

10 Tips for Hiring Minors this Summer

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It's that time again, when employers are considering hiring minors for the summer—in camps, restaurants, resorts, swimming pools, and anywhere else business picks up in the warm weather months. There are strict laws pertaining to hiring minors.



The child labor provisions of the Fair Labor Standards Act (FLSA) prohibit employers from hiring minors (individuals under the age of 18) to work at dangerous occupations, for an excessive number of hours, and at unsuitable times of the day or night. States also have child labor laws and when state and federal laws differ, the stricter law applies.

Child Labor Laws Are Strict and Detailed

There are separate rules for minors under 18, under 16, and under 14 years of age, both on the number of hours and times of the day and year they may work, as well as the types of work that they are allowed to perform. In addition, there are rules on proof of age, minors driving motor vehicles, minimum wage rates, children working in agriculture, and work under federal contracts.

Severe penalties may be imposed on employers that violate child labor laws. In addition, employers are prohibited from retaliating or otherwise discriminating against an employee who files a complaint or participates in a legal proceeding under the Act.

Do You Need to Pay Your Summer Employees—Or Are They Interns?

Springtime every year, employers begin thinking about hiring summer interns. And the question arises—do we have to pay our interns? Particularly in times when employers have decreased their hiring numbers, summer interns are an attractive option at little or no pay.

Interns cost much less than new hires and employers don't have to provide interns with benefits. But, the U.S. Department of Labor's (DOL) intern test is strict and hard to pass. If you don't pass it, then your interns are actually employees and you have to pay them.

According to the DOL, if all of the following six factors are met, an employment relationship does not exist between an intern and the company that sponsors the participant. In such a case, it may be considered an unpaid internship:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training that would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern, and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If no employment relationship exists, the participants are not subject to the FLSA, and no intern pay is due.

10 Tips to Remember When Hiring Minors This Summer

Here are some tips for handling your summer hires:

- Understand and comply with both federal and state child labor laws and occupational safety and health regulations that apply to your business. Employers must check state law and federal law and comply with the more restrictive law.
- Stress safety, particularly among first-line supervisors who have the greatest opportunity to influence teens and their work habits. Work with supervisors and experienced workers to develop an injury and illness prevention program. Train adolescent workers to recognize hazards and use safe work practices.
- Assess and eliminate hazards for adolescent workers, such as:
 - Driving a car or truck
 - Operating tractors or other heavy equipment
 - Using power tools
- Employers are responsible for verifying the age of their minor employees. Age certificates do not give employers authority to violate any child labor laws. Employers must determine a minor's age and set his or her job duties and work schedules accordingly and carefully. Also, employers must file the minor employee's age certificate, keeping it for as long as the minor is employed.
- Unless employers are absolutely certain that they are not engaged in interstate commerce, they should assume that they are.
- Internships in the for-profit, private sector will most often be viewed as employment by the federal DOL, unless the test described above is met. Interns who qualify as employees rather than trainees typically must be paid at least the minimum wage and overtime compensation for hours worked over 40 in a workweek.

- Remember, the federal child labor laws limit the hours and the times of day that minors age 14 and 15 may work. Minors 14 and 15 years of age may be employed outside school hours in a variety of nonmanufacturing and nonhazardous jobs for limited periods of time and under specified conditions. Minors aged 16 and 17 may be employed for unlimited hours in any occupation other than those declared hazardous by the Secretary of Labor.
- Child labor regulations limit the hours and the times of day that minors age 14 and 15 may work to:
 - Outside school hours;
 - 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.
- Children under age 14 may not be employed in nonagricultural 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.
- Minors age 15 may work 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.

For additional inquiries on minor hiring, please contact your Human Resources Business Partner (HRBP) at 210.495.1171 or HR@eESlpeo.com.