

● FAIR LABOR STANDARDS ACT OF 1938

STATUTORY CITATION: 29 USC §§ 201 – 219

RELATED REGULATIONS: 29 CFR Parts 570 and 575

GENERAL SUMMARY: Apart from its provisions regulating wages and working hours, the Fair Labor Standards Act prohibits employers from employing oppressive child labor in commerce, in the production of goods for commerce, or in any enterprise engaged in commerce or the production of goods for commerce. Likewise, no producer, manufacturer or dealer may handle goods where oppressive child labor has been employed within 30 days prior to the removal of the goods.

The Act defines "oppressive child labor" somewhat generally, but within limits gives the Secretary of Labor authority to restrict the ages, hours and occupations of minors employed in businesses affecting interstate trade.

PROVISIONS APPLICABLE TO AGRICULTURE: The Fair Labor Standards Act limits the employment of minors in agriculture according to age and occupational activity, as summarized below.

AGE RESTRICTIONS — No one under the age of 16 may be employed in agriculture during school hours for the school district where the minor is living at the time, even if state law does not require the individual to attend school. Outside school hours, no one under the age of 14 may be employed in agriculture, except under the following conditions:

Children Under Age 12 — In general, minors under 12 years of age may be employed only with the written consent of their parent or person standing in the place of the parent, and only on farms where none of the employees are legally entitled to the federal minimum wage.

Exception — Children age 10 and 11 may be employed by a farm operator who is subject to the minimum wage if the operator has obtained a special child labor waiver from the U.S. Department of Labor. DOL may grant such a waiver only after determining that (1) the crop involved is characterized by a short harvest season and that exclusion of 10- and 11-year-old workers would cause severe economic disruption in the industry, (2) employment of such children would not be deleterious to their health and well-being, (3) the level and type of pesticides used would not adversely affect child workers' health, (4) workers 12 years of age or over are not available, and (5) the industry has traditionally used 10- and 11-year-olds without curtailing job opportunities for workers age 16 and above. Children age 10 and 11 employed under the special waiver may be employed on the farm involved only between June 1 and October 15 and for no more than 8 weeks in a calendar year, must commute each day between their permanent residence and the farm involved, and may only perform hand-harvest jobs customarily paid on a piece-rate basis in the region of employment.

Children Age 12 and 13 — Minors 12 and 13 years of age may be employed only with the written consent of their parent or person standing in the place of the parent, or if the job is on the same farm where such parent or person is also employed.

HOUR RESTRICTIONS — The limitations on the time of day and total working hours applicable to 14- and 15-year-olds in most non-farm occupations **do not apply** to minors employed in agriculture.

HAZARDOUS OCCUPATIONS — Certain types of farm jobs have been found and declared by the Secretary of Labor to be hazardous to minors, and thus closed to workers under the age of 16. These jobs include, among several others, (1) operating high-power tractors, (2) operating or helping to operate power-driven harvesting machines, (3) driving a bus, truck or automobile transporting passengers, (4) working from a ladder at a height over 20 feet, and (5) handling or applying agricultural chemicals.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY — *Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210 (202-693-0072).* The Wage and Hour Division is authorized to investigate possible violations and complaints of violations, and to impose and enforce civil penalties when violations are confirmed. This agency is also responsible for issuing federal certificates of age, in response to valid applications from employers seeking to document their compliance with child labor regulations. Similarly, the Wage and Hour Division reviews waiver applications for agricultural employment of 10- and 11-year-old minors in hand harvesting of short-season crops, and for assuring that jobs offered under the waiver are not harmful to the health and well-being of child workers.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY — *None.*