.33 lists some of the jobs that 14- and 15-year-olds may not hold. The following is just a sample of prohibited occupations:

- They are prohibited from working in any of the Hazardous Orders or in most occupations involving transportation, construction, warehousing, communications and public utilities.
- They may **not** work in processing, mining, in any workroom or workplace where goods are manufactured or processed, in freezers, or in meat coolers.
- They may not operate or tend any power-driven machinery, except office machines.
- They may not perform any baking operations.
- They may **not** be employed in youth peddling, sign waving, or door-to-door sales activities.
- They may **not** work from ladders, scaffolds, or their substitutes.
- They may **not** be employed to catch or coop poultry.

Child Labor Regulation No. 3, 29 C.F.R. §§ 570.34 lists those jobs that 14- and 15-year-olds may hold. WHAT IS NOT PERMITTED

IS PROHIBITED:

- They may work in most office jobs and retail and food service establishments.
- They may be employed in occupations such as bagging groceries, office work, stocking shelves, and cashiering.
- They may work in intellectual or artistically creative occupations such as teacher, musician, artist, and performer.
- They may perform limited kitchen work involving the preparation of food and beverages.
- They may perform only limited cooking duties (see Fact Sheet #58). They may cook over electric or gas grills that do not involve cooking over an open flame and they may cook with deep fryers that are equipped with and utilize a device that automatically lowers the baskets into the hot oil or grease and automatically raised the baskets from the hot oil or grease.
- They may clean cooking equipment and surfaces (not otherwise prohibited), and filter, transport, and dispose of grease as long as the temperature of the surfaces, containers, and grease do not exceed 100°F.
- Properly certified 15-year-olds may work as lifeguards and swimming instructors at traditional swimming pools and water amusement parks.

Special Provisions Permitting the Employment of 15-year-olds, but not 14-year-olds, as Lifeguards at Traditional Swimming Pools and Water Amusement Parks

Regulations, 29 C.F.R. § 570.34(l) permits the employment of 15-year-olds as lifeguards at traditional swimming pools and water amusement parks when such youth have been trained and certified by the American Red Cross, or a similar certifying organization, in aquatics and water safety. The federal child labor provisions require that a 15-year-old must acquire additional certification if he or she is to be employed as a swim instructor.

A traditional swimming pool means a water-tight structure of concrete, masonry, or other approved materials located either indoors or outdoors, used for bathing or swimming and filled with a filtered and disinfected water supply, together with buildings, appurtenances and equipment used in connection therewith.

A water amusement park means an establishment that not only encompasses the features of a traditional swimming pool, but may also include such additional attractions as wave pools; lazy rivers; specialized activities areas such as baby pools, water falls, and sprinklers; and elevated water slides. Properly certified 15-year-olds would be permitted to be employed as lifeguards at most of these water park features, but not as attendants or dispatchers at the top of elevated water slides.

Not included in the definition of a traditional swimming pool or a water amusement park would be such natural environment swimming facilities as rivers, streams, lakes, reservoirs, wharfs, piers, canals, or oceanside beaches. Lifeguards must be at least 16 years of age to be employed at such natural environment facilities.

For more information about these provisions, please read [Fact Sheet # 60: Application of the Federal Youth Employment Provisions of the Fair Labor Standards Act \(FLSA\) to the Employment of Lifeguards](#).

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 may be 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. 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 minor is also required to use personal protective equipment to prevent exposure to excessive levels of noise and sawdust (see [Fact Sheet No. 55](#) in this series for more information about this exemption).

Work Experience and Career Exploration Program (WECEP)

This program is designed to provide a carefully planned work experience and career exploration program for 14- and 15-year-old youths who can benefit from a career-oriented educational program designed to meet the participants' needs, interests and abilities. The program is aimed at helping youths to become reoriented and motivated toward education and to prepare them for the world of work.

State Departments of Education are granted approval to operate a WECEP by the Administrator of the Wage and Hour Division for a 2-year period. Certain provisions of CL Reg. 3 are modified for 14- and 15-year-old participants during the school term.

- They may work during school hours.
- They may work up to 3 hours on a school day; and as many as 23 hours in a school week.
- They also may work in some occupations that would otherwise be prohibited under a variance issued by the Administrator, but they may not work in manufacturing, mining or any of the 17 Hazardous Occupations.

Work-Study Programs (WSP)

Some of the provisions of Child Labor Regulation No. 3 are varied for 14- and 15-year-old participants in approved school-administered WSPs. A WSP participant must be 14 or 15 years of age, enrolled in a college preparatory curriculum, and be identified by authoritative personnel from his or her school as being able to benefit from a work-study program.

Employment of participants in WSPs shall be confined to not more than 18 hours in any one week when school is in session, a portion of which may be during school hours in accordance with the following formula that is based upon a continuous four-week cycle:

- In three of the four weeks, the participant is permitted to work during school hours on only one day per week, and for no more than for eight hours on that day.
- During the remaining week of the four-week cycle, the participant is permitted to work during school hours on no more than two days, and for no more than for eight hours on each of those two days.

