



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Labor

RULE TYPE: Legislative

TITLE-SERIES: 42-09

RULE NAME: Child Labor

CITE AUTHORITY: W. Va. Code §21-6-11

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Mitchell E Woodrum -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR

SERIES 9
CHILD LABOR

§42-9-1. General.

1.1. Scope. -- This rule is for the enforcement of all matters concerning the Child Labor Act, W. Va. Code §21-6-1 *et seq.*

1.2. Authority. -- W. Va. Code §21-6-11.

1.3. Filing Date. -- ~~April 12, 2019.~~

1.4. Effective Date. -- ~~July 1, 2019.~~

1.5. Sunset Date Provision. -- This rule shall terminate and have no further force or effect ~~on July 1, 2029~~ on August 1, 2027.

§42-9-2. Application and Enforcement.

2.1. Application. This legislative rule applies to all persons, employers, employees, and minor children governed or otherwise within the purview of the Child Labor Act, W. Va. Code §21-6-1 *et seq.*

2.2. Enforcement. The enforcement of the Child Labor Act, W. Va. Code §21-6-1 *et seq.* and this legislative rule is vested ~~with~~ in the West Virginia Division of Labor.

§42-9-3. Definitions.

3.1. ~~The~~ "Act" means the Child Labor Act, W. Va. Code §21-6-1 *et seq.*

3.2. "Age certificate" or "certificate of age," means the form authorized by the Division ~~of Labor~~ for the employment of a 16 or 17 year old minor that is issued by the ~~superintendent of schools for the purpose of certifying the minor's age and place and date of birth~~ county superintendent, as defined in subsection 3.10 of this section; an authorized person, as defined in subsection 3.4 of this section; or an issuing administrator, as defined in subsection 3.16 of this section, for the purpose of certifying the minor's age and place and date of birth.

3.3. "Approved program," as used in W. Va. Code §21-6-2(c) and section 12 of this rule, means a training program that is equivalent to that of the West Virginia ~~State Fire Commission, the West Virginia Department of Education Public Service Firefighter Training, or the West Virginia University Fire Service Extension's Junior Firefighter Training, and that has been approved by the Commissioner~~ Department of Education Public Service Fire Service Training, the West Virginia State Fire Commission, or the West Virginia University Fire Service Extension Junior Firefighter Training, and that has been approved by the Commissioner.

~~3.4.~~ 3.4. “Authorized person” means the person who has been authorized in writing by the county superintendent to review and approve work permit applications and age certificate applications.

~~3.4.~~ ~~3.5.~~ 3.5. “Blanket work permit” means the form authorized and issued by the Division of Labor for the employment of 25 or more ~~minor children~~ minors for a period of 90 days or less, which includes an acknowledgment from the prospective employer stating that he or she is familiar with and will abide by the Act and this rule, and which lists the names, birth dates, ages, and job description for each minor ~~child~~.

~~3.5.~~ ~~3.6.~~ 3.6. “Board of education” means the board of education in the county where the minor ~~child~~ resides.

~~3.6.~~ ~~3.7.~~ 3.7. “Certified birth certificate,” as used in subdivision 5.2.2 and section 8 of this rule, means a birth certificate issued by the West Virginia Department of Health and Human Resources, Office of Vital Statistics Registration; by the county clerk of the West Virginia county in which the minor was born; or by an office listed on the National Vital Statistics System maintained by the United States Centers for Disease Control and Prevention.

~~3.7.~~ ~~3.8.~~ 3.8. “Code of Federal Regulations” or “C.F.R.” refers to the ~~codification of the rules and regulations of an agency of the United States government~~ of a federal government agency.

~~3.8.~~ ~~3.9.~~ 3.9. “Commissioner” means the Commissioner of the Division of Labor ~~or~~ and his or her authorized ~~designee~~ representatives.

~~3.9.~~ ~~3.10.~~ 3.10. “County superintendent” means the ~~county where the minor child resides~~ superintendent of schools for the county where the minor resides.

~~3.10.~~ ~~3.11.~~ 3.11. “Dangerous or injurious occupation” means an occupation identified in W. Va. Code §21-6-2, any occupation that the Commissioner determines is detrimental to a minor’s health, safety, or well-being, or that interferes with a minor’s education, and any occupation identified as oppressive by the ~~Secretary of the United States Department of Labor~~ as oppressive.

~~3.11.~~ ~~3.12.~~ 3.12. “Division” means the West Virginia Division of Labor.

~~3.12.~~ ~~3.13.~~ 3.13. “Employ” means to hire, permit, or suffer to work.

