

Oklahoma Department of Labor

# Child Labor Law

40 O.S. §§71, 72.1, 74-80, 88, 89,

Administrative Rules

OAC 380:15 and 16

Current as of January 29, 2016



Melissa McLawhorn Houston

Commissioner of Labor



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# Frequently Asked Questions about Child Labor Law in Oklahoma

## 1. What is Oklahoma's minimum age for employment?

The minimum age to be employed in Oklahoma is 14 years. Children working either on farms or for parents or any entity in which a parent owns an equity interest are exempt. Children engaged in the sale or delivery of newspapers to consumers are also exempt. (See the federal Fair Labor Standards Act for more information.)

## 2. Who issues the work permit (also known as Employment Certificate of Age and Schooling)?

The work permit shall be approved by the principal, headmaster, or equivalent administrative officer of the school which the child attends or should be attending. The child's parents shall approve such certificate if the child is being schooled at home. The school's Issuing Officer verifies the minor's age and the compulsory school requirements in accordance with Title 70 Section 10 of the Oklahoma Statutes.

## 3. How many hours can a 14 or 15-year-old work while attending school?

A minor under the age of 16 years may work up to three (3) hours on school days (Monday to Friday), up to eight (8) hours on non-school days (days in which attendance is not compulsory), and up to 18 hours in a school week. A minor under the age of 16 years may work up to 40 hours in a non-school week if school is out for the entire week and attendance is not compulsory.

**4. How many hours can a 14 or 15-year-old work during summer break?**

A minor under the age of 16 years may work up to eight (8) hours on non-school days (days in which attendance is not compulsory) and up to 40 hours in a non-school week if school is out for the entire week and attendance is not compulsory. A minor under the age of 16 years may not work overtime.

**5. What times can a minor 14 or 15 years of age work when school is in session?**

From the Tuesday after Labor Day to May 31<sup>st</sup> of the following year, a minor under age 16 years may not work before 7:00 a.m. or after 7:00 p.m. If the employer is not subject to the Fair Labor Standards Act, a minor may be allowed to work until 9:00 p.m. throughout the year on days followed by a non-school day. Contact the U.S. Department of Labor to determine whether the employer is subject to the federal Fair Labor Standards Act.

**6. What times can a minor 14 or 15 years of age work when school is not in session?**

From June 1<sup>st</sup> to Labor Day, a minor under age 16 years may not work before 7:00 a.m. or after 9:00 p.m.

**7. Are there any restrictions on the hours or times a 16 or 17-year-old can work during school session or summer break?**

There are no restrictions on the hours or times once the minor reaches 16 years of age.

**8. How many occupations are considered hazardous for minors under the age of 18?**

According to the federal Fair Labor Standards Act, there are 17 hazardous occupations in which the minor must be at least 18 years of age to be employed. (See the federal Fair Labor Standards Act for a listing; the FLSA may be accessed via the Internet at the U.S. Department of Labor, [www.dol.gov](http://www.dol.gov).)

Minors under the age of 16 years are prohibited from performing occupations related to: construction; cooking or baking; fryers or grills; hoisting devices; ladders or scaffolds; lawn mowers and weed eaters other than working for self; loading and unloading; manufacturing,

mining, or processing; motor vehicles or service as helpers on vehicles; power-driven machines or equipment; public messenger service; public utilities and communications; slicers or sharp knives; transportation of persons or property by rail, highway, air, water, pipeline or other means; warehousing or storage.

9. How many injuries occur among minors under 18 years of age every year nationwide?

There are approximately 200,000 workplace injuries among minors under 18 years of age in the United States every year. Of these injuries, approximately 70 resulted in workplace fatalities.

10. What are the break requirements for 16 or 17-year-olds?

There are break laws for minors under age 16 years. A minor under age 16 years must be permitted a one (1) hour cumulative rest period for eight (8) consecutive hours worked or a 30 minute rest period for five (5) consecutive hours worked. Once the minor reaches 16 years of age, there are no requirements for breaks or lunches.

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# Title 40 — Child Labor Law

## **71. Restrictions on employment of children under sixteen**

No child under the age of sixteen (16) shall be permitted to work in any occupation or in any establishment other than those occupations permitted by the "Fair Labor Standards Act of 1938", as amended, 29 U.S.C., Sections 201 through 219, and any regulations related thereto.

It shall be the duty of the Commissioner of Labor upon investigation by himself or the agents of his department, or upon the complaint of the Board of Health, to determine what occupations are injurious to health or morals or especially hazardous to life or limb, and to notify employers in such occupations of his decision, which decision shall be final until such occupations shall be defined by law or by final judgment in a court of competent jurisdiction as safe for health, morals, life or limb.

