

August 15, 2001

WORKFORCE INVESTMENT ACT (WIA)
STATE ADMINISTRATIVE ENTITY (SAE)
SAE INFORMATION NOTICE NO. 60-01
(SIN NO. 60-01)

SUBJECT: CHILD LABOR LAWS AND WIA PARTICIPANTS

1. **PURPOSE:** To provide guidance on the requirements that federal and state child labor laws apply to youth working in paid or unpaid WIA work experience and employment programs.
2. **BACKGROUND:** The Fair Labor Standards Act (FLSA) of 1938, as amended (29 USC §201 et. seq; 29 CFR 570-580) include child labor provisions designed to protect the educational opportunities of youth and prohibit their employment in jobs and under conditions detrimental to their health and well-being. Employers are subject to a civil money penalty of up to \$10,000 for each youth employed in violation of the child labor provisions. In addition to the FLSA, New Mexico child labor laws are codified at Sections 50-6-1 through 50-6-16 NMSA 1978 and are administered by the New Mexico Department of Labor (NMDOL) Labor and Industrial Division. When both FLSA of 1938 and a state law apply, the law setting the higher standards must be observed.

DISTRIBUTION:

NM State and Local WDB Chairpersons
SAE NMDOL EO Officer
NMWDAs/LWDBs Subrecipients

SAE NMDOL Legal Counsel
NMWDAs/LWDBs Administrative Staff
USDOL Federal Representative

3. **ACTION:** As per WIA final rule 663.200(b), labor standards apply in any work experience where an employee/employer relationship, as defined by the Fair Labor Standards Act, exists. As per the FLSA and New Mexico Child Labor codes:
- a. The minimum age for employment is 14 in specified occupations outside school hours for limited periods of time.
 - b. A work permit certificate is required by state law for the employment of children under the age of 16.
 - c. Work permits are proof of age only and do not authorize prohibited employment.
 - d. Work permits shall be issued only by school superintendents, school principals, designated school officials, the Director of the Labor and Industrial Division of the NMDOL, or the Director's designee. Satisfactory proof of age at the time of issuance must be provided.
 - e. A work permit is in force for a period of one year from the date of issuance and may be renewed at the expiration for a period not exceeding one year.
 - f. Minors 14 and 15 may **NOT** be employed:
 - (1) during school hours
 - (2) before 7:00 a.m. or after 7:00 p.m. except from June 1 through Labor Day when evening hours are extended to 9:00 p.m.
 - (3) more than 3 hours a day on a school day
 - (4) more than 18 hours a week in a school week
 - (5) more than 8 hours a day in a non-school week
 - (6) more than 40 hours a week in a non-school week
 - g. There are no hour or time restrictions for minors age 16 and older.
 - h. It is the responsibility of the employer to keep the work permit on file. All work permits and records and the premises where children are employed are subject to inspection by the NMDOL Labor and Industrial Division.
 - i. Prohibited occupations established under the FLSA for minors ages 14 & 15:
 - (1) Occupations involving mining, manufacturing, processing including laundry and dry cleaning, duties in workrooms, public messenger service, hoisting apparatus or any power driven machinery, power driven mowers/cutters, and the use of auto pits, racks, or lifting apparatus.
 - (2) Occupations in connection with transportation of persons or property, warehousing and storage, communications, public utilities and construction.
 - (3) Occupations in retail food/gas service establishment for work in boiler/engine rooms, maintenance/repair of machines and equipment, outside window washing, cooking and baking, operating, setting up, adjusting, cleaning, oiling or repairing power-driven food slicers, grinders, choppers, and mixers, work in freezers/coolers and loading and unloading goods.
 - (4) Any occupations found and declared hazardous by the FLSA.
- Prohibited hazardous occupations established under the FLSA for minors under the age of 18 (even when the minor is employed by a parent/guardian):

Occupations involving or in connection with explosives, motor-vehicle drivers, mining (including coal mining), logging (including sawmill), power-driven wood working machinery, radioactive substance, hoisting apparatus (such as elevators, cranes, derricks, hoists, and high-lift trucks), metal forming, punching and shearing machines, slaughtering/meat packing, power-driven bakery-machines, paper product machines, manufacture of brick, tile and kindred products, circular saws, band saws, and guillotine shears, wrecking, demolition and ship breaking, roofing occupations and excavation operations.

- j. State Penalties for Violations: An employer who is in violation of any of the provisions of Sections 50-6-1 through 50-6-16 NMSA 1978 may be guilty of a misdemeanor and a monetary fine may be imposed for each violation.
- k. Federal Penalties for Violations: The FLSA provides for civil monetary penalties of up to \$10,000 for each violation of child labor provisions.
- l. Further information is available at:

NMDOL Labor and Industrial Division
1596 Pacheco Street, Suite 105
Santa Fe, New Mexico 87505
(505) 827-6830

- 4. **EFFECTIVE DATE**: This Notice is effective immediately and shall remain in effect until rescinded.
- 5. **RESCISSIONS**: None.
- 6. **CONTACT ENTITY**: Inquiries regarding this Notice should be directed to the Job Training Division in Santa Fe at (505) 827-6827.

CLINTON D. HARDEN, JR.
Secretary