

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

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2002 JUL 19 A 10:59

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY: WV Code 21-6-11

RULE TYPE: PROCEDURAL _____ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 9

TITLE OF RULE BEING AMENDED: Child Labor

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS August 1, 2002



SCANNED

WEST VIRGINIA DIVISION OF LABOR

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BOB WISE
Governor



JAMES R. LEWIS
Commissioner

Public Comments Received

There were no public comments received relative to this Rule.

Amendments

One minor amendment was made to the original proposed rule. In subsection 7.1, Hazardous occupations, item (r) was added which generally prohibits 14 and 15 year old children from employment in the construction trades. This change was necessary to bring the rule into conformity with Federal law.

**TITLE 42
INTERPRETIVE RULE
DIVISION OF LABOR**

**SERIES 9
CHILD LABOR**

FILED

2002 JUL 19 A 11: 00

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§42-9-1. General.

- 1.1. Scope. -- This interpretive rule relates to W. Va. Code §21-6 et seq. -- Child Labor Law.
- 1.2. Authority. -- W. Va. Code §21-6-11.
- 1.3. Filing Date. -- July 19, 2002
- 1.4. Effective Date. -- August 1, 2002
- 1.5. Repeal and replace 42 CSR 9 which was effective on April 14, 1975.

§42-9-2. General Requirements.

- 2.1. Work permits must be obtained for minors aged fourteen (14) through fifteen (15) before they can be legally employed. Work permits allow a minor to work between the hours of seven a.m. and seven p.m., but not during school hours, nor for more than eight (8) hours on a non-school day, nor for more than forty (40) hours in a non-school week.
- 2.2. Age certificates can be required of minors aged sixteen (16) through seventeen (17) before they may be employed.
- 2.3. Permits and certificates may be obtained from the County Board of Education in the county in which the minor resides. A written promise of intent to employ and certified birth certificate are required for both work permits and age certificates. The minor in question, or the applicant, must personally present both to the county board office.

§42-9-3. No Permit Or Certificate Necessary.

Minors of any age may be legally employed without a work permit or age certificate in the following occupations:

- (a) Agriculture and horticulture activities which have not been declared hazardous by the secretary of the United States department of labor;
- (b) Domestic services within the residence of the employer;
- (c) Work for parents or legal guardian in their solely owned business, except those jobs defined in section two, article six, chapter twenty-one [§21-6-2 et seq.] of the Code of W. Va.;
- (d) As actors or performers in motion pictures, theatrical, radio or television productions; and
- (e) Newspaper delivery directly to the consumer.

§42-9-4. Minors Aged Fourteen (14) Through Fifteen (15).

4.1. Work permits. Minors aged fourteen (14) through fifteen (15) must obtain a work permit before they can be legally employed. A three (3) part application for said permit may be obtained from the local County Board of Education or the West Virginia Division of Labor. Part A, an intent to employ, must be filled out by the employer. Part B is to be signed by the parent or guardian. Part C is to be completed by the local school principal, counselor or teacher. Upon completion of this application, the applicant or minor seeking employment, must take the application and his/her certified birth certificate to the local board office. Physical examinations are not required by the West Virginia Division of Labor; however, they may be required by the employer or the County Superintendent of Schools. Parents and applicants should ask about local requirements. Work permit to minor under fourteen (14). Work permits are not generally issued to anyone under age fourteen (14). The only exception would be minors working in the school during school hours. The Division of Labor must give its approval in each individual case.

4.2. Supervision permits. Minors aged fourteen (14) through fifteen (15) may not be employed during school hours on the days when school is in session. Otherwise, they may be employed between the hours of seven a.m. and seven p.m., not to exceed eight (8) hours on a non-school day nor forty (40) hours in a non-school week.

4.3. To meet special circumstances, the Commissioner of Labor has the authority to issue supervision permits allowing minors aged fourteen (14) through fifteen (15) to work until eleven p.m. Supervision permits may be obtained only from the West Virginia Department Division of Labor. The applicant, or the minor seeking employment, must make application directly to the commissioner of labor and provide all information required by the commissioner. The permissible hours of work will then be stated on the supervision permit. A new supervision permit must be obtained for each and every job.

4.4. Blanket work permit. -- A blanket work permit may be obtained when twenty-five or more minors are employed for a short term (ninety (90) days or less), and separate work permits would be unwieldy and time consuming. Blanket work permits may be obtained only from the Commissioner of Labor and must be filled out by the employer. Required information consists of:

(a) A letter from the employer stating his/her familiarity with the Child Labor Law and intent to abide by this law; and

(b) A list containing the names, birth-dates, ages and job classifications of each minor.