The employment of WSP participants is still subject to the time of day and number of hours standards contained in 29 C.F.R. §§ 570.35(a)(2), (a)(3), (a)(4), and (a)(6). The superintendent of the public or private school system wishing to supervise and administer a WSP as discussed in this section must first receive permission from the Administrator of the Wage and Hour Division.

Enforcement and Penalties

Investigators of the Wage and Hour Division who are stationed across the U.S. enforce the youth employment provisions of the FLSA. As the Secretary of Labor's representatives, they have the authority to conduct investigations and gather data on wages, hours, and other employment conditions or practices in order to assess compliance with all the provisions of the FLSA.

An employer that violates the youth employment provisions may be subject to civil money penalties (CMPs). The amount of the CMP assessment, which may not exceed a cap set by statute, depends upon the application of statutory and regulatory factors to the specific circumstances of the case.

- As a general matter, child labor CMP assessments will be higher if the violation contributed to the injury or death of the youth involved in the violation. The severity of any such injury will be taken into account in determining the amount of a CMP.
- CMP assessments may be decreased based on the size of the business.
- CMP assessments will reflect the gravity of the violation and may be doubled if the violation is determined to be willful or repeated.

A CMP assessment for a violation that causes the death or serious injury of a minor is subject to a higher statutory cap.

- An injury qualifies as a “serious injury” for this purpose if it involves permanent or substantial harm. Both the significance of the injury and the duration of recovery are relevant in determining whether an injury is serious.
- If more than one violation caused a single death or serious injury, more than one CMP may be assessed.
- CMP assessments based on the death or serious injury of a minor may be doubled up to a higher statutory cap if the violation is determined to be willful or repeated.

For current maximum CMP amounts, please visit <https://www.dol.gov/agencies/whd/flsa>.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.dol.gov/agencies/whd> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).



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The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.



NORTH DAKOTA STATE BUILDING AND CONSTRUCTION TRADES COUNCIL

2901 Twin City Dr. Suite 201
Mandan, North Dakota 58554
(701) 663-8821

® (SCRU) 280-C

March 15, 2023

To the Honorable Scott Louser and Representatives of the Industry, Business and Labor Committee

RE: Senate Bill 2170; Employment of minors in construction.

Representing workers in the commercial, industrial, and residential construction industries from foundation to finish, we are committed to promoting, recruiting, and developing careers for all workers in the skilled trades in North Dakota. Construction is a rewarding career, and we are fully committed to passing this industry along to younger generations in the most suitable and coordinated manner. Though it is a rewarding career, it is an industry with serious risks, that without safeguards, controls, and oversight can lead to serious injuries and fatalities. As such, we are in opposition to Senate Bill 2170.

Employing sixteen-year-olds and seventeen-year-olds in construction without proper training and education to all its inherent hazards will lead to increased incidents of injuries and even worse, fatalities. This can be seen in the August 2022 report from the Center for Disease Control identifying the rate of work-related injuries treated in emergency departments for workers, ages 15-24, was 1.5 times greater than the rate for workers 25 years of age and older.¹ Although contractors, industry, and labor continuously strive to eliminate these terrible incidents, the involvement of heights, power-driven machines and tools, excavations, ladders, and scaffolds are very real dangers and cannot be disregarded because of the shortage of available workers. Employing minors without proper training, education, and safety instruction will lead to increased risks while not meeting the goal of promoting the construction industry as a viable career pathway. There needs to be more definitions and prohibitions in SB 2170 that mirror the Fair Labor Standards Act for the employment of sixteen- and seventeen-year-olds in hazardous industries. Utilizing these established regulations allows these age groups to experience the construction industry in a controlled, safe manner thereby promoting careers in construction in a purposeful strategy.

As an alternative, sixteen- and seventeen-year-olds can explore the construction industry through controlled environments, such as Career and Technical Education classrooms where there is supervised education with training specific to construction.

¹ Young Worker Safety and Health; August 3, 2022; Centers for Disease Control and Prevention, The National Institute for Occupational Safety and Health (NIOSH); <https://www.cdc.gov/niosh/topics/youth/default.html>.

Minors can also be employed as seventeen-year-olds if they are participating in a Registered Apprenticeship Program through the Office of Apprenticeship, U.S. Department of Labor. Within these educational programs there are clear expectations and prohibitions for what this age group can and cannot perform that has a third-party entity oversight ensuring accountability.

Going further, without defined and rigorous third-party oversight, is another reason for our objection to this legislation. We feel the North Dakota Department of Labor and Human Rights (Department) needs to be tasked with the regulatory framework included in the structure of this legislation to oversee employers employing minors in construction. Additionally, the Department should be appropriated funding it to investigate, record, and levy monetary violations to employers who employ minors of these age groups who are found in violation of the prohibitions for minors in construction. This appropriation should also be in perpetuity for as long as SB 2170 is in the Century Code if it were to be adopted.

