

CHILD LABOR

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1.0 AUTHORITY

1.1 --- Commissioner of Labor & Industries

1.2 --- Wage and Hour Commission

2.0 EMPLOYMENT RELATIONSHIP

2.1 --- Generally

2.2 --- Independent Contractors (*see also* Ch. IX, sec. 2.3)

2.3 --- Volunteers/Interns

3.0 EMPLOYMENT CERTIFICATES

In his answer, respondent did not dispute the fact that claimant was 17 years of age when respondents employed him. Rather, respondent stated that both claimant and claimant's father told respondent that claimant was 17½ years old when respondents hired him. Respondent admitted not obtaining an employment certificate prior to employing claimant but asserted ignorance of the law requiring employers to obtain employment certificate before employing minors as their reason for not obtaining a certificate. Ignorance of the law is no defense and the forum granted the agency's motion for summary judgment with respect to its allegation that respondent violated ORS 653.307(2) and OAR 839-021-0220(2). ----- ***In the Matter of Abdul Rahim Ghaffari, 35 BOLI 38, 49-50 (2016), appeal pending.***

A primary purpose of the employment certificate requirement is to protect minors by ensuring they are not allowed to perform job duties or work in occupations deemed hazardous to minors by requiring that BOLI screen all minor's stated job duties prior to their commencement of work. Respondent did not apply for and obtain a certificate, thereby violating ORS 653.307(20) and exposing a minor to the injury that he suffered while operating a band saw. ----- ***In the Matter of Schultz Mfg., Inc., 32 BOLI 1, 6 (2012).***

4.0 POSTING REQUIREMENTS

5.0 RECORD KEEPING

5.1 --- Generally

5.2 --- Preserving, Maintaining and Making Records Available

When all the aggravating factors cited by the agency, viewed in a manner most favorable to the respondents, were amply supported by evidence in the record, there was no

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genuine material issue of fact, and there were no mitigating factors, the forum granted the agency's summary judgment motion for the assessment of a \$1,000 civil penalty for respondents' violation of OAR 839-021-0170. ----- ***In the Matter of Abdul Rahim Ghaffari, 35 BOLI 38, 53 (2016), appeal pending.***

When the only evidence of any records that respondent maintained and preserved with respect to a minor employee and his employment with respondent did not mention the minor employee's full name, his street address, or his date of birth, and respondent provided no evidence that he made any attempt to ascertain these facts, the forum granted the agency's motion for summary judgment on its allegation that respondent violated the provisions of OAR 839-021-0170. ----- ***In the Matter of Abdul Rahim Ghaffari, 35 BOLI 38, 51-52 (2016), appeal pending.***

5.3 --- Verifying Age of Minors

"Requiring" a minor employee to produce "an acceptable proof of age document" under OAR 839-021-0185 means that a respondent employer must require the production of that document *before* employing the minor employee. On a motion for summary judgment, viewed in a manner most favorable to respondent, the forum concluded that (1) the minor employee told respondent that he was 17 years old; (2) Respondent asked the minor employee if he had a driver's license; (3) The minor employee said he did not, that all his records were with his mother in Washington and that he would ask her to send them to him; (4) The minor employee never provided respondent with any proof of age document; and (5) Respondent did not require the minor employee to produce any proof of age document before he started work or at any time during his employment. Based on this evidence, the forum concluded that respondent violated OAR 839-021-0185 and granted the agency's motion for summary judgment. ----- ***In the Matter of Abdul Rahim Ghaffari, 35 BOLI 38, 54 (2016), appeal pending.***

6.0 WORK PERMITS

7.0 OCCUPATION OR INDUSTRY

7.1 --- Agriculture

7.2 --- Domestic Work

7.3 --- Door to Door Sales

7.4 --- Entertainment

7.5 --- Hazardous Occupations

Operation of a chain saw by a minor under the age of 18 years is an occupation listed as hazardous under Title 29 CFR §570.65. Work on or about a roof, including gutter work, by a minor under the age of 18 years is an occupation listed a hazardous under Title 29 CFR §570.67. ----- ***In the Matter of Abdul Rahim Ghaffari, 35 BOLI 38, 65 (2016), appeal pending.***

