

EXECUTIVE SUMMARY

HCR58 (2023) requested a comparative study on state and federal requirements on youth employment under the Fair Labor Standards Act (FLSA). The department strongly recommends against making any changes to the Child Labor Law (Chapter 390, HRS), which is designed to protect minors' health and well-being.

Certificates of age are required under both federal and state law, and if removed from Chapter 390 HRS, the FLSA would still require Hawaii employers to obtain certificates of age. The State's current minor certification process does not create any barriers as evidenced by the 11,632 certificates issued in FY2023 through a free, online process that neither requires a minor nor their guardian to appear in-person.

I. BACKGROUND

To ensure fair labor standards in employment the last, significant New Deal legislation—the FLSA—was enacted by Congress in 1938. The effort was spearheaded by Frances Perkins, Franklin Delano Roosevelt's Secretary of Labor, who had long sought to ban child labor as previously, "There was a time in this country when young children routinely worked legally. As industry grew in the period following the Civil War, children, often as young as 10 years old but sometimes much younger, labored."¹

The United States Department of Labor (U.S. DOL) under the Biden Administration is aggressively pursuing action to combat the exploitation of children. In 2023, the Interagency Task Force to Combat Child Labor Exploitation was formed to "enhance federal efforts to protect children from exploitative situations following a 69 percent increase in findings of illegal child labor between 2018 and 2022." Task force members include the Departments of Agriculture, Commerce, Education, and Health and Human Services.

Acting Secretary of Labor Julie Su proclaimed that the U.S. DOL is "...leaving no stone unturned to root out exploitative child labor," and continued, "Child labor is an issue that gets to the heart of who we are as a country and who we want to be. Like the President, we believe that any child working in a dangerous or hazardous environment is one child too many."

The enhanced efforts have resulted in increased enforcement activity by the U.S. DOL's Wage and Hour Division (WHD). In FY 2023, the agency concluded 955 cases with child labor violations finding 5,792 children employed in violation of federal child labor laws and assessed employers with more than \$8.0 million in penalties. These cases reflect an 88 percent increase in children found employed in violation of federal law and an 83 percent increase in penalties assessed from the same time period in the previous fiscal year.²

¹ https://www.bls.gov/opub/mlr/2017/article/history-of-child-labor-in-the-united-states-part-1.htm#_ednref1.

² <https://blog.dol.gov/2023/10/19/wage-and-hour-division-working-to-keep-kids-safe>.

Despite the increased enforcement and enhanced efforts, the U.S. DOL has found that there have been increased efforts to weaken child labor laws throughout the country. Recently, the U.S. DOL reminded the DLIR that even if state child labor laws are weakened, the FLSA would still govern (attached). The U.S. DOL asked the DLIR to include language on its website and materials reminding employers of this fact:³

Employers are generally subject to both state child labor laws and the federal child labor provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. 212(c), and the FLSA regulations at 29 CFR Part 570. Certain provisions of Hawaii state law may be less restrictive than federal law, and employers covered by the FLSA that only follow a less restrictive provision of Hawaii state law will be in violation of federal law. See 29 U.S.C. 218(a). For more information on federal child labor law, please visit the U.S. Department of Labor's Wage and Hour Division Website at www.dol.gov/whd.

II. COMPARATIVE STUDY ELEMENTS 1-4

1. How states with less certification requirements, including Arizona, Kentucky, and Oregon, are able to ensure access to and oversight of work-based learning for minors;

Chapter 390 requires Hawaii employers to obtain and keep a valid certificate of employment for minors aged 14 to 15 years-old and record and keep on file a valid certificate of age for minors 16 & 17 years-old. Only ten states do not require the issuance of any certifications. The remaining forty states and the District of Columbia require a certification of either employment or age.

The Arizona Industrial Commission administers Arizona's Child Labor Law that requires employers to verify a minor's age, and that the minor receive parental consent to work. Arizona's law regulates the ages, the times, and the types of work minors 17 years and younger may perform. Youth who are 16 and 17 years-old may work in a broad range of jobs but cannot work in jobs that Arizona has deemed are too hazardous. Youth who are 14 and 15 years-old may work in a broad range of jobs but are significantly limited in the number of hours per day and per week they may work, especially when school is in session. Arizona's law provides civil penalties of up to \$1,000 as well as a cease-and-desist provision.