Because of the serious hazards of the construction industry and without robust third-party oversight, the North Dakota State Building and Construction Trades Council is in opposition for SB 2170.

Sincerely, I am

A handwritten signature in black ink, appearing to read "Jason Ehlert". The signature is fluid and cursive, with the first name "Jason" and last name "Ehlert" clearly distinguishable.

Jason Ehlert
President

Jeff Magrum 03/15/2023

Mr. Chairman and committee members.

I introduced SB2170 because our goal as determined by leadership is to grow our workforce. Currently 16 and 17 year olds can work in construction but to a very limited degree because of federal law. The language in the bill was the only way the legislative council could see fit to nullify the federal overreach based on the order of things meaning God (Jesus Christ) first then parents and then government. The current way is putting the federal government above the parents. This bill intends to set the order back to the way it is supposed to be.

The bill was supported by Associated Builders and Contractors, HA Thompson and sons plumbing and mechanical company in Bismarck one of the oldest plumbing companies in the area, ND Association of plumbing, heating and Mechanical contractors, The state electrical board as well as several contractors. Most of these have

apprenticeship programs.

There was testimony of some apprentice programs that are available. That is good but apparently it's not popular.

We as a government want to build tech centers and try all kinds of things to get people to work and yet right in front of us is an excellent opportunity that costs the taxpayers nothing, in fact these young folks would be paying taxes and contributing to the economy. Many contractors are ready and willing to put these young people to work to serve their customer base but currently as was testified, its not worth it because of the liability and if the young folks are given menial tasks like pushing a broom all day or standing around they lose interest and it actually hurts the construction trades in the long run.

Protecting the contractors with the power of the state would create opportunity not just for construction companies but for the youth, giving purpose and hope.

We have heard of suicide among the youth, Drug addictions, the need

of more councilors for schools, more social workers, epidemic proportions of mental health issues. This law will Open up opportunities for young people to know how good a bed feels after a hard days work. How about the sense of accomplishment and self worth knowing that your contribution made someone's life better after a project is complete. How about the acknowledgement from ones peers that an individual is pulling their weight in life, they are worth having around, they have a purpose in life. These are natural highs that drugs can't replace.

The Senate Work Force Committee was not willing to take the leap of faith to nullify federal law so they passed the bill out of committee with a 6-0 do not pass so the bill was amended on the senate floor to create a study and that passed 44-3. After the vote several senators including the senate majority leader said that they would have supported the bill in its original form. I am offering an amendment to return 2170 back to its original form and I ask this committee to please adopt the amendment and pass the bill.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2170

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 34-07 of the North Dakota Century Code, relating to minors working in construction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 34-07 of the North Dakota Century Code is created and enacted as follows:

Employment of minors in construction.

Notwithstanding federal law to the contrary, a minor who is at least sixteen years of age may be employed or permitted to work in construction work if a permit to do so is signed by the minor's parent or guardian. The labor commissioner shall make the permits for employment available and file a copy of completed permits with the department of labor and human rights."

Renumber accordingly

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2170

Introduced by

Senators Magrum, Elkin

Representatives J. Johnson, Kasper, Koppelman

1 A BILL for an Act to provide for a legislative management study of construction labor laws for
2 minors; for an Act to create and enact a new section to chapter 34-07 of the North Dakota
3 Century Code, relating to minors working in construction.

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 ~~SECTION 1. LEGISLATIVE MANAGEMENT STUDY - CONSTRUCTION LABOR BY~~
6 ~~MINORS.~~ During the 2023-24 interim, the legislative management shall consider studying
7 whether federal labor laws provide any exceptions to the prohibition on minors working in the
8 construction industry which would allow minors in this state to work in the construction industry.
9 The legislative management shall report its findings and recommendations, together with any
10 legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

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16 minor's parent or guardian. The labor commissioner shall make the permits for employment
17 available and file a copy of completed permits with the department of labor and human rights.

March 15, 2023

**House Industry, Business and Labor Committee
Senate Bill 2170**

Good morning Chairman Louser and members of the House Industry, Business and Labor Committee:

My name is Tom Schimelfenig from Bowdon. I am here in support of Senate Bill 2170, which would reduce the minimum age for working in construction. I have been in the construction business for 45 years. My wife and I have raised five children, three boys and two girls. They all helped their father in the business in one way or another. My three sons were with me most of the time, learning the trade.

I feel it is important to get young people involved in this industry. It builds your knowledge and character. We need to get youth away from the video games, as most of them promote sex and violence.

I attended a meeting in Nashville in 2019 on the workforce problem in the onsite wastewater industry. It was stated that 80% of those people will be retiring the next five years. I am one of the 80%. Some of the discussions centered around this age group – how to get them involved and overcome the limitations set by our government. I believe this bill is an excellent step forward for North Dakota. I urge a “do pass” on SB 2170.

Thank you for allowing me to speak, and I will stand for any questions.