A minor employee credibly testified that he spent several days operating a 14" chain saw, on a roof scraping off moss, and on a ladder cleaning and painting a gutter. Respondent claimed that the minor never used respondent's chain saw or worked on a roof and testified that an OSHA complaint alleging safety violations regarding the minor's alleged use of a chain saw had been dismissed and provided documentation to show that the Workers' Compensation Board had withdrawn and dismissed a citation and order issued against respondent. However, respondent provided no documentary evidence to show the basis for the citation or why the citation was withdrawn. While not acknowledging that the minor had worked on a roof, respondent acknowledged that the minor, while standing on a ladder, painted a gutter that was nine feet off the ground. Relying on the minor's credible testimony, the forum found that respondent had committed two violations of OAR 839-021-0104 by allowing a minor employee to use a chain saw and perform work on or about a roof. ----- ***In the Matter of Abdul Rahim Ghaffari, 35 BOLI 38, 65 (2016), appeal pending.***

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7.6 --- Newspaper Carriers/Vendors

8.0 HOURS OF EMPLOYMENT

8.1 --- Under 18 Years of Age

8.2 --- Under 16 Years of Age

8.2.1 --- Generally

8.2.2 --- Exceptions

8.3 --- Under 14 Years of Age

9.0 OVERTIME - SPECIAL PERMIT

10.0 OTHER TERMS AND CONDITIONS OF EMPLOYMENT (*see generally* Ch. IX)

10.1 --- Meal Periods and Rest Periods

10.2 --- Wages

11.0 DEFENSES TO CHARGES OF CHILD LABOR LAW VIOLATIONS

In his answer, respondent did not dispute the fact that claimant was 17 years of age when respondents employed him. Rather, respondent stated that both claimant and claimant's father told respondent that claimant was 17½ years old when respondents hired him. Respondent admitted not obtaining an employment certificate prior to employing claimant but asserted ignorance of the law requiring employers to obtain employment certificate before employing minors as their reason for not obtaining a certificate. Ignorance of the law is no defense and the forum granted the agency's motion for summary judgment with respect to its allegation that respondent violated ORS 653.307(2) and OAR 839-021-0220(2). ----- *In the Matter of Abdul Rahim Ghaffari, 35 BOLI 38, 49-50 (2016), appeal pending.*

Respondent argued that its payment of a civil penalty to the USDOL for a violation of the child labor provisions of the FLSA made respondent immune from a civil penalty pursuant to ORS 653.370(5)(a). Respondent introduced evidence that it paid a penalty of \$1,485.00 to the USDOL on February 26, 2010, based on the USDOL's finding that respondent had employed a minor "contrary to the child labor provisions of the [FLSA]." The commissioner rejected respondent's proffered defense because there was no evidence in the record as to the specific factual circumstances on which the USDOL based its assessment of civil penalties. ----- *In the Matter of Schultz Mfg., Inc., 32 BOLI 1, 6-7 (2012).*

12.0 ENFORCEMENT ACTIONS (*see also* Ch. I -- Admin. Proc.)

12.1 --- Constitutionality

12.2 --- Respondents

12.3 --- Investigation and Hearing

12.4 --- Civil Penalties

12.4.1 --- Generally

12.4.2 --- Employing Minors Without Obtaining a Validated Employment Certificate (ORS 653.307 & OAR 839-021-0020(2))

In his answer, respondent did not dispute the fact that claimant was 17 years of age when respondents employed him. Rather, respondent stated that both claimant and claimant's father told respondent that claimant was 17½ years old when respondents hired him. Respondent admitted not obtaining an employment certificate prior to employing claimant but asserted ignorance of the law requiring employers to obtain employment certificate before employing minors as their reason for not obtaining a certificate. Ignorance of the law is no defense and the forum granted the agency's motion for summary judgment with respect to its allegation that respondent violated ORS 653.307(2) and OAR 839-021-0220(2). Since it was respondent's first offense, pursuant to OAR 839-01-0025(2)(a) the forum assessed the minimum civil penalty of \$100 for employing a minor without a valid employment certificate. ----- *In the Matter of Abdul Rahim Ghaffari, 35 BOLI 38, 49-51 (2016), appeal pending.*