~~3.13.~~ ~~3.14.~~ 3.14. “Employer” means any person, firm, or corporation employing a minor ~~child~~.

~~3.14.~~ ~~3.15.~~ 3.15. “Immediate supervision” or “direct supervision” means supervision by a responsible party, as defined in subsection 3.20 of this section, who is within the immediate physical proximity of the minor and is responsible for managing, overseeing, and directing the minor’s work activities.

3.16. “Issuing administrator” means the person who administers a program of secondary education at a public, private, or home school who has the authority to issue education credentials pursuant to W. Va. Code §18-8-12 and the authority to issue a work permit and age certificate pursuant to W. Va. Code §§21-6-3(a) and 21-6-5(a).

~~3.15.~~ “Issuing officer” means ~~the person who has been authorized in writing by the county superintendent of schools to review and approve work permit applications and age certificate applications~~.

~~3.16.~~ 3.17. "NFPA" refers to the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169.

~~3.17.~~ 3.18. "Parent" means and includes a minor's parent, guardian, custodian, or other person standing in the place of the minor's parent.

~~3.18.~~ 3.19. "Personal protective equipment" means NFPA-compliant boots, coats, pants, helmets, hoods, gloves, and self-contained breathing apparatus with face piece.

~~3.19.~~ 3.20. "Responsible party" or "responsible supervisor" means a regular, full-time, qualified, and experienced adult employee or business owner, or, pursuant to W. Va. Code §21-6-2(c), a fire line officer.

~~3.20.~~ 3.21. "School hours" or "while school is in session" means the hours during which county public or private schools are in session.

~~3.21.~~ 3.22. "School week" means Monday through Sunday while county public or private schools are in session.

~~3.22.~~ 3.23. "Special circumstances," means and includes a ~~minor child's~~ minor's particular situation, life experiences, abilities, training, or any other conditions or facts that the Commissioner may consider in determining whether to issue a supervision permit.

~~3.23.~~ "~~Superintendent of schools~~" means the ~~superintendent of schools for the county where the minor child resides, or the superintendent's designated issuing officer.~~

3.24. "Supervision permit" means the form authorized and issued by the Division of Labor for the employment of a minor ~~child~~ under special circumstances that promote the best interests of the minor child.

3.25. "Work experience program," "work-study program," or "work-based learning program" means a school-supervised and school-administered program for 14 and 15 year old minors enrolled in a college preparatory curriculum that meets the educational standards established by the ~~WV~~ West Virginia Department of Education, and has been approved by the ~~Administrator of the Wage and Hour Division of the United States Department of Labor~~ United States Department of Labor Wage and Hour Division Administrator.

3.26. "Work experience and career exploration program" or "WECEP" means a school-supervised and school-administered program for 14 and 15 year old minors that meets the educational standards established by the ~~WV~~ West Virginia Department of Education, and has been approved by the ~~Administrator of the Wage and Hour Division of the United States Department of Labor~~ United States Department of Labor Wage and Hour Division Administrator.

3.27. "Work permit" means the form authorized by the Division of Labor for the employment of a 14 or 15 year old minor ~~child and issued by the county superintendent of schools~~ that is issued by the county superintendent, as defined in subsection 3.10 of this section; an authorized person, as defined in subsection 3.4 of this section; or an issuing administrator, as defined in subsection 3.16 of this section.

§42-9-4. Commissioner's Determination Regarding Occupations that are Dangerous or Injurious to a Child Minor.

Pursuant to W. Va. Code §21-6-2, when the Commissioner determines whether an occupation is dangerous or injurious to a child, he or she shall consider any applicable general guidance, interpretive guidance, fact sheets, opinion letters, and child labor rules published, issued, or promulgated by the United States Department of Labor, including, but not limited to, the Hazardous Occupation Orders in 29 C.F.R. §§ 570 through 570.55 and 570.57 through 570.68, or any other information that he or she deems necessary and relevant.

§42-9-5. Application for and Issuance of a Work Permit for a 14 or 15 Year Old ~~Minor-Child~~.

5.1. ~~When a 14 or 15 year old minor wants to work in a permissible occupation as set forth in the Act and this rule, the Division's work permit form, available from the county board of education and the Division's website (labor.wv.gov), shall be completed by the minor's prospective employer, the minor's parent, the minor's school principal or registrar, and the county superintendent of schools~~ When a 14 or 15 year old minor wants to work in a permissible occupation under the Act and this rule, the minor's prospective employer shall complete the work permit form, available from the county board of education and the Division's website (labor.wv.gov), in accordance with subsection 5.2 of this section.

