



# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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## Minor Labor Laws

Both state and federal law govern the employment of minors, and an employer or minor employee may be subject to one or both laws. With limited exceptions, a minor cannot work in any nonagricultural employment declared hazardous or detrimental to the minor’s health and well-being. If both laws apply but differ on an issue, the law more protective of the minor controls.

Ohio law generally prohibits, with some exceptions, an employer from employing a minor without a work permit. Federal and Ohio law impose additional requirements with respect to work breaks, work hours, wages, recordkeeping, and door-to-door sales. Whether the requirements apply depends on a minor’s age. An employer that violates minor labor standards may be subject to civil and criminal penalties.

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Both federal and state law govern the employment of minors. The federal Fair Labor Standards Act<sup>1</sup> (FLSA) generally sets the wage, hours of work, and safety requirements for minors working for employers covered by it. It prohibits employers from using “oppressive child labor” in commerce. With some exceptions, “oppressive child labor” means employing a minor (1) under age 16 in any occupation or (2) under age 18 in a “hazardous occupation.” The U.S. Department of Labor (USDOL), which administers and enforces the FLSA, has issued

<sup>1</sup> 29 United States Code (U.S.C.) 201 *et seq.*

“hazardous occupation orders” through which it has determined certain nonfarm employment is hazardous and not permitted for minors.<sup>2</sup>

Ohio’s Minor Labor Law<sup>3</sup> also sets minor labor standards and prohibits minor employment in any occupation that the Director of Commerce, who enforces the Law, determines is hazardous or detrimental to the health and well-being of minors under rules the Director adopts. In adopting the rules, the Director must consider USDOL’s hazardous occupation orders.<sup>4</sup>

If both federal and state law apply but differ on an issue regarding minor employment, whichever law is more protective of the minor controls.<sup>5</sup>

## Minimum age requirements

With limited exceptions, minors younger than 14 cannot be employed. While the FLSA establishes a minimum age of 16 for nonagricultural employment, USDOL may establish a list of occupations, other than mining and manufacturing, that do not constitute “oppressive child labor” for 14- or 15-year-olds if the occupations do not interfere with a minor’s schooling or health and well-being. No minor, regardless of age, can be employed in a hazardous occupation unless an exemption applies.<sup>6</sup>

## Hazardous occupations

A minor may not work in any nonagricultural employment declared particularly hazardous or detrimental to a minor’s health or well-being under USDOL’s hazardous occupation orders and the Director’s rules. Because the Director must consider the federal orders in adopting the rules, prohibitions under federal and Ohio law largely overlap. To the extent the laws differ, the law that imposes the greater protections prevails.<sup>7</sup>

Hazardous occupation orders generally apply on an (1) industry basis, specifying prohibited occupations in a particular industry, or (2) occupational basis, regardless of the industry. Some orders contain limited exemptions that permit apprentices and student learners to perform work otherwise prohibited (see “**Exemptions**,” below).<sup>8</sup> The activities prohibited under the hazardous occupation orders are:

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<sup>2</sup> 29 U.S.C. 203(l) and 212(c) and 29 Code of Federal Regulations (C.F.R.) 570.51 to 570.68.

<sup>3</sup> R.C. Chapter 4109.

<sup>4</sup> R.C. 4109.05.

<sup>5</sup> 29 U.S.C. 218.

<sup>6</sup> 29 U.S.C. 203(l), 29 C.F.R. 570.119 and 570.31, and R.C. 4109.05.

<sup>7</sup> 29 U.S.C. 203(l) and 218, 29 C.F.R. 570.50, R.C. 4109.05, and Ohio Administrative Code (O.A.C.) Chapter 4101:9-2.

<sup>8</sup> See 75 Federal Register 28404, <https://www.govinfo.gov/content/pkg/FR-2010-05-20/pdf/2010-11434.pdf>.

### Activities and Occupations Covered by Hazardous Occupation Orders

- Manufacturing or storing explosives
- Driving a motor vehicle or work as an outside helper on motor vehicles
- Coal mining and mining, other than coal
- Occupations in forest fire fighting, forest fire prevention, timber tract, forestry service, and occupations in logging and sawmilling operations
- Power driven woodworking machines\*
- Exposure to radioactive substances and ionizing radiation
- Power driven hoisting apparatus
- Power driven metal-forming, punching, and shearing machines\*
- Power driven bakery machines
- Power driven meat-processing machines, slaughtering, and meat packing\*
- Balers, compactors, and power driven paper products machines\*
- Power driven circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs\*
- Manufacturing of brick, tile, and related products
- Wrecking, demolition, and ship-breaking operations
- Excavating\*
- Roofing operations and work performed on or about a roof\*

\*These occupations have limited apprentice and student learner exemptions.