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In a child labor case which the ALJ proposed a civil penalty of \$1,000 based on respondent's failure to obtain an employment certificate for a minor who sustained a "serious" injury as defined by OAR 839-019-0025(4) while in respondent's employ, respondent excepted to the amount of the civil penalty, arguing that it was excessive and should be reduced to \$100 because the minor's injury was "non-serious" and was respondent's first offense. Respondent attached an exhibit to its exceptions that was not offered at the hearing and requested that it be considered as evidence. The exhibit was the USDOL's "Notice to Employer-Employment of Minors Contrary to the Fair Labor Standards Act" that advised respondent that USDOL had determined that the minor had been employed by respondent to operate a band saw and had sustained a "nonserious" injury "in illegal employment." Respondent gave no reason for not offering this exhibit at hearing and the forum declined to reopen the record to consider it. The forum further stated that, even if the record was reopened to consider the exhibit, the USDOL's conclusion that the minor sustained a "nonserious" injury would not be binding on the forum. ---- ***- In the Matter of Schultz Mfg., Inc., 32 BOLI 1, 10 (2012).***

In a child labor case which the ALJ proposed a civil penalty of \$1,000 based on respondent's failure to obtain an employment certificate for a minor who sustained a "serious" injury while in respondent's employ, respondent excepted to the amount of the civil penalty, arguing that it was excessive and should be reduced to \$100 because the USDOL had already assessed a penalty based on similar facts. The forum rejected respondent's exception because the penalty assessed by the forum was based on respondent's failure to obtain an employment certificate, not the minor's injury. The forum noted that the injury was relevant to the amount of penalty assessed but was not the reason a penalty was assessed. In contrast, according to respondent's statement, the USDOL's penalty was assessed based on the fact that the minor suffered an injury. ---- ***In the Matter of Schultz Mfg., Inc., 32 BOLI 1, 10 (2012).***

12.4.3 --- Employing Minors Without First Verifying the Age of Each Minor (ORS 653.307 & OAR 839-021-0185)

The forum considers employment of a minor without first verifying the minor's age as a serious violation because the purpose of verifying a minor's age before hire is to ensure that the minor is employed under proper working conditions and with proper hours for that specific age. When an employer knows a prospective employee is a minor, employment of that minor without first verifying the minor's age is an aggravating factor. Respondent's excuse that he asked his minor employee to provide documentation and the minor employee failed to provide any is not a mitigating factor because he employed the minor employee without first obtaining any proof of age documentation. Based on the aggravating circumstances and lack of any mitigating circumstances, the forum granted the agency's motion for summary judgment for \$1,000 as a civil penalty for respondent's violation of OAR 839-021-0185. ---- ***In the Matter of Abdul Rahim Ghaffari, 35 BOLI 38, 55 (2016), appeal pending.***

12.4.4 --- Employing a Minors to Engage in Work Declared to be Particularly Hazardous to Minors (ORS 653.307 & OAR 839-021-0104)

Operating a chain saw and working on a roof are two inherently hazardous occupations, and respondent's minor employee could have been seriously hurt doing either activity. The minor employee was given no protective gear to use while he operated respondent's chain saw and he worked alone while performing both jobs. It was respondent's responsibility to be aware of the work the minor employee was performing and make sure his minor employee was not performing hazardous work. Accordingly, respondent's claimed lack of awareness of his minor employee's use of the chain saw and work on a roof is not a mitigating factor. Furthermore, had respondent verified his minor employee's age and applied for an employment certificate, he would have been made aware that 17-year-olds are prohibited from using a chain saw or working on or about a roof. Under these circumstances, the forum assessed the maximum civil penalty of \$1,000 for each of respondent's two violations of OAR 839-021-0104, for a total of \$2,000. ---- ***In the Matter of Abdul Rahim Ghaffari, 35 BOLI 38, 65-66 (2016), appeal***

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pending.