5.2. The Division's work permit form consists of 4 four parts, as follows:

~~5.2.a. 5.2.1. The minor's prospective employer shall complete Part A, to include a description of the minor's intended work activities and any equipment or machines the minor will use, the minor's intended hours of employment, the minor's total hours of work per day and per week, and the minor's total work days per week~~ The prospective employer shall complete Part A and include a description of the minor's:

5.2.1.a. intended work activities and any equipment or machines the minor will use;

5.2.1.b. intended hours of employment;

5.2.1.c. total hours of work per day and per week; and

5.2.1.d. total work days per week;

~~5.2.b. 5.2.2. After the minor's child's prospective employer completes Part A, the minor's parent shall complete Part B, giving permission for his or her child to work for the prospective employer and shall attach the minor's certified birth certificate~~ The minor's parent shall complete Part B, giving permission for the minor to work for the prospective employer and attaching the minor's certified birth certificate;

~~5.2.c. 5.2.3. After Parts A and B are completed, The minor's school principal, administrator, or registrar shall complete Part C, certifying that the minor is currently attending school: *Provided*, That completion of Part C is not required in the case of a homeschooled student exempt from compulsory school attendance pursuant to W. Va. Code §18-8-1(c); and~~

~~5.2.d. 5.2.4. After Parts A, B, and C are completed, the county superintendent, of schools shall review the information completed by the minor's prospective employer, the minor's parent, and the minor's school principal or registrar, and shall either issue, modify, or reject the work permit~~ authorized

person, or issuing administrator shall review the information completed by the prospective employer, the minor's parent, and the minor's school principal, administrator, or registrar, and shall issue, modify, or reject the work permit.

5.3. ~~The superintendent of schools shall retain the original work permit, shall provide the Division with a copy within 4 days of its issuance, and shall furnish copies to the minor's parent and to the minor's employer~~ county superintendent, authorized person, or issuing administrator shall retain the original work permit and provide the Division with a copy within four days of its issuance, and shall furnish copies to the minor's parent and employer.

5.4. If required by the minor's prospective employer, the minor's parent shall attach documentation of a current physical examination to the application for a work permit.

§42-9-6. Employer Responsibilities When Employing a 14 or 15 Year Old Minor Child Pursuant to a Work Permit.

6.1. Before allowing or permitting a 14 or 15 year old minor to work, an employer shall first have in his or her possession a properly issued work permit as set forth in W. Va. Code §21-6-4 and this rule.

6.2. An employer is responsible for complying with the terms and conditions of the minor's employment as set forth in the work permit.

6.3. When school is in session, an employer shall ensure that the minor does not work:

~~6.3.a.~~ 6.3.1. Before 7 a.m. or after 7 p.m.;

~~6.3.b.~~ 6.3.2. For more than ~~3~~ three hours a day; or

~~6.3.c.~~ 6.3.3. For more than a total of 18 hours per week during a school week.

6.4. When school is in session, an employer shall ensure that the minor does not work during the hours that school is in session, unless the minor is participating in an approved school-supervised work experience program or in a school-administered WECEP program.

~~6.4.a.~~ 6.4.1. An employer shall ensure that a 14 or 15 year old minor enrolled in a work experience program or WECEP program works no more than ~~3~~ three hours a day on a school day.

~~6.4.b.~~ 6.4.2. An employer shall ensure that a 14 or 15 year old minor enrolled in a work experience program or WECEP program works no more than 23 hours during a school week.

6.5. During those times when school is not in session, an employer shall:

~~6.5.a.~~ 6.5.1. Limit the minor's work hours to a maximum of ~~8~~ eight hours per day and a maximum of 40 hours per week;

~~6.5.b.~~ 6.5.2. Limit the minor's work hours to between 7 a.m. and 9 p.m.; and

~~6.5.c.~~ 6.5.3. Ensure that the minor does not work continuously for ~~5~~ five hours or more without at least a 30-minute meal break.

§42-9-7. Work Permit for a ~~Child~~ Minor Under 14 Years of Age.

The Commissioner may approve a work permit for a minor under 14 years of age only when the minor plans to work in the school he or she regularly attends and only during regular school hours.

§42-9-8. Application for and Issuance of an Age Certificate for a 16 or 17 Year Old Minor ~~Child~~.

8.1. A prospective employer may obtain the Division's age certificate form for a 16 or 17 year old minor from the county board of education or the Division's website (labor.wv.gov), and shall provide the employer's name and address, a brief description of the employer's business or industry, and a brief description of the minor's occupation or job.

8.2. The minor shall furnish a certified birth certificate to the county superintendent ~~of schools~~ as proof of his or her age. A copy of a certified birth certificate may satisfy this requirement.

