

THE JOB DESCRIPTION

Hiring Summer Help?

Watch Out for Child Labor Laws



Many companies enjoy adding young workers to their staffs during the summer months, and it's a win-win as long as you follow the child labor laws of the U.S. Department of Labor and your state. There are civil and criminal penalties for violating child labor laws, so employers need to be careful.

There are two primary types of restrictions on youth work: hours of work and type of work.

13-year-olds and younger

Children 13 years old and younger are generally not allowed to work, except for casual jobs and jobs in the entertainment field.

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The Cavanaugh Law Firm, LLC is committed to your company's success. We are available to provide you knowledgeable advice on the full range of labor and employment law issues and to defend your company and its managers in lawsuits and agency proceedings. If you have any questions about the contents of this newsletter or about any issue affecting your company, please contact us.

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14- and 15-year-olds

14- and 15-year-olds may generally work only:

- Outside of school hours
- For 18 hours during any week when school is in session
- For 40 hours during a week when school is not in session
- For 3 hours during any day when school is in session (including Fridays)
- For 8 hours on a day when school is not in session
- From 7 a.m. to 7 p.m. on any day, except from June 1 through Labor Day, when the child may work from 7 a.m. to 9 p.m.

Children who are 14 and 15 years old may do the following types of work (this list is not exhaustive):

- Office and clerical work, including the operation of office machines
- Retail, grocery, and restaurant work, including:
 - Cooking with electric or gas grills (but not over an open flame) or with deep fryers that automatically lower and raise the baskets to and from the hot oil
 - Cashiering, selling, modeling, price-marking, assembling orders, packing, shelving, and bagging
- Errand and delivery work by foot, bicycle, and public transportation
- Cleanup work, including the use of vacuum cleaners and floor waxers, and the maintenance of grounds, but not including the use of power-driven mowers or similar equipment
- Kitchen work, preparing and serving food, but only with permitted machines; minors may occasionally enter freezers momentarily to retrieve items in conjunction with restocking or food preparation
- Work of an intellectual or artistically creative nature, such as, but not limited to, computer programming, playing a musical instrument, and drawing

- Work in connection with cars and trucks, if limited to dispensing gasoline and oil, courtesy service, car cleaning, washing and polishing by hand; but not including work involving the use of pits, racks, or lifting apparatus
- Lifeguarding at swimming pools (age 15)

16- and 17-year-olds

There are no limits in Missouri and Illinois on working hours for 16- and 17-year-old workers. 16- and 17-year-olds are still prohibited from working in hazardous jobs.

Employment Certificates

In Missouri and Illinois, 14- and 15-year-olds must obtain a work certificate from the Missouri Department of Labor and get approval to work from the local public school official. Even if the child attends private school or is home schooled, a public school official generally can override a private school principal's or parent's approval.



At age 14, children are permitted to work in retail stores, grocery stores, and restaurants



Illinois Enacts Civil Union Law with Broad Implications for Employers

On June 1, 2011, the Illinois Religious Freedom Protection and Civil Union Act ("Civil Union Act") took effect. The Civil Union Act is similar to other states' laws that provide the same rights to parties to a civil union – both same- and opposite-sex couples – as that of spouses. However, like other states, the law does not label these unions as "marriage". The new law provides that a "party to a civil union" is to be included in *any definition* used in state law where the term "spouse", "family", "immediate family", "dependent", "next of kin", and other terms that denote "spousal relationship" are stated. The Civil Union Act stops short of granting same-sex couples the right to "marry"; however, it does guarantee "[a] party to a civil union . . . the same legal obligations, responsibilities, protections, and benefits as are afforded or recognized by the law of Illinois to spouses."

Illinois will be the sixth state to provide equal state-level spousal rights to same-sex couples entering into domestic partnerships or civil unions. Illinois is also one of 21 jurisdictions that prohibit employment discrimination on the basis of sexual orientation.

Health and Benefits Plans

In light of the expansive definition of the term "party to a civil union" in the Civil Union Act, the new law will provide greater benefits to parties to an Illinois civil union than are provided under federal law, which does not grant same-sex couples who enter into civil unions or domestic partnerships the same rights and benefits as married couples. An immediate area of potential conflict can be found in employee benefits.

Whether an employer's benefits plan will be affected by the Civil Union Act will be largely dependent upon whether the benefits are subject to the Employee Retirement Income Security Act (ERISA). An employer may not be required to offer coverage for same-sex spouses or domestic partners under the Civil Union Act if the employer's health and benefits plan is subject to ERISA.

While ERISA preempts state laws that apply to an ERISA benefit plan, it does not preempt state

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Missouri Gov. Nixon Vetoes Pro-Employer Bill to Amend Missouri Human Rights Act

As expected, Missouri Governor Jay Nixon vetoed the pro-employer bill that would have amended the Missouri Human Rights Act in pro-employer ways, both procedurally and substantively. It would have made it more difficult for plaintiffs to prove unlawful discrimination and harassment and would have limited the damages available to plaintiffs. Nixon not only vetoed the bill, but also promised he would “not cede one inch of ground” on the issue. The veto was not overridden, and the Missouri Legislature is now out of session.