This information must be sent to the Commissioner of Labor. The listed minors shall not be employed until this permit is received and acknowledged by the Commissioner. The employer will receive a letter of acknowledgement from the Commissioner of Labor, and must keep said acknowledgement on file for as long as these minors are in his/her employ.

4.5. Lifeguards. -- Minors may be employed as a lifeguard: Provided, That he or she has completed a senior lifesaving course conducted by a qualified association such as the Red Cross: And further provided, That he or she has completed the ninth grade or reached the age of fifteen (15). Work permits, or supervision permits, are further required as applicable.

4.6. Work prohibited. -- Fourteen (14) and fifteen (15) year old minors may not be employed in any occupation defined in section two, article six, chapter twenty-one [§21-6-2] of the Code of W.Va. or other occupation deemed hazardous by the commissioner of labor.

§42-9-5. Minors Aged Sixteen (16) And Seventeen (17).

5.1. Age certificates. -- All minors aged sixteen (16) and seventeen (17) employed in any gainful occupation, can be required to have an age certificate. The West Virginia Division of Labor does not require age certificates as a condition of legal employment of minors aged sixteen (16) and seventeen (17). Age certificates are recommended, however, to ensure the full rights of both employers and employees under the West Virginia Workers' Compensation Law. Minors aged sixteen (16) and seventeen (17) need only present a certified birth certificate and a promise of employment in order to obtain an age certificate. These certificates may be obtained at the County Board of Education in the county in which the minor resides.

5.2. Work prohibited. -- Children under the age of eighteen (18) years shall not be employed in any occupation defined in section two, article six, chapter twenty-one [§21-6-2] of the Code of W. Va.

§42-9-6. Volunteer Fire Activities.

6.1. Under no circumstances can any minor under age sixteen (16) participate in any fire activities.

6.2. Volunteer fire departments.

(a) Minors aged sixteen (16) and seventeen (17) who have successfully completed the minimum training requirements of the West Virginia University fire service extension firefighting training section one, or its equivalent, and who has the written consent of his or her parents or guardian may engage in limited fire-fighting activities: Provided, That such minors are under the direct supervision and control of trained and qualified fire protection personnel. Written permission of the minor's parent or guardian is required, and this written permission must be kept on file as long as the minor's name appears on the volunteer fire department's roster as a potential minor volunteer.

(b) No sixteen (16) or seventeen (17) year old minor shall be permitted to:

(1) Drive any fire apparatus, ambulance or other official fire vehicle; and/or operate red lights, siren or an audible signal in responding to an alarm on their own personal vehicles or any other vehicle;

(2) Operate an aerial ladder, aerial platform or hydraulic jack at a fire scene;

(3) Use rubber electrical gloves, insulated wire gloves, insulated wire cutters, life nets, acetylene cutting units, K-12 power saws, air chisels, porta-powers, hurst tools or other equipment related to rescue and fire operations at a fire scene;

(4) Operate the pumps of any fire vehicle while at the scene of a fire;

(5) Enter a burning structure, except at designated training sessions at specified training schools conducted by the West Virginia Fire Service Training Program of West Virginia University or the West Virginia State Fire Marshal's office.

(c) Minors attending school shall not be permitted to respond to a fire during school hours unless such a request is made by the fire official in charge to the principal of the school.

(d) Minors shall be afforded the minimal personal protective equipment; i.e., boots, bunker coats, helmet, gloves, etc., as it relates to their work outlined in subsection (e)(3) and during training exercises that require such protective equipment.

(e) The activities of these minors shall be limited to:

- (1) Training;
 - (2) First-aid;
 - (3) Clean-up service at the scene of a fire, outside the structure, after the fire has been declared by the official in charge to be under control;
 - (4) Coffee wagon and food service.
- (f) In no case, however, shall these minors be permitted to:
- (1) Operate high pressure hose lines, except during training;
 - (2) Ascend ladders, except during training activities.

6.3. Junior forest fire crew members.

(a) Forest fire fighting is considered emergency work which must be performed. These minors must be sixteen (16) or older, the consent of the minor's parents is required, and if the minor is in school, the consent of the school principal must be obtained before employing the individuals for emergency work during school hours.

(b) Such minors are to be under the direct supervision and control of a forest fire warden or fire official.

NOTE: All other provisions of the West Virginia Child Labor Law and the regulations promulgated thereunder affecting the employment of minors shall be applicable in all cases.

§42-9-7. Hazardous Occupations.