When there was no dispute that a minor's injury occurred while he was the operator of machinery that met the relevant definition of "band saw," and the very fact that the minor was hand-feeding the plastic piece to be cut at the time he was injured demonstrated that respondent's band saw was not equipped with "full automatic feed and ejection" as required by federal law, the forum assessed the maximum civil penalty of \$1,000 based on its determination that the minor's injury was "serious." ----- ***In the Matter of Schultz Mfg., Inc., 32 BOLI 1, 8-9 (2012).***

12.4.5 --- Failure to Post a Validated Employment Certificate (ORS 653.307 & OAR 839-021-0220(3))

12.4.6 --- Failure to Maintain and Preserve Required Records on Minor Employees (OAR 839-021-0170)

When all the aggravating factors cited by the agency, viewed in a manner most favorable to the respondents, were amply supported by evidence in the record, there was no genuine material issue of fact, and there were no mitigating factors, the forum granted the agency's summary judgment motion for the assessment of a \$1,000 civil penalty for respondents' violation of OAR 839-021-0170. ----- ***In the Matter of Abdul Rahim Ghaffari, 35 BOLI 38, 53 (2016), appeal pending.***

12.4.7 --- Aggravating Circumstances

Respondent's violation of OAR 839-021-0170 was aggravated because of the seriousness of the violation, in that maintaining records on the employment of minors helps ensure that employment protections for minors are being enforced; magnitude of the violation was such that respondent kept no records regarding the employment of minors and took no steps to obtain information from a minor before hiring him; (2) Respondent knew or should have known that he was required to comply with child labor laws; and (3) It would not have been difficult or unduly burdensome for respondent to have maintained required employment records on his minor employee. ----- ***In the Matter of Abdul Rahim Ghaffari, 35 BOLI 38, 52-53 (2016), appeal pending.***

In a case seeking to assess a civil penalty based on respondent's failure to obtain an employment certificate before employing a minor, the minor cut his finger while operating respondent's band saw. The injury was a fracture to the top joint of the minor's middle finger on his right hand and a cut that bled a considerable amount and required immediate medical attention. The minor had to be driven by ambulance to a local hospital, where he received 12 stitches, a bandage that had to be changed for a month, and a metal splint. Although the minor's doctor anticipated no residual effects, the finger was still painful at the time of hearing whenever the minor accidentally bumps it against a hard object. It is also apparent to the forum, given the type of machinery the minor was operating and the particular injuries he suffered, that his finger could have been severed instead of fractured and cut. Respondent argued that the injury was "non-serious" because the minor was released to return to work the day after the injury, a fact not disputed by the agency and because ORS 161.015(8), a provision of the Oregon Criminal Code, defines "serious physical injury" as "physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ." The forum held that the definition in ORS 161.015(8) was inapplicable to this proceeding because it relates only to crimes and that the minor suffered a "serious injury" within the meaning of OAR 839-019-0025(4) that required the commissioner to assess the maximum penalty. ----- ***In the Matter of Schultz Mfg., Inc., 32 BOLI 1, 7-9 (2012).***

When there was no dispute that a minor's injury occurred while he was the operator of machinery that met the relevant definition of "band saw," and the very fact that the minor was hand-feeding the plastic piece to be cut at the time he was injured demonstrated that

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respondent's band saw was not equipped with "full automatic feed and ejection" as required by federal law, the forum had no choice under OAR 839-019-0025(4) but to assess the maximum civil penalty of \$1,000 if it determined that the minor's injury was "serious." ----- ***In the Matter of Schultz Mfg., Inc., 32 BOLI 1, 8-9 (2012).***

12.4.8 --- Mitigating Circumstances

Mitigation refers to actions taken by the employer regarding the alleged violation, or to circumstances that might affect an employer's ability to comply with the law. ----- ***In the Matter of Abdul Rahim Ghaffari, 35 BOLI 38, 53 (2016), appeal pending.***

Respondent testified that a minor employee and his father told him that the minor employee was 17½ years of age, that he did not have a driver's license, which respondent usually used for his records, that all the minor's records were with his mother in Washington, that the minor told respondent he would have his mother send the records to him and would provide those records to respondent, and that the minor never provided those records. The forum found that those circumstances did not mitigate respondent's failure to obtain, record, and keep the minor's full name, his street address, and date of birth and consequent violation of OAR 839-021-0185 because all of these facts could have been easily obtained merely by asking the minor employee or his father at the time the minor employee was hired. ----- ***In the Matter of Abdul Rahim Ghaffari, 35 BOLI 38, 53 (2016), appeal pending.***

12.4.9 --- Repeated Violations

12.4.10 --- Willfulness of Violations (see also Ch. IX, sec. 13.1.2)

12.4.11 --- Statutory Exemptions

12.5 --- Revocation of Right to Hire Minors