

**12 DEPARTMENT OF LABOR**

**170 BUREAU OF LABOR STANDARDS**

**Chapter 11: RULES GOVERNING HAZARDOUS OCCUPATIONS FOR MINORS UNDER THE AGE OF EIGHTEEN IN NON-AGRICULTURAL EMPLOYMENT**

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**Summary:** The purpose of this Chapter is to prevent the exploitation of Minors through hazardous working conditions in non-agricultural employment. These rules do not supersede Sections 771 and 773 of 26 M.R.S.A. which set minimum wages for employment in specific industries. Sec. 772 of 26 M.R.S.A. was amended to allow the Bureau of Labor Standards to adopt rules to develop and maintain a list of occupations not suitable for employment of minors. The rules must conform as far as practicable to the child labor provisions of the federal *Fair Labor Standards Act of 1938, 29 United States Code*, Section 212 and any associated regulations.

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**1. Definitions**

For the purpose of these regulations, the following terms will be construed as follows:

- A. "Bureau" means the Bureau of Labor Standards within the Department of Labor.
- B. "Director" means the director of the Bureau of Labor Standards or the director's designee in the Wage & Hour Division.
- C. "Hazardous Occupation" means a State prohibited occupation for any minor under the age of sixteen or under the age of eighteen in non-agricultural employment.
- D. "Student Learner" means a student enrolled in a course of study and training in a CTE cooperative or vocational training program under a recognized State or local educational authority or in a course of study in a substantially similar program conducted by a private school.
- E. "Apprentice" means a person who is employed in a craft recognized as an apprenticeable trade and is registered by the Bureau of Apprenticeship and Training of the U.S. Department of Labor as employed in accordance with the standards established by that Bureau, or is registered by a State agency as employed in accordance with the standards of the State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, or is employed under a written apprenticeship agreement and conditions which are found by the Secretary of Labor to conform substantially with such Federal or State standards.
- F. "Nude Entertainment" means any amusement, performance, exhibition or diversion which includes the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state. This does not include incidental nudity in a theatre or film performance or exhibition.

- G. "Outside Helper" means an individual, other than a driver, whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivering goods.
- H. "CTE-Student" (Career Technical Education) mean a student enrolled in an approved CTE program offered from a CTE center or region as defined in 20-A M.R.S.A §§ 8301-A, 8306-B, 8401, and 8451.
- I. "Power driven hoisting apparatus" does not include grease rack lifts used in gasoline service stations, tire stores, and other establishments servicing automobiles.

## **2. Enforcement Responsibilities**

- A. The Director has the responsibility to ensure the protection of young workers from dangerous work and may, and upon written complaint shall, enter any establishment for the enforcement of laws that regulate the occupations of minors under the age of eighteen.
- B. The Director has the responsibility of providing an updated printed list of hazardous occupations, determined by the Director, and shall make the same available to the public upon request.

## **3. State Prohibited Occupations**

### **A. Minors Under Sixteen Years of Age**

Minors under the age of sixteen may not be employed in the following occupations:

1. Any manufacturing occupation;
2. Any mining occupation;
3. Any processing occupation (except those allowed in retail, food service and gasoline service stations, and all other venues not prohibited by federal law);
4. Motor vehicle driving of any kind and outside helper;
5. Operation or tending of hoisting apparatus or of any power-driven machinery other than non-hazardous office machines or machines in retail, food service and gasoline service establishments that are allowed by federal law;
6. Construction occupations involving:
  - a. Maintenance and repair of public highways;
  - b. All roofing occupations;
  - c. All trenching and excavation operations;
7. All work in boiler or engine rooms;

8. Outside window washing that involves working from window sills and all work involving the use of ladders, scaffolds or their substitutes;
9. Cooking (except at soda fountains, lunch counters, snack bars or cafeteria serving counters and other venues allowed by federal law) and baking;
10. Occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers and cutters and bakery-type mixers;
11. All work in freezers and meat coolers;
12. Occupations involving the use of power-driven mowers or cutters, including the use of chain saws;
13. All warehousing occupations, including the loading and unloading of trucks and use of conveyers;
14. All welding, brazing or soldering occupations;
15. Occupations involving the use of toxic chemicals and paints;
16. Selling door-to-door (except when the minor is selling candy or merchandise as a fund-raiser for school or for an organization to which the minor belongs, such as Girl Scouts of America) or work in a traveling youth crew;
17. All occupations on amusement rides, including ticket collection or sales;
18. Any placement at the scene of a fire, explosion or other emergency response situation: and
19. All occupations that are expressly prohibited for sixteen and seventeen-year-old minors;

