

Federal Teen-Labor Regulations

An Update for Restaurant-and-Foodservice Employers • February 2005

Changes in Some Federal Teen-Labor Regulations Take Effect Feb. 14, 2005

New rules update, clarify permissible cooking duties for 14- and 15-year-olds

Federal minimum-wage law (the Fair Labor Standards Act, or the FLSA) governs not only the wages employers pay but the conditions under which certain teenage employees can work.

While the FLSA generally sets 16 as the minimum age for employment, one part of the FLSA's teen-labor regulations—Regulation No. 3, found at 29 CFR §570.31–.38—outlines limited conditions under which 14- and 15-year-olds may work. Generally, those teenagers are permitted to work in retail, foodservice and gas-station jobs.

Reg. 3 limits the hours and time of day those employees can work and specifies permissible and prohibited job duties. Another set of teen-labor regulations, known as the Hazardous Occupation Orders, define what jobs and duties are off-limits to 16- and 17-year-olds.

On Dec. 16, 2004, the DOL published in the *Federal Register* a series of changes to teen-labor regulations that take effect Feb. 14, 2005.

For restaurateurs, the main impact will be in cooking duties for 14- and 15-year-olds. The DOL has rewritten the reg-

ulations to more clearly spell out which food-and-beverage preparation, kitchen and cooking duties are OK for employees age 14 and 15. The new regulations also eliminate a previous interpretation that allowed these employees to cook only if they did so "in plain view."

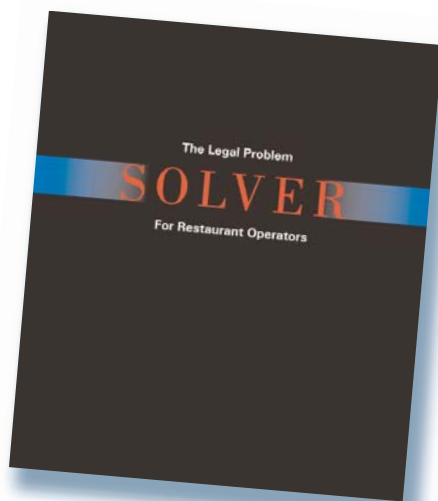
Among other changes, the DOL eliminated the "in plain view" cooking rule for employees age 14 and 15. See inside for details.

Other changes to teen-labor regulations codify conditions under which 17-year-olds may drive on the job and require employers to return federal age certificates to employees when they leave a job.

Following is the National Restaurant Association's analysis of what the changes mean for restaurateurs. The Association also recommends that you check with your state labor department. Some states have laws that are more protective of workers under 18; in such cases, state law applies. National Restaurant Association members who have questions may contact the Association's Legal Department at (202) 331-5910 or pkilgore@dineout.org.

The Legal Problem Solver: Your One-stop Shop

For a complete rundown on federal teen-labor rules, including limits on the hours and times of day teens under age 16 can work, consult the National Restaurant Association's *Legal Problem Solver for Restaurant Operators*. The *Legal Problem Solver* covers everything from tip reporting to who pays for employee uniforms. Consider it your one-stop shop for the federal laws you need to know to run a restaurant. Visit www.restaurant.org/store or call (800) 482-9122 to order. \$49.95 for NRA members, \$99.95 for non-members.



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Cooking Duties for Employees Age 14 and 15

The new federal teen-labor rules that take effect Feb. 14, 2005, permit 14- and 15-year-olds to perform various food-and-beverage prep work, as well as kitchen work, and provide examples of equipment that these employees may use. The new rules are not too different from the previous regulations, the U.S. Department of Labor says, but do a better job of reflecting advances in restaurant kitchens and foodservice equipment.

Permissible cooking duties for employees age 14 and 15 starting Feb. 14, 2005

WHAT'S ALLOWED

Under federal teen-labor regulations, 14- and 15-year-old employees:

(1) MAY perform various food-and-beverage preparation work.

Examples of permitted machines and devices that employees age 14 and 15 may work with include:

- Dishwashers
- Toasters
- Dumbwaiters
- Popcorn poppers
- Milkshake blenders
- Coffee machines
- Devices used to maintain food temperatures (e.g., warmers, heat lamps, etc.)
- Microwave ovens that do not have the capacity to warm above 140° F

Employees age 14 and 15 may also:

- Clean, maintain and repair cooking devices such as grills, deep-fat fryers and steam tables if equipment surfaces are below 100° F.*
- Change, clean and dispose of oil and grease, or oil and grease filters, if the temperature of the liquid is below 100° F.*

(2) MAY cook using electric or gas grills that do not have open flames.

(3) MAY cook using deep fryers that are equipped with and utilize devices that automatically lower and raise baskets.

** A note on maximum allowable temperatures for clean-up tasks: The new rules reflect a change in the maximum allowable temperatures for clean-up duties. Previously, 14- and 15-year-old employees were permitted to clean equipment and handle oil and grease as long as the temperature was below 140° F. In the new rules, the DOL reduces the maximum allowable temperature to 100° F. The DOL says this "will significantly diminish the possibility of young workers suffering burns while cleaning equipment and surfaces or while filtering and disposing of cooking oil and grease."*

The DOL says the new temperature requirement will require vigilance by employers. Managers and supervisors must ensure that equipment and materials are cooled to 100° F or lower before 14- and 15-year-olds are allowed to undertake any clean-up tasks such as washing the machines or removing or filtering the oil or grease. Restaurant managers may need to make greater use of thermometers, cool-down waiting periods and other methods to ensure that the temperature restrictions for young employees are met, the DOL says.