WAGE AND HOUR DIVISION
 UNITED STATES DEPARTMENT OF LABOR

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Revised December 2016

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It is an unfortunate fact that children do get injured, even killed, in the workplace. The National Institute for Occupational Safety and Health estimates that 160,000 American children suffer occupational injuries every year—and 54,800 of these injuries are serious enough to warrant emergency room treatment.

Both Federal and State laws govern the employment of young workers and when both are applicable, the law with the stricter standard must be obeyed.

The Federal youth employment provisions **do not**:

- require minors to obtain "working papers" or "work permits," though many States do;
- restrict the number of hours or times of day that workers 16 years of age and older may be employed, though many States do;
- apply where no FLSA employment relationship exists;
- regulate or require such things as breaks, meal periods, or fringe benefits;
- regulate such issues as discrimination, harassment, verbal or physical abuse, or morality, though other Federal and State laws may.

Minimum Age Standards For Employment

The FLSA and the youth employment regulations issued at 29 CFR, Part 570, establish both hours and occupational standards for youth. Children of any age are generally permitted to work for businesses entirely owned by their parents, except those under age 16 may not be employed in mining or manufacturing and no one under 18 may be employed in any occupation the Secretary of Labor has declared to be hazardous.

18 - When youth reaches 18 years of age, he or she is no longer subject to the Federal youth employment provisions.

16 - Basic minimum age for employment. Sixteen- and 17-year-olds may be employed for unlimited hours in any occupation other than those declared hazardous by the Secretary of Labor.

14 - Young persons 14 and 15 years of age may be employed outside school hours in a variety of non-manufacturing and non-hazardous jobs for limited periods of time and under specified conditions.

14 - Children under 14 years of age may not be employed in non-agricultural occupations covered by the FLSA. Permissible employment for such children is limited to work that is exempt from the FLSA (such as delivering newspapers to the consumer and acting). Children may also perform work not covered by the FLSA such as completing minor chores around private homes or casual baby-sitting.

OCCUPATIONS BANNED FOR ALL MINORS UNDER THE AGE OF 18

The Hazardous Occupations Orders (HO)

The FLSA establishes an 18-year minimum age for those nonagricultural occupations that the Secretary of Labor finds and declares to be particularly hazardous for 16- and 17-year-old minors, or detrimental to their health or well-being. In addition, Child Labor Regulation No. 3 also bans 14- and 15-year-olds from performing any work proscribed by the HOs. There are currently 17 HOs which include a partial or total ban on the occupations or industries they cover.

HO 1. Manufacturing or storing explosives—bans minors working where explosives are manufactured or stored, but permits work in retail stores selling ammunition, gun shops, trap and skeet ranges, and police stations.

HO 2. Driving a motor vehicle or work as an outside helper on motor vehicles—bans operating motor vehicles on public roads and working as outside helpers on motor vehicles, except 17-year-olds may drive cars or small trucks during daylight hours for limited times and under strictly limited circumstances (see [Fact Sheet #34](#) in this series for information about on-the-job driving).

HO 3. Coal mining—bans most jobs in coal mining.

HO 4. Occupations in forest fire fighting, forest fire prevention, timber tract, forestry service, and occupations in logging and sawmilling operations—bans most jobs in: forest fire fighting; forest fire prevention that entails extinguishing an actual fire; timber tract management; forestry services; logging; and sawmills.

HO 5. Power-driven woodworking machines—bans the operation of most power-driven woodworking machines, including chain saws, nailing machines, and sanders.*

HO 6. Exposure to radioactive substances and ionizing radiation—bans employment of minors where they are exposed to radioactive materials.

HO 7. Power-driven hoisting apparatus—bans operating, riding on, and assisting in the operation of most power-driven hoisting apparatus such as forklifts, non-automatic elevators, skid-steers, skid-steer loaders, backhoes, manlifts, scissor lifts, cherry pickers, work-assist platforms, boom trucks, and cranes. Does not apply to chair-lifts at ski resorts or electric and pneumatic lifts used to raise cars in garages and gasoline service stations.

HO 8. Power-driven metal-forming, punching and shearing machines—bans the operation of certain power-driven metal-working machines but permits the use of most machine tools.*

HO 9. Mining, other than coal—bans most jobs in mining at metal mines, quarries, aggregate mines, and other mining sites including underground work in mines, work in or about open cut mines, open quarries, and sand and gravel operations.

HO 10. Power-driven meat-processing machines, slaughtering and meat packing plants—bans the operation of power-driven meat processing machines, such as meat slicers, saws and meat choppers, wherever used (including restaurants and messens). Also prohibits minors from cleaning such equipment, including the hand-washing of the disassembled machine parts. This ban also includes the use of this machinery on items other than meat, such as cheese and vegetables. HO 10 also bans most jobs in meat and poultry slaughtering, processing, rendering, and packing establishments.*

HO 11. Power-driven bakery machines—bans the operation of power-driven bakery machines such as vertical dough and batter mixers; dough rollers, rounders, dividers, and sheeters; and cookie or cracker machines. Permits 16- and 17-year-olds to operate certain lightweight small portable counter-top mixers and certain pizza dough rollers.