USDOL's *Field Operations Handbook* provides a detailed description of the occupations, processes, and power driven machines that are prohibited for minors.<sup>9</sup> Ohio specifies occupations prohibited for minors that are in addition to those prohibited under the FLSA, such as occupations in or about a railroad.<sup>10</sup>

### Exemptions

Under the FLSA, a minor classified as an apprentice or student learner (a student enrolled in a vocational program) is exempt from the federal ban on engaging in certain hazardous activities if requirements are met. To be exempt, the hazardous work performed must be (1) incidental to the apprentice's or student learner's training, (2) intermittent and for short periods of time, and (3) under an experienced person's direct and close supervision. For student

<sup>9</sup> U.S. Department of Labor, *Field Operations Handbook – Chapter 33*, [https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH\\_Ch33.pdf](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch33.pdf).

<sup>10</sup> O.A.C. 4101:9-2-19 and Ohio Department of Commerce, *State of Ohio Minor Labor Laws*, [https://www.com.ohio.gov/documents/laws\\_mllposter.pdf](https://www.com.ohio.gov/documents/laws_mllposter.pdf).

learners, safety instructions also must be given and a schedule of organized and progressive work processes must be prepared.<sup>11</sup>

In Ohio, a student participating in a career-technical or science, technology, engineering, and mathematics (STEM) program approved by the Ohio Department of Education may engage in occupations otherwise considered hazardous in the Director's rules.<sup>12</sup>

While Ohio does not appear to have an apprentice exemption, there is an exemption for preapprenticeship programs. Those programs teach basic technical and job readiness skills for certain apprentice occupations to prepare students for a formal registered apprenticeship program. Students participating in eligible classes through the College Credit Plus Program that include a state-recognized preapprenticeship program that imparts the skills and knowledge needed for successful participation in a registered apprenticeship occupation course are also exempt.<sup>13</sup>

Ohio law also provides various exceptions to some, but not all, of the hazardous occupations specified in the Director's rules. These are generally applied to specific types of work or machines, rather than being based on a minor participating in an apprenticeship program or as a student learner.<sup>14</sup> To the extent that Ohio law allows a student to participate in activities that federal law does not, federal law controls.

## Ohio's work permit requirement

With certain exceptions, a minor in Ohio who is of compulsory school age (under age 18) may not be employed by an employer unless the minor presents a proper work permit.<sup>15</sup> Only the superintendent of the school district where the minor resides, or the chief administrative officer of a nonpublic or community school the minor attends, may issue a permit. To issue it, a superintendent or officer must have proof an individual is at least 14 and have received and approved specified papers relating to the individual's age, physical fitness, school record, and information on the employment and use of the work permit.<sup>16</sup>

A 16- or 17-year-old may work during summer vacation without a work permit if the employment is not otherwise prohibited. A work permit is not required in industries where minor labor is common, including snow shoveling, newspaper delivery, or family farm work. A minor does not have to obtain a work permit if the minor has received a high school diploma or the equivalent. Additional exceptions may apply.<sup>17</sup>

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<sup>11</sup> 29 C.F.R. 570.50, 570.55, 570.59, 570.61, 570.63, 570.65, 570.67, and 570.68.

<sup>12</sup> R.C. 4109.06(A).

<sup>13</sup> R.C. 4109.06(A) and Ohio Department of Education, *Apprentices and Internships*, <http://education.ohio.gov/Topics/Career-Tech/Apprenticeships-and-Internships>.

<sup>14</sup> O.A.C. 4101:9-2-04 to 4101:9-2-06, 4101:9-2-08, 4101:9-2-10 to 4101:9-2-17, and 4101:9-2-20 to 4101:9-2-22.

<sup>15</sup> R.C. 4109.02(A) and 3331.01.

<sup>16</sup> R.C. 3331.01 and 3331.02.

<sup>17</sup> R.C. 4109.02 and 4109.06.

Although the FLSA does not require an employer to obtain a work permit, if an employer has an Ohio work permit on file for a minor, that minor's employment is not considered oppressive child labor under the FLSA.<sup>18</sup>

## Hours of work

With limited exceptions, a 14- or 15-year-old cannot work during school hours. Generally, such a minor may work the following hours depending on whether school is in session:

School in Session?	Maximum Hours Per Day or Week	Times Permitted to Work <sup>19</sup>
Yes	3 hours per day or 18 hours per week	Between 7:00 a.m. and 7:00 p.m.
No	8 hours per day or 40 hours per week	Between 7:00 a.m. and 7:00 p.m., except may work until 9:00 p.m. between June 1 and September 1

For a 16- or 17-year-old who must attend school, Ohio limits the minor's work hours to between 7:00 a.m. and, on a night that precedes a school day, 11:00 p.m. Unless employed after 8:00 p.m. the previous night, the minor may begin work after 6:00 a.m.<sup>20</sup>