## **72.1. Certain occupations not permitted to be filled by children under 16**

A. No child under sixteen (16) years of age shall be employed or permitted to work at any of the following occupations:

1. Manufacturing, mining, or processing occupations, including occupations requiring performance of any duties in work rooms or work places where goods are manufactured, mined, or otherwise processed;
2. Occupations which involve the operation or tending of hoisting apparatus or of any power-driven machinery other than office machines;
3. The operation of motor vehicles or service as helpers on such vehicles;
4. Public messenger service;
5. Occupations declared to be particularly hazardous to the health and well-being of minors under sixteen (16) years of age by federal laws and regulations or as declared by the Commissioner of Labor; and
6. Occupations, except office work or sales work, in connection with:
  - a. transportation of persons or property by rail, highway, air, water, pipeline or other means;
  - b. warehousing and storage;
  - c. communications and public utilities; and
  - d. construction including demolition and repair.

B. This section shall not apply to:

1. children working either on farms or for parents or any entity in which a parent owns an equity interest; or
2. children engaged in the sale or delivery of newspapers to consumers.
3. Children engaged in voluntary service for a charitable organization recognized exempt under the Internal Revenue Code of 1986, as amended, Section 501(c), if the organization receives written permission from a parent or legal guardian of any such child.

## **74. Educational qualifications required of child before employment**

No child under the age of sixteen (16) years shall be employed or permitted to work in any of the occupations specified in Section 71 of this title unless such child is able to read and write, or shall have attended some school during the preceding year for the time that attendance is compulsory under the laws.

### **75. Hours of employment of children—Rest periods**

A. No child under the age of sixteen (16) years shall be employed or permitted to work in any gainful occupation, other than agriculture or domestic service, for more than:

1. Three (3) hours in any one (1) school day, except that if the employer is not covered by the Fair Labor Standards Act, a child may work eight (8) hours or less on a school day which precedes a nonschool day;
2. Eight (8) hours on a nonschool day;
3. Eighteen (18) hours in any one (1) week when school is in session; or
4. Forty (40) hours in any one (1) week when school is not in session, except that if the employer is not covered by the Fair Labor Standards Act, a child may work forty (40) hours in any one (1) week when school is in session if attendance is not compulsory.

B. As used in this section, "in session" means the period beginning on the first Tuesday after Labor Day through May 31 of the following year.

C. Children under the age of sixteen (16) years must be permitted a one (1) hour cumulative rest period for each eight (8) consecutive hours worked. However, no such child shall work more than five (5) consecutive hours unless permitted a one-half (1/2) hour cumulative rest period.

### **76. Night work**

No person under the age of sixteen (16) years shall be employed or permitted to work in any of the occupations set out in Section 71 of this title between the hours of seven o'clock p.m. and seven o'clock a.m.; except, during the summer (June 1 through Labor Day) and, if the employer is not covered by the Fair Labor Standards Act, during the remainder of the year on days followed by a nonschool day when the prohibited hours will be between the hours of nine o'clock p.m. and seven o'clock a.m.

### **77. Schooling certificates—Duties of employers**

Before any child under the age of sixteen (16) years shall be employed in any occupation specified in Section 71 of this title, it shall be the duty of the parent or guardian of such child to procure and furnish the employer of such child an age and schooling certificate as hereinafter provided in this article. It shall be the duty of every person, firm or corporation owning or operating any of the establishments specified in Section 71 of this title, or employers in such occupation, to keep on file for the inspection of the Commissioner or his designee, truant officers, or other persons charged with the administration of this article, such age and schooling certificate, for every child under sixteen (16) years of age employed in such occupation, and to keep on file where such children are employed a register with a complete list



of children under sixteen (16) years of age so employed, together with the age of each child as set forth in the age and schooling certificate opposite the name of such child, and also to keep on file in such place or establishment, in such form as the Commissioner or his designee may prescribe, the time of opening and closing of such factory or other establishment, the number of hours of labor required or permitted in such establishment, the hours of commencing and stopping work, and the time allowed for meals, and, if there be two or more shifts in such establishment, the number of hours in each shift during which the employees are required or permitted to work. On termination of the employment of a child so registered, and whose certificate is so filed, such certificate shall be forthwith surrendered by the employer to the child or its parent, guardian or custodian; provided that this section shall not apply to the employment of children who are not residents of the State of Oklahoma, to perform in any duly licensed theatre, motion picture theatre or other place of public amusement.

