

## **MINORS CAN'T ALWAYS WORK "ADULT" HOURS, BUT MUST STILL BE PAID ADULT MINIMUM WAGE**

**QUESTION:** We are thinking of hiring a few high school students for the summer to help with our growing business. Our plan is to have them work very long hours for a month or so we can catch up on our outstanding orders. Are minors entitled to be paid overtime pay? If so, is it calculated the same way as is overtime for adult employees?

**ANSWER:** For purposes of wage and hour law, a minor is any employee under 18 years of age. An employer's obligation to pay overtime - including the method of calculating the overtime rate of pay - is the same for minors as it is for adult employees: Employers must pay employees at the overtime rate of pay (time and a half the employee's regular rate) for all hours worked in excess of 40 hours in a workweek.

Since you are anticipating that the employees who are minors will work long hours, here's a review the hours limitations set forth in child labor laws. The limitations differ depending on an employee's age.

Sixteen and 17-year-olds may work up to 44 hours per week, any time of day, any time of the year. An employer desiring to employ a 16 or 17 year-old to work more than 44 hours per week must be issued a Special Emergency Overtime Permit by the Wage and Hour Commission. If approved, 16 and 17 year olds may be employed to work up to 60 hours/week.

Hours limitations on 14- and 15-year-olds depend on whether school is in session. When school is in session, 14- and 15-year-olds may not work during school hours and are limited to working between the hours of 7 a.m. to 7 p.m. They may only work a maximum of 3 hours per day on school days and 8 hours per day on non-school days (e.g., weekend days). The weekly maximum they can work is 18 hours.

From June 1st through Labor Day (summer vacation from school), 14- and 15-year-olds may work up to 8 hours per day, with a maximum of 40 hours per week. However, they may not work earlier than 7a.m. or later than 9 p.m.

So, if the minors you end up employing are 16 or 17 years of age, you may require them to work up to 44 hours per week as long as you pay them four hours at the overtime rate of pay. Younger minors (those 14- and 15-years-old) should not work over 40 hours per week, and therefore will not earn any overtime compensation.

Many of the federal and state rules are exactly the same, but in instances in which they differ, the law which is the most beneficial to the employee must be followed. An example is the minimum wage: The federal minimum wage is \$5.15 an hour, but Oregon's minimum wage is currently \$7.50 an hour. Oregon employers, even if covered by both laws, must therefore pay employees (including the younger ones) at least \$7.50 an hour.

In the past, state law required every working minor to have an individual work permit. In addition, the employer had to have an individual employment certification for every minor hired. Those requirements were eliminated several years ago. Now, employers of minors need only apply for and obtain an Annual Employment Certificate from BOLI. Information about applying for Annual Employment Certificates may be obtained from the Child Labor Unit, Wage and Hour Division, BOLI, (971)673-0836, or from the BOLI website at the address provided below.

**QUESTION:** Are employees under 18 years of age entitled to more rest breaks than adult employees?

**ANSWER:** No, but minors are entitled to longer rest breaks than adults. Although adult employees must receive breaks that are at least 10 minutes long, those for minors must be at least 15 minutes long. As with adults, minors must get one break for every four hours worked, or “the major portion thereof.” “Major portion thereof” is a rather convoluted way of saying “more than two hours.”

Therefore, an employee must receive a break for any period they work that is longer than two hours (such as a shift from 1 p.m. to 3:10 p.m., or a shift from 9 a.m. to 11:30 a.m.). The rest periods must be paid, and should be provided as close to the middle of the four hour period as possible.

In addition, employers must provide minors with meal periods of at least 30 minutes that start no later than 5 hours and one minute after the minor reports to work. As with adults, this time may be unpaid as long as it not interrupted.

**QUESTION:** I recently became the owner of a fast food restaurant. Last Friday night, a 16-year-old employee arrived to work his shift, and I told him he didn't have to stay and work because business was slow. He commented to me that he was glad to have the night off to spend with his friends. One of my managers is telling me that I have to pay him for his scheduled shift -- even though I sent him home before he even punched in on the time clock. Is this true?

**ANSWER:** Your manager is likely referring to the “adequate work” rule in the child labor law. If a minor employee is required to report to work, he or she must be provided work (or compensation in lieu thereof) for half the minor's regularly scheduled work shift or one hour, whichever is greater. This is true even if the employer ends up instructing the minor that he or she is not needed to work at all for that shift. Whether the minor employee is pleasantly or unpleasantly surprised is not relevant to the amount of compensation due in the situation.

**For more information affecting Oregon employers, as well as information about seminars from BOLI's Technical Assistance Unit, visit our website at [www.oregon.gov/boli/ta](http://www.oregon.gov/boli/ta).**