8.3. Upon receipt of the minor's certified birth certificate establishing that he or she is 16 years old or older, and a determination that the employer's business or industry and the minor's occupation or job are permissible under the Act and this rule, ~~the superintendent of schools shall issue an age certificate to the employer~~ the county superintendent, authorized person, or issuing administrator shall issue an age certificate to the employer.

8.4. ~~The superintendent of schools shall retain the original age certificate, shall provide copies to the Division, the minor's parent, and the minor's employer~~ The county superintendent, authorized person, or issuing administrator shall retain the original age certificate, and shall provide copies to the Division, the minor's parent, and the minor's employer.

§42-9-9. Application for and Issuance of a Supervision Permit.

9.1. When a minor ~~child~~ wants to be employed under special circumstances, the Division's supervision permit form, available from the Commissioner and the Division's website (labor.wv.gov), shall be completed by the minor's prospective employer and the minor's parent.

9.2. The Division's supervision permit consists of ~~3~~ three parts, as follows:

~~9.2.a.~~ 9.2.1. The minor's prospective employer shall complete Part A, to include the following information:

~~9.2.a.1.~~ 9.2.1.a. a description of the employer's business;

~~9.2.a.2.~~ 9.2.1.b. a detailed description of proposed terms and conditions of the minor's job, including the minor's work schedule, the days and hours of work each week, and total hours of work each week;

~~9.2.a.3.~~ 9.2.1.c. a detailed description of the proposed tasks the minor will perform, and specification of the machines and equipment the minor will use;

~~9.2.a.4.~~ 9.2.1.d. the name and job title of the person who is going to supervise the minor, the length of time the responsible supervisor has been employed by the employer, the specifics of the

responsible supervisor's work schedule and a description of how the responsible supervisor will supervise the minor;

~~9.2.a.5.~~ 9.2.1.e. an explanation of the minor's special circumstances that are relevant to the proposed tasks the minor will perform and the machines and equipment the minor will use;

~~9.2.a.6.~~ 9.2.1.f. an explanation of how and why the proposed job will be in the minor's best interests; and

~~9.2.a.7.~~ 9.2.1.g. a statement that the employer is not subject to federal regulation regarding child labor;

~~9.2.b.~~ 9.2.2. After the prospective employer has completed Part A, the minor's parent shall complete Part B, to include the following information:

~~9.2.b.1.~~ 9.2.2.a. an explanation of how and why the proposed job will be in the minor's best interests;

~~9.2.b.2.~~ 9.2.2.b. a statement in support of the minor's proposed job;

~~9.2.b.3.~~ 9.2.2.c. a description of the minor's previous work experience or training relevant to the proposed job; and

~~9.2.b.4.~~ 9.2.2.d. a statement of any concerns, restrictions, or conditions regarding the proposed job that the parent or guardian believes are necessary to ensure that the minor's best interests will be met, including any training the parent or guardian believes the employer must provide.

9.3. Upon receipt of a properly completed application for a supervision permit, the Commissioner shall timely investigate the request, including interviewing the prospective employer and any other matters the Commissioner considers necessary.

9.4. If, after review of the supervision permit application and the investigation, the Commissioner finds the application to be in the minor's best interests, he or she may issue or modify the supervision permit to the employer and set forth the employer's responsibility to comply with all terms and conditions of the supervision permit. The Commissioner shall provide a copy of the supervision permit to the minor's parent or guardian.

9.5. If, after review, the Commissioner finds that the application is not in the minor's best interests, he or she shall provide the employer and the minor's parent or guardian with a written explanation for denying the application.

§42-9-10. Application for and Issuance of a Blanket Work Permit; Employer Responsibilities.

10.1. When an employer wants to employ 25 or more children ages 14 through 15 for a short-term period of 90 days or less, the employer shall apply for a blanket work permit directly to the Commissioner on the Division's form available on the Division's website (labor.wv.gov).

10.2. The application for a blanket work permit shall include the following:

~~10.2.a.~~ 10.2.1. A letter from the employer acknowledging his or her familiarity with the ~~Child Labor~~ Act and this rule, and his or her intent to abide by and comply with the Act and this rule; and

~~10.2.b.~~ 10.2.2. A list of the names, birth dates, ages, date the employment will begin and end, and job description or tasks for each ~~child~~ minor to be included in the blanket work permit.

10.3. Upon receipt of the required information, the Commissioner shall issue a letter to the employer, approving, modifying, or denying the blanket work permit.

10.4. An employer shall only employ ~~children~~ minors under a blanket work permit after receiving the Commissioner's approval, and only for the approved ~~children~~ minors, dates of employment, and jobs and tasks specified.