## Wages

If a minor's employer is subject to both federal and Ohio minimum wage laws, and the minor is 16 or 17, the employer must pay the minor at least the higher minimum wage between the two laws (currently, Ohio's is higher). If the minor is under 16, the employer must pay the minor at least the federal minimum wage. The FLSA allows an employer to pay an employee under 20 for the first 90 consecutive calendar days, beginning the first work day, a minimum wage of \$4.25 per hour. After that, the minor must be paid at least the federal minimum wage.<sup>21</sup>

Ohio law requires an employer to provide a written agreement to a minor of the minor's wages and, on or before each payday, with an earnings statement. An employer cannot reduce the minor's wages without giving the minor notice at least 24 hours before the reduction, at which time the employer must enter into another written agreement. An employer may not withhold a minor's wages agreed on for the minor's presumed negligence or failure to comply

<sup>18</sup> 29 U.S.C. 203 and 29 C.F.R. 570.5 and 570.9.

<sup>19</sup> 29 C.F.R. 570.35 and R.C. 4109.07.

<sup>20</sup> R.C. 4109.07, by reference to R.C. Chapter 3321.

<sup>21</sup> 29 U.S.C. 206; Ohio Constitution, Article II, Section 34a; R.C. Chapter 4111; U.S. Department of Labor, *Fact Sheet #32: Youth Minimum Wage – Fair Labor Standards Act*, <https://www.dol.gov/whd/regs/compliance/whdfs32.pdf>; U.S. Department of Labor, *Employee Rights under the Fair Labor Standards Act*, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/minwage.pdf>; and Ohio Department of Commerce, *State of Ohio 2020 Minimum Wage*, [https://www.com.ohio.gov/documents/dico\\_2020MinimumWageposter.pdf](https://www.com.ohio.gov/documents/dico_2020MinimumWageposter.pdf).

with rules, machinery breakage, or alleged incompetence to produce work or perform labor according to any standard of merit.<sup>22</sup>

## Other Ohio law requirements

Ohio's Minor Labor Law also imposes the following requirements and prohibitions:

- **Work breaks:** An employer must give a minor at least a 30-minute break after five consecutive hours of work (the break does not need to be included in computing the minor's hours worked).
- **Security prohibited:** An employer cannot require a minor employee to obtain a form of security to obtain employment or ensure faithful performance of labor, guarantee strict rule observance, or make good losses that may be due to the minor's incompetence, negligence, or inability.
- **Records:** An employer must keep for two years written records of each minor employee's name, address, occupation, hours worked and schedule each day, and wages paid (the employer must make those records available to the Director on request).
- **Door-to-door sales:** An employer employing a minor in any door-to-door sales activity must obtain registration from the Director and is subject to certain other requirements.<sup>23</sup>

## Penalties

### Ohio law

In addition to compensation and benefits available under Ohio's Workers' Compensation Law,<sup>24</sup> a minor may receive an additional award up to 50% of the maximum award allowed by the Law for an injury or death suffered or occupational disease contracted while performing a prohibited activity in the course of and rising out of the minor's employment. The employer pays the award through an increase in the employer's workers' compensation premium or directly if the employer is permitted to do so.<sup>25</sup>

Violating Ohio's minor labor standards also may result in criminal penalties. For example, employing a minor in a hazardous occupation is a third degree misdemeanor.<sup>26</sup>

### Federal law

An employer that violates the FLSA's minor labor standards may be subject to a civil fine for each minor employee who was the subject of the violation. If the violation causes the minor's death or serious injury, the employer is subject to a higher civil penalty, which may be doubled if

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<sup>22</sup> R.C. 4109.10(A) and (B).

<sup>23</sup> R.C. 4109.07(C), 4109.10(C), 4109.11, and 4109.21.

<sup>24</sup> R.C. Chapter 4121, 4123, 4127, and 4131.

<sup>25</sup> Ohio Constitution, Article II, Section 35; R.C. 4123.89; and *State ex rel. Kantor Corp. v. Stringer*, 67 Ohio St.2d 8, 13 (1981) (holding that, due to a constitutional limitation, the award is capped at 50%).

<sup>26</sup> R.C. 4109.99.

the violation is repeated or willful. The penalty amount may be adjusted based on the employer's size and the gravity of the violation.

Further, an employer that willfully violates federal minor labor standards may be subject to a tiered criminal penalty based on the number of convictions. In addition, USDOL may seek an injunction to restrain violations of the FLSA's minor labor standards.<sup>27</sup>

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<sup>27</sup> 29 U.S.C. 212, 215, 216(a) and (e), and 217; 29 C.F.R. 570.140, 570.142, and 579.1; and Public Law 114-74, sec. 701.