WHAT'S NOT ALLOWED

Under federal teen-labor regulations, 14- and 15-year-old employees:

- May NOT cook over open flames.
- May NOT bake, including any part of the baking process: weighing, mixing, putting products in pans or trays; operating pans of any type; and removing items from ovens or placing on cooling trays.
- May NOT use deep fryers that require the operator to manually raise or lower the baskets, or that do not use baskets to contain the food product during frying.
- May NOT use rotisseries, broilers, pressurized equipment including fryolators, or cooking devices that operate at extremely high temperatures such as "Neico broilers."
- May NOT clean, maintain or repair cooking equipment such as grills, deep-fat fryers and steam tables if the equipment surface exceeds 100° F. (The DOL points out that *simple maintenance* of grills is permissible for 14- and 15-year-olds—i.e., the routine part of the actual cooking process whereby the employee uses water and a spatula to scrape away food particles and grease from the surface of the grill.)
- May NOT change, clean or dispose of oil and grease, or oil and grease filters, if the temperature of the liquids exceeds 100° F. This includes a ban on lifting, moving or carrying containers of hot grease or oil 100° F or higher.

Cooking Duties, Continued

Why the change in the “in plain view” cooking rules?

The DOL says it updated its cooking regulations for 14- and 15-year-olds because the old rules, first developed in the early 1960s, had become confusing and unhelpful.

The old rules prohibited 14- and 15-year-old employees from cooking except at “soda fountains, lunch counters, snack bars or cafeteria serving counters.” The idea at the time was to define duties that weren’t strenuous and that didn’t require continuous cooking at a stove or the use of complicated or dangerous equipment.

However, the rules were vague. It became increasingly difficult to define what counted as a “soda fountain” or a “lunch counter.” Over time, the DOL interpreted this to mean that 14- and 15-year-olds were allowed to cook

only if they did so “in plain view.”

The regulations became problematic all around, the DOL said in the Dec. 16, 2004, *Federal Register* notice announcing the new regulations. “The snack bars and soda fountains upon which [these standards] were established have been largely, if not entirely, replaced by different kinds of quickservice restaurants ... that evolved during the decades of the 1970s, 1980s and 1990s,” the DOL said. And the “in plain view” interpretation no longer made sense as a safety standard, the DOL noted: It didn’t provide great guidance for employers, parents or teens, plus it was confusing to regulate cooking duties based on where these duties took place.

Other Changes to Teen-Labor Laws

In addition to updating cooking regulations for 14- and 15-year-olds, the DOL also updated a few other areas of teen-labor rules. Some of these updates simply spell out in more detail laws that have already taken effect. For more information, refer to the Dec. 16, 2004, *Federal Register* at www.gpoaccess.gov/fr.

Age certificates

To reduce the paperwork burden on employers, the DOL updated its rules under 29 CFR §570.6 to specify that in cases where the DOL sends an employer an age certificate for a minor under age 18, and that minor terminates employment, the employer must give the certificate back to the employee so the minor may present the certificate to future employers as proof of age. Previously, employers were required to return DOL-issued age certificates to the DOL.

On-the-job driving for 17-year-olds

Pursuant to a law Congress passed in 1998, the DOL revised its teen-labor regulations (specifically, Hazardous Order 2) to ban all job-related driving for 16-year-olds and outline the condi-

tions under which 17-year-olds may drive on the job.

For 17-year-olds, the rules require that:

- (1) The vehicle driven by the 17-year-old does not weigh more than 6,000 pounds, is equipped with a seatbelt, and the youth is instructed by the employer that the seatbelt must be used;
- (2) The driver is restricted to driving in daylight hours;
- (3) The youth needs a state license for that type of driving and has no moving-violation record at the time of hire;
- (4) The employee must have passed a driver’s education course;
- (5) The driving does not involve, among other things, urgent, time-sensitive deliveries;*
- (6) The driving does not involve more than two trips away from the employer in a workday to deliver goods to a customer;
- (7) The driving does not exceed a 30-mile radius from the restaurant;
- (8) The driving is only occasional and incidental to the youth’s employment, rather than being his or her primary function. (The term “occa-

sional and incidental” means the driving takes up no more than one-third of the youth’s work time in the workday, or 20 percent of his or her workweek, the DOL says.)

Loading scrap-paper balers and paper-box compactors

The DOL regulations outline the conditions under which 16- and 17-year-old workers may load, but not operate or unload, certain scrap-paper balers or paper box compactors. Since the DOL estimates that these regulations would cover only 1 percent of restaurants, the NRA does not cover those changes in this publication. National Restaurant Association members who would like more information may contact the Association’s legal department.

* The DOL explains that “urgent, time-sensitive deliveries” include, among other things, trips subject to timelines, schedules or turnaround times in order to satisfy customers or protect the product from temperature changes or other deterioration. The DOL specifically states in its regulations that “prohibited trips would include ... delivery of pizzas and prepared foods to customers.” For this reason, it is not expected that many restaurant employers may use 17-year-olds for normal deliveries of food to outside customers.