### **78. Evidence of age of child—Certificate of physical fitness**

The Commissioner or his designee, truant officer, or other person charged with the administration of this article, may make demand on an employer in whose factory or establishment a child apparently under the age of sixteen (16) years is employed or permitted or suffered to work, and whose employment certificate is not then filed as required by this section, that such employer shall either furnish him, within ten (10) days, evidence satisfactory to him that such child is in fact over sixteen (16) years of age, or shall cease to employ or permit or suffer such child to work in such factory or establishment. Such officer may require from such employer the same evidence of age of such child as is required on the issuance of an employment certificate; and the employer furnishing such evidence shall not be required to furnish any further evidence of the age of the child. In case such employer shall fail to produce and deliver to such officer, within ten (10) days after such demand, such evidence of age herein required by him, and shall thereafter continue to employ such child to work in such factory or establishment, proof of the giving of such notice and of such failure to produce and file such evidence shall be prima facie evidence in any prosecution brought for violation of this provision of this article that such child is under sixteen (16) years of age and is unlawfully employed: Provided, that the Commissioner or his designee shall have the power to demand a certificate of physical fitness from some licensed physician in good standing in this state in case of children who may appear to him physically unable to perform the labor at which they may be engaged, and shall have power to prohibit the employment of any minor that cannot obtain such a certificate.

### **79. Age and schooling certificates—Proof of age**

The age and schooling certificate shall be approved by the principal, headmaster, or equivalent administrative officer of the school which the child attends or should be attending or by one of the child's parents if the child is being schooled at home, who shall, for the purpose of this article, be empowered to administer an oath. The

principal, headmaster, or equivalent administrative officer of the school which the child attends or should be attending or by one of the child's parents if the child is being schooled at home, shall approve such certificate only upon the application in person of the child desiring employment accompanied by its parents, guardian or custodian, and after having received, examined and approved documentary evidence of age, showing that the child is fourteen (14) years of age, or over, which evidence shall consist of one of the following named proofs of age, duly attested, and the proof accepted shall be specified in the certificate issued to the child; the proof specified in subdivision (a) shall be required first, but if this is not available then one of the proofs specified in the succeeding subdivisions shall be required and in the order designated until the age of the child be established, as follows:

(a) A birth certificate or transcript thereof issued by a registrar of vital statistics or other officer charged with the duty of recording births which certificate or transcript thereof shall be prima facie evidence of the age of the child.

(b) A certificate of baptism or transcript thereof, showing the date of birth and place of baptism of the child.

(c) A passport showing the age of the child; or a certificate of arrival in the United States, issued by the United States immigration officer and showing the age of the child; or a life insurance policy at least one (1) year old showing the age of the child or other credible evidence as may be approved by the Commissioner.

Every employment certificate shall be signed, in the presence of the officer issuing the same by the child in whose name it is issued.

## **80. School attendance certificate to be presented—Duplicate of schooling certificate—Blank form—Form of certificate**

The age and schooling certificate shall not be approved until the parent or guardian of such child shall present a school attendance certificate as hereinafter prescribed. A duplicate of such age and schooling certificate shall be filled out and sent by the school officer, before whom the same is made, to the Commissioner of Labor. The blank forms for school attendance certificate and for the age and schooling certificate shall be supplied to the principal, headmaster, or equivalent administrative officer of the school or to one of the child's parents if the child is being schooled at home by the State Superintendent of Public Instruction as hereinafter indicated.

### **SCHOOL ATTENDANCE CERTIFICATE.**

(Name of School).

(City and County).

(Date).

This certifies that (name of child) can read and write and that according to the records of this school and in my belief is now (number of years and months) old, and has attended school during the full school term of the preceding year.

(Name of parent or guardian).

(Residence).

(Signature of teacher).

### **AGE AND SCHOOLING CERTIFICATE.**

This certifies that I am (father, mother or guardian) of (name of child) s.s.#, and that he (or she) was born at (town or city), (county), (state or country), on the (day, month and year of birth), and is now (number of years and months old).

(Signature of parent or guardian).

(Date).

(City or town or county).

Personally appeared before me the above-mentioned (name of person signing), and made oath that the foregoing certificate is true to the best of his (or her) knowledge and belief.

I hereby approve the foregoing certificate of (name of child), height (feet and inches), weight (pounds), complexion (fair or dark), hair (color), eyes (color), having no sufficient reason to doubt that he (or she) is of the age therein certified.

### **OWNER OF CERTIFICATE.**

This certificate belongs to (name of child), and is to be surrendered to him (or her) whenever he (or she) leaves the service of the employer holding the same, but if not claimed by said child within thirty days after leaving said service, shall be sent to the Commissioner of Labor.