Arizona has a Work-Based Learning program administered by its Department of Education that enables students to develop job skills either at a school or an industry location if the student-learner is in a state-approved Career and Technical Education Program. The program is effectuated via a contract that must include a coordinating teacher that develops a written training agreement and works with the sponsor and student to schedule activities and assignments as well as visit the work site and maintain files. The work-based learning experience may be paid or unpaid but must

³ Letter Dated July 28, 2023, from Principal Deputy Administrator Jessica Looman to Director Jade Butay.

comply with federal and state laws, which include restrictions on work hours and certificates of age.

The Kentucky Education and Labor Cabinet administers Kentucky's Child Labor Law, which requires employers to verify a minor's age and maintain a register of minors' work hours and break periods. The employer must also post an abstract of the Kentucky Child Labor provisions, including prohibited occupations (hazardous) and permitted work hours. It is the duty of the local board of education to provide a certificate of age upon request to a minor, which an employer may use to verify a minor's age with inspectors of the Department of Workplace Standards.

Kentucky also has a Work-Based Learning program administered by its Department of Education that enables students to engage in occupational experiences. The program includes a coordinating teacher to develop and monitor the program as well as address concerns. The work-based learning experience may be paid or unpaid, but must comply with federal and state laws, which include restrictions on work hours and the requirement of certifications.

Oregon's Bureau of Labor and Industries administers its Child Labor Law and requires employers that employ minors submit an Annual Employment Certificate Application every year. Oregon's law includes prohibitions on working hours and occupations and the requirements of minimum wage, meals, and breaks. Oregon's law includes provisions for civil penalties of up to \$1,000 per violation and revocation of the right to hire minors in the future.

Oregon has a Work-Based Learning program administered by its Department of Education that enables students to gain skills and credentials needed to enter the workforce. The Oregon program requires that minors be paid minimum wage, and that all federal and state laws, including restrictions on work hours and the requirements of certifications, are followed.

Overall, Arizona, Kentucky, and Oregon are all still subject to the FLSA and its restrictions on employment of minors. These states require teacher coordinators to ensure compliance with the laws in operating their work-based learning programs.

2. Whether current state youth employment permitting requirements create any barriers to expanded work-based learning opportunities for youth;

Both federal and state laws govern the employment of minors as the law with the higher standard prevails pursuant to 29 U.S.C. § 218. Certificates of age are required under both federal and state law, and if removed from Chapter 390 HRS, the FLSA would still require Hawaii employers to obtain federal certificates of age. The State's current minor certification process does not create any barriers as evidenced by the 11,632 certificates issued in FY2023 through a free, online process that neither requires a minor nor their guardian to appear in-person.

The U.S. DOL's WHD enforces the FLSA through 29 C.F.R. Part 570. Part 570 sets forth minimum age standards, requires certificates of age, prohibits certain hazardous occupations, prescribes hours of work and conditions of employment, and permits work experience and career exploration program for students enrolled in a school-supervised and school-administered program, among other provisions.

Part 570 permits student-learners "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..." under a written agreement exemptions from working in hazardous conditions as long as the hazardous conditions are incidental to training, is intermittent and for short periods of time and under direct and close supervision, and safety instructions are provided and incorporated into on-the-job training. Similar exemptions are available for registered apprentices working in hazardous occupations as part of a bona fide Registered Apprenticeship Program.

Hawaii's laws (Chapter 390, HRS & 12-25, Hawaii Administrative Rules (HAR)) are very similar to the FLSA and 29 C.F.R. Part 570 as outlined in the preceding paragraph. Chapter 12-25, HAR, also provides exemptions for student-learners, apprentices, trainees, and enrollees via provisions that mirror 29 C.F.R. Part 570.

3. The anticipated actions needed by the State to transition its youth employment policies so that they do not impose requirements that exceed the federal minimum for youth employment under the Fair Labor Standards Act;

The FLSA pursuant to 29 U.S.C. § 212 and 29 C.F.R. Part 570 provides that both the state and federal laws govern the employment of minors. 29 CFR 570.39 states, "No provision of this subpart shall under any circumstances justify or be construed to permit noncompliance with the wage and hour provisions of the act or with the provisions of any other Federal law or of any State law or municipal ordinance establishing higher standards than those established under this subpart."