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laws that regulate insurance. Thus, insurance companies issuing policies in Illinois may now be required to offer coverage for the partners of employees who enter into a civil union in Illinois or who have previously entered into a civil union in another state. As a practical matter, Illinois employers that do not already do so should consider voluntarily extending insurance coverage to employees in civil unions and domestic partnerships to avoid potential claims arising out of such relationships, including, but not limited to, charges of discrimination based upon sexual orientation or marital status. Moreover, to the extent that normal qualifying conditions are met, the Civil Union Act also will likely extend Illinois' Health Insurance Continuation Rights (mini-COBRA) to same-sex couples if the employer is not subject to Federal COBRA.

Implications of the Act

It is still too early to tell what legal challenges, if any, the Civil Union Act will face and how far reaching it will be following enactment. For example, the Illinois Family Military Leave Act (the "Military Leave Act") requires Illinois employers to provide unpaid leave to individuals if certain members of their family, including spouses, are called away on military duty. If interpreted literally, the Civil Union Act will

extend the protections afforded by the Military Leave Act to couples who enter into civil unions.

In addition to determining if health and benefits plans comply with the Civil Union Act and appropriately define the term "spouse", employers should be mindful of other areas that may also be affected by the law, including, but not limited to:

- Terms and conditions of employment contracts and/or collective bargaining agreements
- Employment tax liability, especially under state law;
- Leave of absence policies where spouse has not been defined
- Statutory leaves such as family medical leave, leave for victims of domestic abuse, sexual assault, and related crimes
- Other policies, such as sick leave that applies to family members' illnesses, procedures, and training

In light of the likely broad changes the Civil Union Act will have on the laws of the State of Illinois, some of which are identified above, Illinois employers should ensure their policies (including health and benefits plans), handbooks, and harassment training programs are in compliance with the new law.

Tech Update: New Timesheet App Helps Workers Track Hours on Their iPhones

The U.S. Department of Labor ("DOL") has launched its first application for iPhones, a timesheet to help employees track the hours they work.

Available in English and Spanish for the iPhone and iPod Touch, the free app allows users to track their regular work hours, break time, and overtime hours. The app also contains links to the web pages of the DOL's Wage and Hour Division.

The app will enable users to add comments to their information; view a summary of their work hours in a daily, weekly, and monthly format; and e-mail the summary of

work hours and gross pay as an attachment, the DOL said.

According to the DOL, this information could be helpful during an investigation of an employer that has failed to maintain accurate records of employment.

The DOL will explore updates that could enable similar versions for other smartphone platforms, such as Android and BlackBerry, and other pay features not currently available, such as tips, commissions, bonuses, deductions, holiday pay, pay for weekends, shift



An example of the DOL's new iPhone application

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New I-9 Form and Procedures Take Effect



Guidelines for verifying employment eligibility have changed

A new final rule on verifying employment eligibility through the Form I-9 process has taken effect. The new rule adopts the changes the Department of Homeland Security made to the Form I-9 process over two years ago. This final rule prohibits employers from accepting expired documents, revises the list of acceptable documents to remove outdated documents, and makes technical amendments.

The list of acceptable documents employees may present to employers is still divided into three sections: List A documents, showing identity as well as employment authorization; List B documents, showing identity only; and List C documents, showing employment authorization only.

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DOL iPhone App (continued)

differentials, and pay for regular days of rest.

The app may be downloaded directly from iTunes or from the Wage and Hour Division's home web page at www.dol.gov/whd.

The release of this app is yet another reminder to employers to require non-exempt employees to track their time and to turn in timesheets on a regular basis, even if the non-exempt employees are paid a salary or commission-only. In a DOL Wage and Hour investigation, if the employee has been tracking his or her hours and the employer has no time records of its own, there will be no practical way to challenge the employee's records, and the employee will have little difficulty obtaining premium pay for whatever overtime hours he or she claimed over the past two years.

New I-9 Form (continued)

There are still two versions of the Form I-9 that employers may use – the current version (Rev. 08/07/2009) or the previous version (Rev. 02/02/2009). The Handbook for Employers, Instructions for Completing the Form I-9 (M-274), is available at www.uscis.gov/files/form/m-274.pdf.



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Congressional Update: Sexual Orientation / Gender Identity Employment Bill

The Employment Non-Discrimination Act (H.R. 1397, S. 811) was introduced again this spring in the House and Senate. It would prohibit employers, employment agencies, labor organizations, and joint labor-management committees from firing, refusing to hire, or discriminating against those employed or seeking employment on the basis of their perceived or actual sexual orientation or gender identity. The EEOC would enforce the ban, and the procedures and remedies for a violation would be the same as the procedures and remedies available for a violation of Title VII of the 1964 Civil Rights Act.

If one of these bills becomes law, it would not have a large effect in Illinois, which already prohibits employment discrimination on the basis of real or perceived sexual orientation or gender identity. But this would have an impact on Missouri companies with 15 or more employees since it would impose entirely new prohibited bases for job actions. Currently, Missouri has no prohibitions against discrimination on the basis of sexual orientation or gender identity.