(Signature of officer, with name of city, town or county, and date.)

## **88. Penalties for violating this chapter**

Any person who is in willful violation of any of the provisions of Section 71 et. seq. of this title shall, upon conviction, be guilty of a misdemeanor and, for each offense, shall be subject to a fine of not more than Five Hundred Dollars (\$500.00), or imprisonment for not less than ten (10) nor more than thirty (30) days, or both such fine and imprisonment.

## **89. Enforcement**

A. It shall be the duty of the Commissioner of Labor to enforce the provisions of Section 71 et seq. of Title 40 of the Oklahoma Statutes.

B. 1. In addition to any other penalty prescribed by law, any person who is in violation of Section 71 et seq. of Title 40 of the Oklahoma Statutes shall be liable for an administrative fine, to be assessed by the Commissioner of Labor, of not more than One Hundred Dollars (\$100.00) for each offense. The maximum administrative fine shall not exceed One Thousand Dollars (\$1,000.00) for all related violations. All administrative fines collected pursuant to this section shall be deposited in the Department of Labor Revolving Fund, created pursuant to Section 141.19 of Title 40 of the Oklahoma Statutes.

2. In lieu of the penalty provided for in paragraph 1 of this subsection, the Commissioner or a representative of the Commissioner may issue a warning for a first offense to a person who is in violation of Section 71 et seq. of Title 40 of the Oklahoma Statutes. The warning shall cite the violation committed by the

person and, where appropriate, state the time period in which the violation must be remedied.

C. After a violator is cited or fined for two unrelated offenses of failure to comply with the provisions of Section 71 et seq. of Title 40 of the Oklahoma Statutes, the Commissioner of Labor shall have the authority to issue cease and desist orders, in accordance with the rules of the Department of Labor, against the violator until such time as compliance with the provisions of Section 71 et seq. of Title 40 of the Oklahoma Statutes is met. Any order to cease and desist issued by the Commissioner may be enforced in district court. Upon application of the Commissioner, the district court may issue an injunction without bond for the purpose of enforcing this section.

D. The Commissioner of Labor shall assess and collect administrative fines incurred under subsection B of this section and, at the Commissioner's discretion, may remit, mitigate, or negotiate the fines. In determining the fine to be assessed, or the amount agreed upon in any negotiation, consideration shall be given to the appropriateness of the fine in light of the gravity of the violation and the extent to which the person charged has attempted to remedy the consequences of the violation. Individual proceedings shall be conducted pursuant to the provisions of subsection E of this section.

E. For the purpose of determining if an administrative fine should be assessed, a hearing shall be conducted in accordance with the provisions of the Administrative Procedures Act, by a hearing officer designated by the Commissioner of Labor. A final order by the hearing officer may be appealed to the district court in the county in which the violation occurred pursuant to the provisions of the Administrative Procedures Act.



# Administrative Rules – Child Labor

## CHAPTER 15. HAZARDOUS EMPLOYMENT OF CHILDREN

### **380:15-1-1. Purpose**

The purpose of the rules in Chapter 15 is to restrict children under the age of sixteen in engaging in certain occupations and to promulgate rules that the Commissioner of Labor shall use in determining what occupations are injurious to the health or morals or especially hazardous to life and limb to children.

### **380:15-1-2. Prohibited Sales-REVOKED**

### **380:15-1-3. Non-profit organizations-REVOKED**

### **380:15-1-4. Special hazards**

In order to vitalize Section 71 of Title 40, Oklahoma Statutes, the Commissioner of Labor has determined that the following occupations are either or both injurious to health or morals or especially hazardous to life or limb of children under fifteen years of age:

- (1) Working in or around grease vats or deep-frying facilities; and/or
- (2) Working around any powered machine used in the slicing or preparing of foods.

## **CHAPTER 16. CHILD LABOR VIOLATIONS**

### **SUBCHAPTER 1. GENERAL PROVISIONS**

### **380:16-1-1. Purpose**

The purpose of this Chapter is to set forth rules for the enforcement of 40 O.S. § 71 *et seq.*, relating to the employment of children.

### **380:16-1-2. Definitions**

The following words or terms shall have the following meaning, unless the context clearly indicates otherwise:

“**The Act**” shall be defined as 40 O.S. §§ 71-89.

“**Age and Schooling Certificate**” may at various times be referred to as “employment certificate of age and schooling,” “employment certificate,” “work certificate,” and “work permit.”