HO 12. Balers, compactors, and power-driven paper-products machines—bans the operation of all compactors and balers and certain power-driven paper products machines such as platen-type printing presses and envelope die cutting presses. Sixteen- and 17-year-olds may load, but not operate or unload, certain scrap paper balers and paper box compactors under very specific conditions (see [Fact Sheet #57](#)).

HO 13. Manufacturing of brick, tile and related products—bans most jobs in the manufacture of brick, tile and similar products.

HO 14. Power-driven circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs—bans the operation of, and working as a helper on, the named types of power-driven equipment, no matter what kind of items are being cut by the equipment.

HO 15. Wrecking, demolition, and ship-breaking operations—bans most jobs in wrecking, demolition, and ship-breaking operations, but does not apply to remodeling or repair work which is not extensive.

HO 16. Roofing operations and work performed on or about a roof—bans most jobs in roofing operations, including work performed on the ground and removal of the old roof, and all work on or about a roof* (see [Fact Sheet #74](#)).

HO 17. Trenching and excavation operations—bans most jobs in trenching and excavation work, including working in a trench more than four feet deep.

* The regulations provide a limited exemption from HOs 5, 8, 10, 12, 14, 16 and 17 for apprentices and student-learners who are at least 16 years of age and enrolled in approved programs.

The term "operation" as used in HOs 5, 8, 10, 11, 12 and 14 generally includes the tasks of setting up, adjusting, repairing, oiling or cleaning the equipment.

HOURS OF WORK AND PERMITTED OCCUPATIONS FOR 14- AND 15-YEAR-OLDS IN NONAGRICULTURAL EMPLOYMENT

The Federal youth employment provisions limit the times of day, number of hours, and industries and occupations in which 14- and 15-year-olds may be employed.

Child Labor Regulation No. 3, 29 C.F.R. § 570.35, limits the hours and the times of day that 14- and 15-year-olds may work to:

- outside school hours;
- no more than 3 hours on a school day, including Fridays;
- no more than 8 hours on a nonschool day;
- no more than 18 hours during a week when school is in session;
- no more than 40 hours during a week when school is not in session;
- between 7 a.m. and 7 p.m.—except between June 1 and Labor day when the evening hour is extended to 9 p.m.

Child Labor Regulation No. 3, 29 C.F.R. §§ 570.33 lists some of the jobs that 14- and 15-year-olds may not hold. The following is just a sample of prohibited occupations:

- They are prohibited from working in any of the Hazardous Orders or in most occupations involving transportation, construction, warehousing, communications and public utilities.
- They may **not** work in processing, mining, in any workroom or workplace where goods are manufactured or processed, in freezers, or in meat coolers.
- They may not operate or tend any power-driven machinery, except office machines.
- They may not perform any baking operations.
- They may **not** be employed in youth peddling, sign waving, or door-to-door sales activities.
- They may **not** work from ladders, scaffolds, or their substitutes.
- They may **not** be employed to catch or coop poultry.

Child Labor Regulation No. 3, 29 C.F.R. §§ 570.34 lists those jobs that 14- and 15-year-olds may hold. WHAT IS NOT PERMITTED

IS PROHIBITED:

- They may work in most office jobs and retail and food service establishments.
- They may be employed in occupations such as bagging groceries, office work, stocking shelves, and cashiering.
- They may work in intellectual or artistically creative occupations such as teacher, musician, artist, and performer.
- They may perform limited kitchen work involving the preparation of food and beverages.
- They may perform only limited cooking duties (see Fact Sheet #58). They may cook over electric or gas grills that do not involve cooking over an open flame and they may cook with deep fryers that are equipped with and utilize a device that automatically lowers the baskets into the hot oil or grease and automatically raised the baskets from the hot oil or grease.
- They may clean cooking equipment and surfaces (not otherwise prohibited), and filter, transport, and dispose of grease as long as the temperature of the surfaces, containers, and grease do not exceed 100°F.
- Properly certified 15-year-olds may work as lifeguards and swimming instructors at traditional swimming pools and water amusement parks.

Special Provisions Permitting the Employment of 15-year-olds, but not 14-year-olds, as Lifeguards at Traditional Swimming Pools and Water Amusement Parks

Regulations, 29 C.F.R. § 570.34(l) permits the employment of 15-year-olds as lifeguards at traditional swimming pools and water amusement parks when such youth have been trained and certified by the American Red Cross, or a similar certifying organization, in aquatics and water safety. The federal child labor provisions require that a 15-year-old must acquire additional certification if he or she is to be employed as a swim instructor.

Traditional swimming pool means a water-tight structure of concrete, masonry, or other approved materials located either indoors or outdoors, used for bathing or swimming and filled with a filtered and disinfected water supply, together with buildings, appurtenances and equipment used in connection therewith.