**B. Minors Sixteen and Seventeen Years of Age**

Minors who are sixteen and seventeen years of age may not be employed in the following occupations:

1. Manufacturing and storing explosives;
2. Motor vehicle driving on public roadways and outside helper;
3. All mining occupations;
- \*4. Power-driven woodworking machines;
5. Power-driven hoisting apparatus;
- \*6. Power-driven metal forming, punching and shearing machines;

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- \*7. Slaughtering or meat packing, processing or rendering occupations (this includes meat slicers, grinders and choppers);
  - \*8. Power-driven paper products machines;
  9. Manufacturing brick, tile, and kindred products;
  - \*10. Power-driven circular saws, band saws, and guillotine shears;
  11. Wrecking and demolition occupations;
  - \*12. Roofing operations;
  - \*13. Excavation operations;
  14. All occupations in places having nude entertainment;
  15. Placement at the scene of a fire, explosion or other emergency except as provided in part 4(C) & 4(E);
  - \*16. Gas or electric welding, brazing, burning or cutting if done in conjunction with other hazardous occupation such as wrecking, demolition and shipbreaking operations;
  17. Work that involves entry into a confined space where the U.S. Occupational Safety and Health Administration regulations require a permit entry system under 29 CFR 1910.146 as amended August 1, 2003; and
  18. Working at heights where the U. S. Occupational Safety and Health Administration regulations require special precautions or personal protective equipment:
    - a. Walking working surfaces more than 4 feet above the next closest surface without a standard railing as required under 29 CFR 1910.23 as amended August 1, 2003.
    - b. Fixed ladders of more than 20 feet in height; and
    - c. Scaffolding work performed more than 10 feet above the working surface supporting the scaffold where railings or fall protection is required under the U.S. Occupational Safety and Health Administration 29 CFR 1910.28 as amended August 1, 2003.
  19. All occupations in registered dispensaries of marijuana for medical use authorized under Title 22, chapter 558-C and in establishments that cultivate, produce or sell marijuana or products in which marijuana is an ingredient or in recreational marijuana social clubs authorized under Title 7, chapter 417.

#### 4. **Limited Exemption for 17 Year Old Employees**

1. Seventeen-year-olds, but no one under 17 years of age, may drive automobiles and trucks on public roads as part of their employment on an occasional and incidental basis if all the following requirements are met:
  - a. The automobile or truck does not exceed 6,000 pounds gross vehicle weight;
  - b. The driving is limited to daylight hours;
  - c. The 17-year-old holds a state license valid for the type of driving involved;
  - d. The 17-year-old has successfully completed a state-approved driver education course and has no record of any moving violations at the time of hire;
  - e. The driving takes place within a thirty (30) mile radius of the minor's place of employment;
  - f. The automobile or truck is equipped with a seat belt for the driver and any passengers and the employer has instructed the youth that the seat belts must be used when driving the vehicle;
  - g. The driving may not involve: towing vehicles; route deliveries or route sales; transportation for hire of property, goods, or passengers; urgent, time-sensitive deliveries; transporting more than three passengers, including employees or the employer; more than two trips away from the primary place of employment in any single day to deliver the employer's goods to a customer (other than urgent, time-sensitive deliveries which are prohibited); more than two trips away from the primary place of employment in a single day to transport passengers, other than employees of the employer.
2. The following definitions shall apply to Section 4 of these Rules:
  - a. "Motor vehicle" shall mean any automobile, truck, truck tractor, trailer, semitrailer, motorcycle, or similar vehicle propelled or drawn by mechanical power and designed for use as a means of transportation but shall not include any vehicle operated exclusively on rails.
  - b. "Driver" shall mean any individual who in the course of employment, drives a motor vehicle at any time.
  - c. "Outside helper" shall mean any individual, other than a driver, whose work includes riding on a motor vehicle outside the cab for the purpose of assisting in transporting or delivering goods.
  - d. "Gross vehicle weight" includes the truck chassis with lubricants, water, and full tank or tanks of fuel, plus the weight of the cab or driver's compartment, body, and special chassis and body equipment, and payload.
  - e. "Urgent, time-sensitive deliveries" shall mean trips which, because of such factors as customer satisfaction, the rapid deterioration of the quality or change in