§42-9-11. Revocation of a Work Permit, Age Certificate, Supervision Permit, or Blanket Work Permit.

11.1. If the Commissioner determines that a work permit, an age certificate, a supervision permit, or a blanket work permit was improperly issued, or contains inaccurate or false information, he or she may revoke it.

11.2. If the Commissioner revokes a work permit, an age certificate, a supervision permit, or a blanket work permit, he or she shall immediately notify the ~~superintendent of schools and the employer in writing of the revocation~~ county superintendent, authorized person, or issuing administrator, as applicable, and the employer in writing of the revocation.

11.3. Upon receipt of the revocation, the employer shall immediately end the minor's employment.

§42-9-12. Minors Ages 16 and 17 Engaging in Volunteer Fire Department Activities; Responsibilities of the Volunteer Fire Department; Prohibited and Permitted Activities.

12.1. A 16 or 17 year old minor may be employed by or elected as a member of a volunteer fire department to perform fire-fighting functions, other than those prohibited functions listed in subsection 12.3 of this section, if he or she:

~~12.1.a.~~ 12.1.1. Is enrolled in, is participating in, or has completed the minimum training requirements of one of the following programs:

~~12.1.a.1.~~ 12.1.1.a. the West Virginia ~~University Fire Service Extension Training Program for Junior Firefighters~~ Department of Education Public Service Fire Service Training;

~~12.1.a.2.~~ 12.1.1.b. the West Virginia State Fire Commission;

~~12.1.a.3.~~ 12.1.1.c. the West Virginia ~~Department of Education Public Service Firefighter Training~~ University Fire Service Extension Junior Firefighter Training; or

~~12.1.a.4.~~ 12.1.1.d. an equivalent approved program; and

~~12.1.b.~~ 12.1.2. Has the written consent of his or her parent to be employed by or be elected as a member of a volunteer fire department.

12.2. The volunteer fire department is responsible for and shall ensure that:

~~12.2.a.~~ 12.2.1. The minor has provided documentation of his or her enrollment in, participation in, or successful completion of one of the training programs listed in subdivision ~~12.1.a~~ 12.1.1 of this section;

~~12.2.b.~~ 12.2.2. The minor has provided an age certificate;

~~12.2.c.~~ 12.2.3. The minor is under the direct supervision and control of trained and qualified fire protection personnel; and

~~12.2.d.~~ 12.2.4. The minor's ~~parent's~~ parental consent is on file as long as the minor's name appears on the volunteer fire department's roster of volunteers.

12.3. A minor ~~shall~~ may not:

~~12.3.a.~~ 12.3.1. Drive any fire apparatus, ambulance, or other official fire vehicle;

~~12.3.b.~~ 12.3.2. Operate flashing lights, a siren, or other audible signal when responding to an alarm in his or her own personal vehicle or any other vehicle;

~~12.3.c.~~ 12.3.3. Operate or climb an aerial ladder, aerial platform, or hydraulic jack at a fire scene or an emergency scene;

~~12.3.d.~~ 12.3.4. Use rubber electrical gloves, insulated wire gloves, insulated wire cutters, life nets, acetylene cutting units, K-12 fire rescue saws, air chisels, jaws of life, or other hydraulic rescue tools or other equipment related to rescue and fire operations at a fire scene or an emergency scene;

~~12.3.e.~~ 12.3.5. Operate the pumps or high-pressure hoses of any fire vehicle while at a fire scene or an emergency scene; or

~~12.3.f.~~ 12.3.6. Enter a burning structure.

12.4. As long as a minor is wearing personal protective equipment, he or she may:

~~12.4.a.~~ 12.4.1. Participate in training activities of the West Virginia ~~University Fire Service Extension Training Program for Junior Firefighters, the West Virginia State Fire Commission, the West Virginia Department of Education Public Service Firefighter Training or an equivalent program approved by the Commissioner~~ Department of Education Public Service Fire Service Training, the West Virginia State Fire Commission, the West Virginia University Fire Service Extension Junior Firefighter Training, or an equivalent program approved by the Commissioner;

~~12.4.b.~~ 12.4.2. Administer first-aid at a fire scene or an emergency scene, but only at a safe distance away from any building or structure;

~~12.4.c.~~ 12.4.3. Clean up the outside area of a fire or emergency scene, but not the inside area of a building or structure, after a fire has been declared by the official in charge to be under control; and

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~~12.4.d.~~ 12.4.4. Provide coffee and food service at a fire scene or an emergency scene, if needed, but only at a safe distance away from any building or structure.

12.5. A minor may not respond to a fire while school is in session or during school hours, unless the fire official in charge has obtained permission from the minor's school principal.