A water amusement park means an establishment that not only encompasses the features of a traditional swimming pool, but may also include such additional attractions as wave pools; lazy rivers; specialized activities areas such as baby pools, water falls, and sprinklers; and elevated water slides. Properly certified 15-year-olds would be permitted to be employed as lifeguards at most of these water park features, but not as attendants or dispatchers at the top of elevated water slides.

Not included in the definition of a traditional swimming pool or a water amusement park would be such natural environment swimming facilities as rivers, streams, lakes, reservoirs, wharfs, piers, canals, or oceanside beaches. Lifeguards must be at least 16 years of age to be employed at such natural environment facilities.

For more information about these provisions, please read [Fact Sheet # 60: Application of the Federal Youth Employment Provisions of the Fair Labor Standards Act \(FLSA\) to the Employment of Lifeguards](#).

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**, 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 may be 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. 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 minor is also required to use personal protective equipment to prevent exposure to excessive levels of noise and sawdust (see [Fact Sheet No. 55](#) series for more information about this exemption).

Work Experience and Career Exploration Program (WECEP)

This program is designed to provide a carefully planned work experience and career exploration program for 14- and 15-year-old youths who can benefit from a career-oriented educational program designed to meet the participants' needs, interests and abilities. The program is aimed at helping youths to become reoriented and motivated toward education and to prepare them for the world of work.

State Departments of Education are granted approval to operate a WECEP by the Administrator of the Wage and Hour Division for a 2-year period. Certain provisions of CL Reg. 3 are modified for 14- and 15-year-old participants during the school term.

- They may work during school hours.
- They may work up to 3 hours on a school day; and as many as 23 hours in a school week.
- They also may work in some occupations that would otherwise be prohibited under a variance issued by the Administrator, but they may not work in manufacturing, mining or any of the 17 Hazardous Occupations.

Work-Study Programs (WSP)

Some of the provisions of Child Labor Regulation No. 3 are varied for 14- and 15-year-old participants in approved school-administered WSPs. A WSP participant must be 14 or 15 years of age, enrolled in a college preparatory curriculum, and be identified by authoritative personnel from his or her school as being able to benefit from a work-study program.

Employment of participants in WSPs shall be confined to not more than 18 hours in any one week when school is in session, a portion of which may be during school hours in accordance with the following formula that is based upon a continuous four-week cycle:

- In three of the four weeks, the participant is permitted to work during school hours on only one day per week, and for no more than for eight hours on that day.
- During the remaining week of the four-week cycle, the participant is permitted to work during school hours on no more than two days, and for no more than for eight hours on each of those two days.

The employment of WSP participants is still subject to the time of day and number of hours standards contained in 29 C.F.R. §§ 570.35(a)(2), (a)(3), (a)(4), and (a)(6). The superintendent of the public or private school system wishing to supervise and administer a WSP as discussed in this section must first receive permission from the Administrator of the Wage and Hour Division.

Enforcement and Penalties

Investigators of the Wage and Hour Division who are stationed across the U.S. enforce the youth employment provisions of the FLSA. As the Secretary of Labor's representatives, they have the authority to conduct investigations and gather data on wages, hours, and other employment conditions or practices in order to assess compliance with all the provisions of the FLSA.

An employer that violates the youth employment provisions may be subject to civil money penalties (CMPs). The amount of the CMP assessment, which may not exceed a cap set by statute, depends upon the application of statutory and regulatory factors to the specific circumstances of the case.

As a general matter, child labor CMP assessments will be higher if the violation contributed to the injury or death of the youth involved in the violation. The severity of any such injury will be taken into account in determining the amount of a CMP.

- CMP assessments may be decreased based on the size of the business.
- CMP assessments will reflect the gravity of the violation and may be doubled if the violation is determined to be willful or repeated.

A CMP assessment for a violation that causes the death or serious injury of a minor is subject to a higher statutory cap.

- An injury qualifies as a “serious injury” for this purpose if it involves permanent or substantial harm. Both the significance of the injury and the duration of recovery are relevant in determining whether an injury is serious.
- If more than one violation caused a single death or serious injury, more than one CMP may be assessed.
- CMP assessments based on the death or serious injury of a minor may be doubled up to a higher statutory cap if the violation is determined to be willful or repeated.

For current maximum CMP amounts, please visit <https://www.dol.gov/agencies/whd/flsa>.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.dol.gov/agencies/whd> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).



This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

A BILL for an Act to create and enact a new section to chapter 34-07 of the North Dakota Century Code, relating to minors working in construction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 34-07 of the North Dakota Century Code is created and enacted as follows:

Employment of minors in hazardous locations.

A minor who is at least sixteen years of age may be employed or permitted to work in a hazardous occupation as a registered apprentice in a registered apprenticeship program or as a student learner of an approved career and technical education program. A parental signature is required for a minor to participate in an apprenticeship or a career and technical education program. This section shall not limit the ability of minors who are at least sixteen years of age to work as already permitted by law.