Hawaii's laws (Chapter 390, HRS & 12-25 HAR) largely mirror the FLSA and 29 C.F.R. Part 570. Chapter 390, HRS, contains additional prohibitions on minors employed in "adult entertainment" and requirements for "theatrical employment" but exemptions for golf caddies, domestic service, and religious, charitable, or non-profit organizations as compared to federal law. The FLSA includes additional specified hazardous occupations for children, such as lifeguarding at swimming pools, peddling, and manufacturing explosives.

Except for adult entertainment and theatrical employment, there are no State requirements that exceed the minimum for youth employment under the FLSA. Therefore, no actions are necessary unless policy makers want to remove prohibitions pertaining to adult entertainment, requirements for theatrical employment, or existing exemptions for golf caddies, domestic service, and religious, charitable, or non-profit organizations.

4. What practices and policies would enable the State to streamline access to work-based learning opportunities that provide students with advantages in the Hawaii job market;

Both federal and state laws govern the employment of minors. When both are applicable, the law with the higher standard applies pursuant to 29 U.S.C. § 218. Certificates of age are required under both federal and state law, and if removed from Chapter 390 HRS, the FLSA would still require Hawaii employers to obtain federal certificates of age. The State's current minor certification process does not create any barriers as evidenced by the 11,632 certificates issued in FY2023 through a free, online process that neither requires a minor nor their guardian to appear in-person.



July 28, 2023

Jade Butay
Director
Hawaii Department of Labor and Industrial Relations
830 Punchbowl Street, Room 340
Honolulu, Hawaii 96813

Dear Director Butay:

I write to you with the goal of working together to ensure the safety and welfare of young workers in Hawaii.

As Principal Deputy Administrator of the Department of Labor's (Department) Wage and Hour Division (WHD), I am responsible for administering and enforcing some of our nation's most foundational labor laws, including the child labor provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. 212(c). Child labor laws ensure the safety and well-being of young workers and prevent work experiences from having a negative effect on their health or education. The federal child labor regulations generally prohibit employers subject to the FLSA from employing children in hazardous occupations and limit the hours that 14- and 15-year-olds can work in agricultural and nonagricultural employment. The FLSA also restricts the employment of children under the age of 14. The FLSA's child labor provisions cover children under the age of 18 who are employed by businesses or organizations that have an annual dollar volume of sales or business done of at least \$500,000 or who are individually engaged in commerce or in the production of goods for commerce as part of their employment. *See, e.g., [Fact Sheet #14: Coverage Under the Fair Labor Standards Act \(FLSA\) | U.S. Department of Labor \(dol.gov\)](#).*

Most states also have laws setting standards for child labor in both agricultural and non-agricultural occupations, and employers may be subject to both state and federal child labor provisions. WHD has seen a disturbing increase in efforts to weaken these state child labor laws across the country. While states may establish higher child labor standards than those set by the FLSA, the FLSA sets the minimum standards for child labor for covered employers and children. When both federal and state child labor laws apply, and the state child labor law is less restrictive than federal law, the federal law must be followed. State child labor laws that purport to authorize employment practices that are prohibited by the FLSA present an obstacle to accomplishing the objective of the FLSA's child labor provision—to protect the education and well-being of children and to end oppressive child labor. Moreover, without clear guidance from the state, these laws could create confusion for employers as to whether they must comply with the FLSA's provisions.

To provide clarity to employers who may inadvertently violate the FLSA by complying only with a less protective state law, WHD strongly recommends including the following language on the Hawaii Department of Labor and Industrial Relations website and in compliance assistance materials for employers:

Employers are generally subject to both state child labor laws and the federal child labor provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. 212(c), and the FLSA regulations at 29 CFR Part 570. Certain provisions of Hawaii state law may be less restrictive than federal law, and employers covered by the FLSA that only follow a less restrictive provision of Hawaii state law will be in violation of federal law. *See* 29 U.S.C. 218(a). For more information on federal child labor law, please visit the U.S. Department of Labor's Wage and Hour Division Website at www.dol.gov/whd.

If you have questions about how Hawaii state law interacts with federal child labor law, WHD is available to provide technical assistance. Please direct any questions to Cheresse Thymes at Thymes.Cheresse@dol.gov in WHD's Division of Fair Labor Standards Act and Child Labor. WHD is also available to provide compliance assistance to Hawaii employers, parents, and young workers to help each understand their rights or obligations under the FLSA and the Department's regulations. We appreciate the opportunity to work with you to ensure children in Hawaii who work do so in a safe and healthy environment.

Sincerely,



Jessica Looman
Principal Deputy Administrator