temperature of the product, and/or economic incentives, are subject to timeliness, schedules, and/or turnaround times which might impel the driver to hurry in the completion of the delivery. Prohibited trips would include, but are not limited to, the delivery of pizzas and prepared foods to the customer, the delivery of materials under a deadline (such as deposits to a bank at closing), and the shuttling of passengers to and from transportation depots to meet transport schedules. "Urgent, time-sensitive deliveries" do not depend on the delivery's points of origin and termination, an include the delivery of people and things to the employer's place of business as well as from that business to come other location.

- f. "Occasional and incidental" shall mean not more than one-third of the 17-year-old driver's worktime in any workday and no more than 20 percent of the 17-year-old driver's worktime in any workweek.

## 5. Clarification of Hazardous Occupation Definitions and Special Exemptions

- A. The Director shall be guided by the definitions and special exemptions contained in Subpart C of Part 570 of Title 29 of the *Code of Federal Regulations* for minors under sixteen and Subpart E of Part 570 of Title 29 of the *Code of Federal Regulations* for minors who are sixteen and seventeen years of age in interpreting and enforcing these rules.

### B. Apprentices, CTE-Students, and Student-Learners

Exemptions from certain hazardous occupations may be made for apprentices and student learners under the following conditions:

1. The work of the apprentice, CTE-student, or student-learner in the occupations declared particularly hazardous is incidental to minor's training.
2. The work is intermittent and for short periods of time and is under the direct and close supervision or a journeyman (for an apprentice) or a fully-qualified and experienced adult (for a CTE-student or student-learner). "Intermittent" and "short periods of time" mean that the minor may not be the principal operator of prohibited machinery and the duties may not be such that the minor is constantly operating the prohibited machinery or working in the occupation declared as hazardous during the work shift, but only doing so as part of the training experience. Direct and close supervision is met when there is one journeyman or experienced adult working with the first apprentice or student-learner onside, and at least three journeymen or experienced adults working alongside each additional apprentice or student-learner during the periods when the apprentice or student-learner is performing work that would otherwise be prohibited by the rules. Direct and close supervision for CTE-students is met when 2 or fewer CTE-students are assigned to an experienced adult, the experienced adult has direct line of sight and within the student's audio hearing range.
3. The employer shall provide workplace safety and health training along with the on-the-job training. CTE Program will provide basic safety training for the CTE-Student related to the selected program and field of work prior of CTE student performing work that would otherwise be prohibited by the rules. In the case of a CTE Cooperative Education program, the CTE Cooperative Education program

instructor may arrange with job site supervisor for delivery of any required safety instruction. CTE program shall create any required schedule of work, educational performance deliverables and additional educational component found during live work field experiences as part of the written agreement.

4. There must be a written agreement providing a description of the job, processes, expectations, schedule of work and name of the apprentice, CTE-student, or student-learner. The employer and school coordinator or principal shall sign the agreement. CTE-students shall have a signed agreement between the student, CTE Instructor, CTE Coordinator (if any) and CTE Director. Copies of the agreement must be kept on file by both the school where the principal or director resides and the employer.
5. CTE Instructor, Coordinator and/or Director have direct control of CTE-student's work, grade, attendance and overall program's involvement within this educational component.
6. A high school graduate may be employed in an occupation in which training under an apprentice or student-learner program has been completed as provided in this section, even though the youth is not yet 18 years of age.

The restrictions that may be exempted under this sub-section are those listed in Section 3(B) that are marked by an asterisk.