Legislative Management Study

The legislative management shall consider studying the desirability of creating a state office of apprenticeship under the supervision of the department of career and technical education. The study shall include the advantages and disadvantages of creating such an office in comparison to leaving apprenticeship solely under the control of the federal department of labor. The study shall identify areas in which the state may exercise more control over the federal labor law provisions to provide more flexibility as it applies to minors over the age of sixteen. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

23.0285.03002
Title.

Prepared by the Legislative Council staff for
Representative Koppelman
April 11, 2023

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2170

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 34-07 of the North Dakota Century Code, relating to minors working in hazardous occupations; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 34-07 of the North Dakota Century Code is created and enacted as follows:

Minors working in hazardous occupations.

A minor who is at least sixteen years of age may be employed or permitted to work in a hazardous occupation if the minor is in a registered apprenticeship program or is a student learner of an approved career and technical education program. Under this section, a parental signature is required for the minor to participate in the apprenticeship or technical education program. This section does not limit the ability of a minor who is at least sixteen years of age to work in an occupation already permitted by law.

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - STATE OFFICE OF APPRENTICESHIP. During the 2023-24 interim, the legislative management shall consider studying the feasibility and desirability of creating a state office of apprenticeship under the supervision of the department of career and technical education. The study must include consideration of the advantages and disadvantages of creating the office in comparison to apprenticeships remaining solely under the control of the federal department of labor. The study must identify areas in which the state may exercise more control over the federal labor law to provide more flexibility as it applies to minors at least sixteen years of age. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

23.0285.03002

FIRST ENGROSSMENT

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2170

Introduced by

Senators Magrum, Elkin

Representatives J. Johnson, Kasper, Koppelman

1 A BILL ~~for an Act to provide for a legislative management study of construction labor laws for~~
2 ~~minors.~~for an Act to create and enact a new section to chapter 34-07 of the North Dakota
3 Century Code, relating to minors working in hazardous occupations; and to provide for a
4 legislative management study.

5 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

6 ~~SECTION 1. LEGISLATIVE MANAGEMENT STUDY - CONSTRUCTION LABOR BY~~
7 ~~MINORS.~~ During the 2023-24 interim, the legislative management shall consider studying
8 whether federal labor laws provide any exceptions to the prohibition on minors working in the
9 construction industry which would allow minors in this state to work in the construction industry.
10 The legislative management shall report its findings and recommendations, together with any
11 legislation required to implement the recommendations, to the sixty-ninth legislative assembly.

12 SECTION 1. A new section to chapter 34-07 of the North Dakota Century Code is created
13 and enacted as follows:

14 Minors working in hazardous occupations.

15 A minor who is at least sixteen years of age may be employed or permitted to work in a
16 hazardous occupation if the minor is in a registered apprenticeship program or is a student
17 learner of an approved career and technical education program. Under this section, a parental
18 signature is required for the minor to participate in the apprenticeship or technical education
19 program. This section does not limit the ability of a minor who is at least sixteen years of age to
20 work in an occupation already permitted by law.

21 SECTION 2. LEGISLATIVE MANAGEMENT STUDY - STATE OFFICE OF
22 APPRENTICESHIP. During the 2023-24 interim, the legislative management shall consider
23 studying the feasibility and desirability of creating a state office of apprenticeship under the
24 supervision of the department of career and technical education. The study must include

1 consideration of the advantages and disadvantages of creating the office in comparison to
2 apprenticeships remaining solely under the control of the federal department of labor. The study
3 must identify areas in which the state may exercise more control over the federal labor law to
4 provide more flexibility as it applies to minors at least sixteen years of age. The legislative
5 management shall report its findings and recommendations, together with any legislation
6 required to implement the recommendations, to the sixty-ninth legislative assembly.

23.0285.03003
Title.04000

Prepared by the Legislative Council staff for
House Industry, Business and Labor
Committee

April 12, 2023

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2170

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 34-07 of the North Dakota Century Code, relating to minors working in hazardous occupations; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 34-07 of the North Dakota Century Code is created and enacted as follows:

Minors working in hazardous occupations.

A minor who is at least sixteen years of age may be employed or permitted to work in a hazardous occupation if the minor is in a registered apprenticeship program or is a student learner of an approved career and technical education program. Under this section, a parental signature is required for the minor to participate as an apprentice or student learner. This section does not limit the ability of a minor who is at least sixteen years of age to work in an occupation already permitted by law.