No child under eighteen (18) years of age may be employed, permitted or suffered to work in, about or in connection with any of the following occupations:

- (a) Motor vehicle driver and outside helper whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivery of goods;
- (b) The manufacture, storage, handling or transportation of explosives or highly flammable substances;
- (c) Ore reduction works, smelters, hot rolling mills, furnaces, foundries, forging shops, or in any other place in which the heating, melting or heat treatment of metals is carried on;
- (d) Logging and saw milling occupations;
- (e) Power-driven woodworking machine occupations;
- (f) Occupations involving exposure to radioactive substances and ionizing radiations;
- (g) Power-driven hoisting apparatus occupations;
- (h) Power-driven metal-forming, punching, and shearing machine occupations;
- (i) Mining, including coal mining;
- (j) Occupations involving slaughtering, meat-packing, or processing or rendering;

- (k) Power-driven bakery machines;
- (l) Power-driven paper products machine occupations;
- (m) Occupations involved in the manufacturing of brick, tile, and kindred products;
- (n) Occupations involved in the operation of power-driven circular saws, band saws, and guillotine shears;
- (o) Occupations involved in wrecking, demolition, and ship-breaking operations;
- (p) Roofing operations above ground level;
- (q) Excavation operations; and
- (r) All construction occupations for children fourteen (14) and fifteen (15) years old except as specifically and individually authorized by the commissioner under the provisions of subsection 9.6 of this rule.

7.2. No child under eighteen (18) years of age may be employed or permitted to work in a bar, or be permitted, employed or suffered to sell, dispense or serve alcoholic beverages in any place or establishment where the consumption of alcoholic beverages is permitted by law.

7.3. Exemptions. -- Nonagricultural hazardous occupations numbers e, h, j, l, n, and o contain exemptions for sixteen (16) and seventeen (17) year old student-learners: Provided, That they are employed under the following conditions:

(a) The student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school; and

(b) Each student-learner is employed under a written agreement which provides:

(1) That the work of the student-learner is in an occupation declared hazardous and the work shall be incidental to his or her training;

(2) That such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(3) That safety instructions shall be given by the school and correlated by the employer with on-the-job training; and

(4) That a schedule or 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 kept on file by both the school and the employer. This exemption for the employment of student-learner may be revoked in any individual situation where it is found that reasonable precautions have not been observed for the safety of minors employed thereunder.

(c) A high school or vocational school graduate may be employed in an occupation in which he has completed training as provided in this subsection as a student-learner even though he or she is not yet eighteen (18) years of age.

§42-9-8. Responsibilities As An Employer.

8.1. An employer is responsible that each minor in his or her employ has procured an appropriate work permit, age certificate or certify that the minor is the proper age for the occupation and hours for which he or she is employed. The employer must keep on file in his establishment a copy of such certificate as long as the minor is in his or her employ. The employer is responsible to insure that the minors in his or her employ do not, with or without his or her knowledge or consent, engage in the hazardous occupations prohibited by the commissioner and section two, article six, chapter twenty-one [§21-6-2] of the code of W.Va.

8.2. Age certificates. -- All minors between sixteen (16) and eighteen (18) years of age, employed in any gainful occupation, may be required to have an age certificate except when employed in those occupations exempted by section three of this rule.

8.3. Work permits. -- All minors under sixteen (16) years of age, employed in any gainful occupation, must obtain a work permit. Any minor between fourteen (14) and sixteen (16) years of age who desires to work after seven p.m. due to extenuating circumstances must obtain a supervision permit from the West Virginia Division of Labor.

8.4. Obtaining a work permit. -- Minors fourteen (14) and fifteen (15) years of age must first obtain a promise of employment in writing from an employer, stating the nature of employment offered and the hours of the day to be employed. Accompanied by his/her parent or guardian, the minor must apply in person for the work permit to the county superintendent of schools or such other person as may be designated by him or her to issue work permits. The promise of employment and certified birth certificate must be presented when making application.

8.5. Obtaining an age certificate. Minors sixteen (16) and seventeen (17) years of age need only present a promise of employment and a certified birth certificate to the superintendent of schools or his or her designee in order to obtain an age certificate.

§42-9-9. Instructions For Local Officials Issuing Work Permits And Age Certificates.

9.1. Information for issuing officers.

(a) Work permits and age certificates are issued by the county superintendent of schools where the minor resides or by some persons authorized by him or her in writing.

(b) Forms are prepared and furnished by the West Virginia division of labor, on request, to the county superintendent of schools.

(c) State work permits and age certificates are acceptable as proof of age under the child-labor provision of the Fair Labor Standards Act through cooperative arrangements with the United States Department of Labor.

(d) The minor must appear in person before the issuing officer to obtain a work permit or age certificate.

