

UPDATE

What are the U.S. Regulations for Child Labor in Agriculture?

Business owners and operators commonly employ human resources to provide labor to and services for their businesses. Many farmers, ranchers, and other agricultural producers often hire youth to perform labor or services in return for wages or other remuneration. “Hire” means the beginning of employment in exchange for wages or other remuneration. “Remuneration” is anything of value given in exchange for labor or services, including food and lodging.

Fair Labor Standards Act (FLSA)

The federal child labor provisions, authorized by the Fair Labor Standards Act (FLSA) of 1938, also known as the child labor laws, were enacted to ensure that when young people work, the work is safe and does not jeopardize their health, well-being, nor educational opportunities. Employees of farms are subject to FLSA’s child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce. For example, if they are involved in producing, manufacturing, mining, handling, transporting, or otherwise working with such goods.

In addition, all employees of a farm are covered under the FLSA on an enterprise basis if the annual gross volume of sales made or business done by the enterprise that owns the farm is not less than \$500,000. Such covered employees include workers employed directly by the farmer, or by a covered contractor hired by the farmer, who cultivate the soil or grow or harvest crops; raise livestock, bees, fur-bearing animals, or poultry; perform work which is incidental to the farming operations of that farm; work off the farm as employees of the farmer performing work which is incidental to the farming operations of that farm. For example, delivering produce to market by truck.

Minimum Age Standards for Agricultural Employment

The FLSA establishes minimum ages for covered employment in agriculture, unless a specific exemption applies. Youth of any age may work at any time in any job on a farm owned or operated by their parents.

- Youth ages 16 and above may work in any farm job at any time.
- Youth aged 14 and 15 may work outside school hours in jobs not declared hazardous by the Secretary of Labor.

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- Youth aged 12 and 13 years of age may work outside of school hours in non-hazardous jobs on farms that also employ their parent(s) or with written parental consent.
- Youth under 12 years of age may work outside of school hours in non-hazardous jobs with parental consent, but only on farms where none of the employees are subject to the minimum wage requirements of the FLSA. Local youth 10 and 11 may hand harvest short-season crops outside of school hours for no more than eight weeks between June 1st and October 15th if their employers have obtained special waivers from the Secretary of Labor.

School Hours and Employment in Agriculture

Minors under the age of 16 may not be employed during school hours except employed by their parent or a person standing in place of their parent. The term school hours is defined as those set by the official calendar of the school district in which a minor is living while employed in agriculture. No exception may be made for the early release of individual children or any class or grade to work in agriculture. Work before or after school hours, during weekends, or on other days that the school is not in session is considered outside school hours.

The requirement that minors be employed outside the school hours of the public school district in which the minor is living while employed in agriculture applies even if that minor does not attend public school. These hours apply when the minor attends a private or parochial school, is home schooled, or has completed his or her formal education. A crew leader who takes young migrant workers to an area where schools are open may not allow minors under 16 to work during the hours school is in session in the school district where the farm work is being done. Seasonal agricultural workers who return to their residences at the end of the day are governed by the hours of the school district in which they reside when performing the work.



Hazardous Agricultural Occupations

Minors under age 16, except youth working on a farm owned or operated by their parents, may not work in occupations declared hazardous by the Secretary of Labor. Students age 14 and 15 who are enrolled in vocational agricultural programs are exempt from certain hazardous occupations when certain requirements are met. Also, minors aged 14 and 15 who hold certificates of completion for training under a 4-H or vocational agriculture program may work outside school hours on certain equipment for which they have received training.

Hazardous farm-related occupations and activities include:

- Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor;
- Operating or working with a corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, mobile pea viner, feed grinder, crop dryer, forage blower, auger conveyor, unloading mechanism of a nongravity-type self-unloading wagon or trailer, power post-hole digger, power post driver, or nonwalking-type rotary tiller;
 - Operating or working with a trencher or earth-moving equipment, fork lift, potato combine, or power-driven circular, band or chain saw;
 - Working in a yard, pen, or stall occupied by a bull, boar, or stud horse maintained for breeding purposes; a sow with suckling pigs; or a cow with a newborn calf;
 - Felling, bucking, skidding, loading, or unloading timber with a butt diameter or more than 6 inches;
 - Working from a ladder or scaffold at a height of over 20 feet;
 - Driving a bus, truck, or automobile to transport passengers;
 - Riding on a tractor as a passenger or helper;
 - Working inside a fruit, forage, or grain storage



designed to retain an oxygen-deficient or toxic atmosphere; an upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position; a manure pit; or a horizontal silo while operating a tractor for packing purposes;

- Handling or applying toxic agricultural chemical identified by the words “danger,” “poison,” or “warning or a skull and crossbones on the label;
- Handling or using explosives; and
- Transporting, transferring, or applying anhydrous ammonia.



Minimum Wage

The FLSA, and subsequent amendments, established a minimum wage for youth. Employers may pay employees under 20 years of age a lower wage for a limited period – 90 calendar days – after they are first employed. Any wage rate above \$4.25 an hour may be paid to eligible workers during this 90-day period. Only employees under 20 years old may be paid the youth minimum wage and only during the first 90 consecutive calendar days after initial employment by their employer.

The eligibility period runs for 90 consecutive calendar days beginning with the first day of work for an employer. It does not matter when the job offer was made or accepted nor when the employee was considered “hired”. The 90-day period starts with and includes the first day of work for the employer. The 90-day period is counted as consecutive days on the calendar, not days of work. It does not matter how many days during this period the youth actually performs any work.

Many states have laws setting standards for youth employment in agriculture. When both state and federal youth employment laws apply, the law setting the most stringent standard must be observed.

Summary

Youth often work on farms and ranches. Such work is critical to the viability of the farm operation and give



youth opportunities to develop skills and earn money.

The Fair Labor Standards Act and its several amendments – in conjunction with state laws – is designed, in part, to prevent youth from performing dangerous tasks and assure they are paid a minimum wage. Youth can generally be involved all agricultural activities except those deemed hazardous by the U.S. Secretary of Labor and those tasks occurring during school hours. However, youth may be involved in nearly all activities on or directly related to a farm owned or operated by their parents.

Farmers and ranchers interested in hiring minors should be aware of federal and state laws. Also, they may find the guidebook “Ag Help Wanted” a valuable resource when managing employees of all ages.



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Ag Help Wanted: Guidelines for Managing Agricultural Labor is an educational guidebook designed to assist every person who currently manages or expects to manage human resources on farms, ranches, nurseries, dairies, and other agricultural operations. The text includes chapters covering:

- Organization Planning | Family Business Points;
- Organization Planning | Operating within Legal Bounds; and
- Staffing the Farm Business | Who Gets to Work in an Agricultural Business

RESOURCES:

Much of the information presented in this document was drawn from U.S. Department of Labor and U.S. Citizenship and Immigration Services.

Ag Help Wanted Updates. “What is the Fair Labor Standards Act in Agriculture and How Does it Apply to Me?”

AGWU-20200424.001. April 2020. <https://AgHelpWanted.org>.

U.S. Citizenship and Immigration Services. <https://www.uscis.gov> (accessed April, 2020).

U.S. Department of Labor. <https://www.dol.gov> (accessed April, 2020).

YouthRules! <https://www.youthrules.gov> (accessed April, 2020).



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