SECTION 2. LEGISLATIVE MANAGEMENT STUDY - STATE OFFICE OF APPRENTICESHIP. During the 2023-24 interim, the legislative management shall consider studying the feasibility and desirability of creating a state office of apprenticeship under the supervision of the department of career and technical education. The study must include consideration of the advantages and disadvantages of creating the office in comparison to apprenticeships remaining solely under the control of the federal department of labor. The study must identify areas in which the state may exercise more control over the federal labor law to provide more flexibility as it applies to minors at least sixteen years of age. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

Dutton, Barry - ETA

From: Wobbema, Michael <mwobbema@ndlegis.gov>
Sent: Friday, April 21, 2023 9:39 AM
To: Dutton, Barry - ETA
Subject: RE: Bill SB 2170

CAUTION: This email originated from outside of the Department of Labor. Do not click (select) links or open attachments unless you recognize the sender and know the content is safe. Report suspicious emails through the "Report Phishing" button on your email toolbar.

Mr. Dutton,

The Conference Committee for SB 2170 will be this afternoon at 2:00 pm in the Fort Lincoln room. Please be prepared to assist us in understanding where we have missed the target as you mentioned in your email.

Thank you.

Mike

Michael A. Wobbema
 Colonel, US Air Force, Retired
 Senator, North Dakota District 24
 Chairman, Workforce Development Committee
 Education Committee
mwobbema@ndlegis.gov / 701-595-1579

Let love be genuine. Abhor what is evil; hold fast to what is good. – The Apostle Paul
 Romans 12:9 ESV

“To each their comes in their lifetime a special moment when they are figuratively tapped on the shoulder and offered the chance to do a very special thing, unique to them and fitted to their talents. What a tragedy if that moment finds them unprepared or unqualified for that which could have been their finest hour.” – Winston Churchill

From: Dutton, Barry - ETA <Dutton.Barry@dol.gov>
Sent: Monday, April 17, 2023 12:20 PM
To: Wobbema, Michael <mwobbema@ndlegis.gov>; Axtman, Michelle <maxtman@ndlegis.gov>
Subject: Bill SB 2170

Senators,

As you can see by my signature line, I am the State Director of Apprenticeship for the U. S. Department of Labor. I have been in this position for over 17 years and am the only individual in the State of ND authorized to develop and register apprenticeship programs for Federal recognition. My job is to ensure the welfare of apprentices as well as employers by ensuring they follow FLSA, EEO and Affirmative Action provisions.

Our federal region is composed of the following states: ND, SD, WY, CO, OK, AR, UT, and Texas we are also responsible for LA, MT, and NM.

I was recently alerted to testimony on SB 2170 which I found startling. Some testimony was anti-government, some emotional, some exaggerated, and lots of conjecture and incorrect information. Very few individuals that testified in favor of this bill understood apprenticeship or what can and cannot be done by youth on construction sites. They also do not understand the ramifications of placing 16-year-olds on construction sites.

I heard testimony that other states have similar laws that have been proposed. I do not know of any State that has tried to “nullify” Federal law or “nullify” the laws and regulations that OSHA is tasked with enforcing. The FLSA has been in effect since 1938.

I am in favor of allowing youth to work and learn the construction field as that is what I have done my entire life(except for military service and deployments) I worked construction from the time I was 17 until 33. At 33 I became a Firefighter in Bismarck and rose to the rank of Captain within 4 years through a Registered Apprenticeship program. So, I understand the value of apprenticeship.

It seems no one in the State bothers to consult my office before trying to craft legislation on apprenticeship. They will call me afterwards and when they find out the information, they have related to others is incorrect. Somehow, I become the “bad guy” and it’s the “Federal Governments” fault.

The United States passed child labor laws under FLSA in 1938 to ensure that when youth worked on jobs, they were safe and didn’t jeopardize their health or well-being. The FLSA also provides limited exceptions.

If companies want Youth to work on their jobs, they must develop strong mentorship programs and well thought training programs to development these youth, this is the reason for Registered Apprenticeship. These youth can do a lot more than employers think they can, but the employers must develop programs which comply with Federal law. Most now are just concerned about the bottom line and not being able to find workers. Placing youth on construction sites without a well thought out training program, and dedicated mentors will not solve North Dakotas workforce challenges.

I have attached the links to the U. S. Department of Labors Wage and Hour Division which had guidance on Youth employment and the law. [Child Labor | U.S. Department of Labor \(dol.gov\)](https://www.dol.gov/eis/whd/child-labor) I have also attached a highlighted copy of Child Labor Bulletin No. 101 and if you take notice of pages 24 and 25, I believe you will get the answers you need for reviewing this bill.

Also, if the state is interested in developing a State Apprenticeship Council, I have the attached 29 CFR 29 and specifically highlighted section 29.13 which lays out the entire process for becoming a Sate Apprenticeship Agency. Even if the State was to become a SAA, they (ND) will still have to follow FLSA regulations. (Page 64431)

I don’t know why the sate would expend monies in a study of this process as it’s already laid out in our regulations. It would be a waste of taxpayer’s money. The State already has my office which is charged with developing, monitoring, and providing technical assistance for Registered apprenticeship. Federal Apprenticeship opens the doors to Federal monies in the way or grants, funding through Job Service and Veterans benefits to apprentices through the VA.

William B. Dutton, ND State Director
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dutton.barry@dol.gov

“Audentes Fortuna Juvat”