9.2. Procedure for issuing a work permit or age certificate.

(a) Issuing officer will interview minor to discuss:

- (1) The type of work the minor wants to perform;
- (2) The work restrictions defined in the West Virginia Child Labor Act;
- (3) The importance of completion of high school;
- (4) What minor must do to obtain a work permit or age certificate.

(b) Application for Employment Certificates -- Form 1.

(1) One (1) copy of Form 1 will be completed when minor applies for a Work Permit or Age certificate and kept in issuing officer's files. A new permit or certificate is required for each change in job and place of employment.

(2) Instructions for completing the application: (A) Intention to employ - minor will have this section completed and signed first. The extra line under the hours section is for reporting variations in scheduled hours of employment; (B) Parent's Consent - After Intention to Employ has been completed, minor will have parent or guardian complete this section; (C) School Record - (NOTE: A school record is required except for high school graduates or vacation employment) Minor will have the principal or teacher of the last school he/she attended to complete this section.

(c) Certified birth certificate (NOTE: This must be obtained before a work permit or age certificate is issued.) The issuing officer will explain how a birth certificate can be obtained if minor does not have one.

(d) Issuing officer will instruct minor to return to his or her office with the completed application and certified birth certificate.

(e) Issuing officer will review the completed application and certified birth certificate submitted.

(1) A determination will be made whether the employment is legal under state child labor law. Additional information on child labor may be found in the Federal Fair Labor Standards Act which may be secured from your district office of the United States Department of Labor.

(2) The issuing officer may check with the prospective employer on any points in his or her Statement of Intention to Employ that need to be clarified.

9.3. Work Permit -- Form 2.

(a) Form 2 will be used to issue a work permit to minors aged fourteen (14) and fifteen (15) for employment in any gainful occupation, except where otherwise prohibited or exempted by the Act or this rule.

(b) The permit will be made out in triplicate.

(1) Copy for the employer.

(2) Copy for the Commissioner of Labor.

(3) Copy for the issuing officer's files.

(c) Completion of form.

(1) The type of permit will be designated by a check in one (1) of the two (2) boxes at the top of the permit.

(2) All required sections shall be completed.

(3) Minor shall sign the permit in the presence of the issuing officer.

(4) Signature of issuing officer shall appear on the permit.

9.4. Age Certificate -- Form 3.

(a) Form 3 will be used to issue an age certificate, upon request, to minors sixteen (16) and seventeen (17) years of age for agricultural as well as nonagricultural employment as permitted by the Act.

(b) The certificate will be made out in triplicate. The distribution is the same as for the work permit.

(c) Completion of the form.

(1) All items shall be completed when the age certificate is issued.

(2) Hours of employment are not required on the age certificate.

(3) Minor shall sign the permit in the presence of the issuing officer.

(4) Signature of issuing officer shall appear on the certificate.

9.5. Revocation.

(a) The Commissioner of Labor may at any time revoke an age certificate or work permit, if in his or her judgment, it was improperly issued.

(b) The issuing officer will be notified of such action; the minor shall not be employed until a new work permit or age certificate has been legally obtained.

9.6. Supervision Permit.

(a) The Commissioner of Labor prescribes the condition and terms of this permit and is the only person authorized to issue it.

(b) The supervision permit is issued to meet special employment circumstances such as extending the hours for a fourteen (14) and fifteen (15) year old minor past seven p.m. or limited work in an occupation otherwise deemed to be hazardous.

(c) The commissioner's considerations when issuing a supervision permit shall include, but are not limited to the following:

(1) Minor's work will be supervised by a responsible party;

(2) The best interests of the child will be promoted.

(d) A supervision permit is valid only by complete compliance with the prescribed terms and conditions.

9.7. Enforcement.

(a) Powers of the Commissioner. -- The Commissioner of Labor may make, amend, alter or rescind any rules and regulations for the effective administration and enforcement of the West Virginia Child Labor Laws. The Commissioner of Labor or his or her authorized representatives may make any inspection or investigation which, in his or her judgment, is necessary to administer and enforce the Child Labor Law and this rule. They have authority to enter and inspect establishments and have access to all files and records of employers which may concern minors in their employ.

(b) Rights to petition and hearing. -- Any person wishing a revision of any of these regulations may submit a petition to the Commissioner of Labor setting forth the changes desired and the reasons for proposing them.

The Commissioner of Labor, upon inspection of the petition, and believing that the grounds are reasonable, may schedule a hearing with due notice to interested persons, or make other provisions for affording interested persons the opportunity to present data, views and arguments relating to any proposed changes.

(c) Penalty for violation.-- Any person, firm or corporation violating any provisions of these rules and regulations shall be subject to the penalties prescribed in W. Va. Code §21-6-10.