“**Commissioner**” shall mean the Commissioner of Labor or her designee.

“**Equity interest**” means ownership interest.

“**Hearing officer**” shall mean the Commissioner of Labor or her designee sitting as Administrative Law Judge.

“**Inspecting officer**” means any employee of the Department of Labor who may be designated to inspect or investigate violations of the Act, or who personally observes a violation of the Act.

### **380:16-1-3. Burden of compliance on parents and employer**

The failure of a parent or guardian to comply with the provisions of the Act shall not absolve the employer from the requirements thereof. Lack of knowledge, either actual or constructive, as to an employee's age shall not be a valid defense to any violation of the Act.

## **SUBCHAPTER 5. HEARING PROCEDURES**

### **380:16-5-1. Notices of violation**

If upon inspection or investigation, an employer is found to be in violation of the Act, the inspecting officer may issue the employer a written citation describing the violations found and any corrective action which must be taken. Employers are to comply with such corrective action immediately, or as soon as possible, unless otherwise instructed by the Commissioner. Failure to comply with the Commissioner's lawful order shall be taken into account as an aggravating factor during any administrative hearing. In any administrative hearing, the hearing officer shall not be bound by the amount of any fine which may have been negotiated prior thereto. The hearing officer may set the fine at whatever amount he or she deems appropriate, up to the maximum allowed by the Act.

### **380:16-5-2. Warnings**

In lieu of a citation, the inspecting officer may issue a warning to the employer if such is warranted in the officer's opinion. The warning may require that corrective action be taken immediately; however, failure to comply with a warning will not result in a fine being imposed upon the employer, unless a subsequent citation is issued to the employer.

### **380:16-5-3. Hearing procedures**

(a) Employers cited for violations of the Act will be provided with notice of the date, time, and place where they may contest such violations. Employers may appear either in person or by counsel. Failure to appear may result in entry of a default order and assessment of the maximum fine allowable by law. Employers may file whatever pleadings or motions they deem appropriate.

(b) The Notice of Violation and the testimony of the inspecting officer shall establish a prima facie case that the violation occurred.

(c) If the employer wishes to contest any facts relating to the violation, or to present an affirmative defense, the employer shall provide the following documents to the agency's Legal Division at least 10 days prior to the scheduled hearing date:

- (1) A brief statement explaining the employer's defenses to the citation;
- (2) A list of any witnesses the employer intends to call on its behalf;
- (3) Two (2) copies of all documents the employer intends to introduce as exhibits at the hearing.

(d) Unless good cause is shown, no evidence shall be admissible at the hearing unless the same has been provided to the Legal Division as required above.

#### **380:16-5-4. Cease and desist orders**

Pursuant to the Act, the Commissioner may issue Cease and Desist Orders against employers who repeatedly violate child labor laws. If a Cease and Desist Order is issued against an employer, the matter will be set before a hearing officer on the next available Child Labor docket. The employer shall be commanded to appear and show cause why the Order should not remain in full force and effect. Failure to comply with the Order and/or appear at the show cause hearing may result in the Commissioner obtaining an injunction from the District Court to enforce the Order. Compliance with any Cease and Desist Order is mandatory unless and until the Commissioner rescinds the Order.

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# For more information . . .

## Oklahoma Department of Labor

[www.labor.ok.gov](http://www.labor.ok.gov)

### Oklahoma City

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Telephone 405-521-6100  
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## U.S. Department of Labor

[www.dol.gov](http://www.dol.gov)

Toll-free, nation-wide 866-487-2365

### Oklahoma City

215 Dean A. McGee Boulevard  
Oklahoma City, OK 73102  
Telephone 405-231-4545

### Dallas

525 South Griffin, Suite 707  
Dallas, TX 75202  
Telephone 214-767-6831

## Oklahoma Employment Security Commission

2401 North Lincoln Boulevard  
Oklahoma City, OK 73152  
Toll Free Telephone 888-980-9675  
[www.oesc.ok.gov](http://www.oesc.ok.gov)



## U.S. Equal Employment Opportunity Commission

215 Dean A. McGee Ave., 5th Floor  
Oklahoma City, OK 73102  
Telephone 405-231-4911  
[www.eeoc.gov](http://www.eeoc.gov)

## Oklahoma Human Rights Commission

2101 North Lincoln Boulevard, Room 480  
Oklahoma City, OK 73105  
Toll Free Telephone 888-456-2885  
Fax 405-522-3635  
[www.ok.gov/ohrc](http://www.ok.gov/ohrc)

## National Labor Relations Board Region 17

224 South Boulder, Room 318  
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