### C. **Junior Firefighters**

Paid and volunteer junior firefighters who are sixteen and seventeen years of age may:

1. Attend and take part in supervised training;
2. Participate in fire department functions within the rehabilitation area;
3. Pick up hose and clean up at the fire scene after the On-Scene Commander has declared the scene safe;
4. Enter a structure that has been on fire when deemed safe by the On-Scene Commander and accompanied by a firefighter;
5. With proper training, fight grass fires not involving standing timber; and
6. Perform search and rescue activities, other than structural firefighting.

They may not:

1. Perform fire suppression involving structures, vehicles, or wildland fires, except grass fires not involving standing timber;
2. Operate a fire department vehicle;
3. Respond with red lights;

4. Perform firefighting "overhaul" activities;
5. Respond to hazardous material events;
6. Perform any activity, except training, that involves the use of self-contained breathing equipment.
7. Respond to any accident involving fire or extraction activities (1055's);
8. Respond to "ice rescue" activities, except within the rehabilitation area; or
9. Perform traffic control activities.

**D. Junior Emergency Medical Services (EMS) Persons**

Paid and volunteer junior emergency medical services persons who are sixteen and seventeen years of age may:

1. Attend and take part in supervised training;
2. Provide, under supervision, emergency medical treatment in accordance with the *Maine Emergency Medical Service Act of 1982* (32 M.R.S.A. Chapter 2-B) and the Maine EMS Rules.

They may not:

1. Be first on scene of a medical emergency to which the EMS service has been summonsed;
2. Respond to any call that may be psychologically or physically traumatic to the junior EMS person, as determined by the senior member in charge of the welfare and actions of the junior EMS person during the call;
3. Operate a vehicle defined as an authorized emergency vehicle by 29-A M.R.S.A §2054;
4. Operate a privately-owned vehicle that is responding with one or more red lights;
5. Participate in any patient extrication, except in a support role in an area away from the scene of the extrication;
6. Perform traffic control activities.

**E. Career-Oriented Law Enforcement Programs**

1. **Traffic control duties permitted.** Notwithstanding any other provision of this article, a minor who is 14 years of age or older and is a volunteer participant in a career-oriented law enforcement program may perform traffic control duties in accordance with this section.



2. **Training.** A minor may not perform traffic control duties under this section until the minor has received traffic control training in accordance with the requirements of the supervising law enforcement agency. Proof of the minor's successful completion of the training must be maintained by the law enforcement agency.
  3. **Supervision.** A minor may perform traffic control duties only under direct supervision of a law enforcement officer as part of a career-oriented law enforcement program. This supervision must:
    - a. Be from a close distance so that the officer does not become distracted or perform other duties; and
    - b. Include means of radio contact in the event that the minor needs to contact another officer for assistance.
  4. **Limitations on events.** A minor may perform traffic control duties only at civic events, fair parking lots, parades, walks, foot races, car shows and charity events.
  5. **Limitations on locations.** A minor may not:
    - a. Direct traffic or pedestrians on busy roadways or thoroughfares;
    - b. Assist in traffic control at places of heightened danger such as traffic stops or roadblocks;
    - c. Direct traffic in conjunction with crowd control or riot control;
    - d. Collect donations at a traffic light;
    - e. Direct traffic at funeral processions; or
    - f. Direct traffic at the scene of an emergency.
  6. **Night activities prohibited.** A minor may perform the activities authorized under this section only during the period from sunrise to sunset.
- F. Exception to the prohibitions on working in confined spaces (Sec. 3B(19)) and working at heights (Sec. 3B(20)) may be made for work of an emergency nature that affects the public's health and safety. Such situations may include, but are not limited to, police, fire, emergency medical services and National Guard duty. All other restrictions in these rules still apply in such situations.

## 6. Coverage

These rules apply to all employment and nonemployment situations. Non-employment situations include but are not limited to legitimate training and volunteer programs that ensure the safety and well-being of minors. These rules do not apply to minors in public and approved private schools where mechanical equipment is installed and operated primarily for the purpose of instruction.

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STATUTORY AUTHORITY: 26 M.R.S.A. §772 (as amended by 2003 PL c. 59), and §773

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