

## **OVERVIEW OF THE WAGE AND HOUR DIVISION:**

The Vermont Department of Labor's Wage and Hour Division enforces the laws regarding the payment of wages, minimum wage, overtime pay, prevailing wages, employee benefits, and child labor. The Division also enforces the Notice of Potential Layoffs Act, commonly known as the WARN Act, which requires employers laying off 50 or more employees to provide notice to the Department and other entities.

In addition to its enforcement function, the Division provides information and conducts outreach to employers, employees, and the general public about Vermont's wage and hour laws.

In 2015, the Wage and Hour Division worked extensively with the Agency of Agriculture, Food & Markets, the Department of Health, the Green Mountain Dairy Farmers, and Migrant Justice to produce the "Vermont Farm Worker Wage, Hour, and Housing Fact Sheet." The fact sheet outlines the rights and responsibilities of employers and employees in the agricultural sector, particularly in the dairy industry.

The Division also worked with schools and regional tech-centers to increase student participation in career training programs in a way that complied with the child labor laws.

### **1. ENFORCEMENT OF WAGE AND HOUR LAWS:**

The primary duty of the Wage and Hour is to enforce Vermont's wage and hour laws. The enforcement of the wage and hour laws is complaint driven, and complaints are received by email, telephone, or in-person. Employees may also file wage complaints online at the Department of Labor website.

In 2015, the Division received 3,125 inquiries. Each inquiry is assigned a wage and hour identification number in the division's case tracking system and information regarding the inquiry is entered into the database.

Inquiries included general questions about the wage and hour laws as well as specific claims for the nonpayment of wages or benefits. When an inquiry alleges behavior that is not within the wage and hour division's jurisdiction (for instance workplace discrimination which is handled by the Attorney General's Office) the Division will refer the inquiry to the proper entity.

When a claim is made for the nonpayment of wages or benefits, the Division will begin an investigation of the claim which can result in a determination being issued against an employer for the amount of wages or benefits owed.

In 2015, the Division handled 220 wage claims and issued collection orders in the amount of \$162,376.15 in unpaid wages or benefits, of which \$80,062.12 has been paid. 33 wage claims remain open, which means they are either still being investigated, have been appealed and

scheduled for an administrative hearing, or have been referred to the Department's collection attorney to seek a judgement in the Superior courts.

## **2. A NEW WAGE AND HOUR HEARING PROCESS:**

In 2013, the Legislature passed Act 15 which updated the wage and hour laws and created an administrative hearing process for wage and hour claims. The Department has implemented the hearing process which has resulted in 7 issued opinions and orders. Currently there are 11 pending cases that will be heard by a hearing officer.

## **3. THE WARN ACT:**

Vermont's version of the Federal WARN Act was enacted in 2014. The WARN Act requires employers laying off 50 or more employees to provide notice to the Department and other entities. The Act enables the Department of Labor to coordinate a rapid response of services for laid off workers including unemployment benefit processing and job training. The Wage and Hour Division is charged with ensuring WARN Act compliance. Since the law was enacted 5 businesses have been subject to the notice requirements of the WARN Act. The Wage and Hour Division has reviewed the filings submitted by these businesses to ensure compliance with the law. The Division has also advised employers on their obligations under the Act. Currently, the Division is working on a compliance guide advising employers of their obligations under the Act.

## **4. CHILD LABOR:**

The Wage and Hour Division enforces the child labor laws. It has also worked with the Department's Workforce Development Division, regional tech-centers, and employers to increase the number of students receiving "hands on" job training experience. To this end, the Wage and Hour Division created a guide to the child labor laws to illustrate the types of work and educational experiences that are available to minor children. (See Appendix 1.)

## **5. AGRICULTURAL LABOR:**

The Wage and Hour Division met extensively with the Agency of Agriculture, Food & Markets, the Department of Health, the Green Mountain Dairy Farmers, and Migrant Justice to produce the "Vermont Farm Worker Wage, Hour, and Housing Fact Sheet." The Division has also attended workshops to educate agricultural employers about Vermont's labor laws. The fact sheets have been distributed by the Agency of Agriculture, Food & Markets at Agency sponsored training events, workshops, and the Vermont Farm Show. (See Appendix 2.)

## **Appendix #1**

### **1. EMPLOYMENT OF MINORS**

State and Federal law limits the kinds of work that can be performed by children aged 14 to 17.

The types of employment available for 14 and 15 year olds is generally restricted to work in retail, food service, and gasoline service stations and includes office and clerical work, cashiering or stocking goods, cleaning, and kitchen work. A list of permitted occupations for 14 and 15 year olds can be found in section 8 of this report.

State and Federal law allows for 14 and 15 year olds to engage in otherwise prohibited occupations as part of a school-supervised and school-administered work-experience and career exploration program.

However, 14 and 15 year olds in such a program are still prohibited from being employed in manufacturing, mining, and other occupations that are deemed hazardous.

16 and 17 year olds are allowed to work in any occupation other than one which is deemed to be hazardous.

### **2. GENERAL PROHIBITION ON EMPLOYMENT IN HAZARDOUS OCCUPATIONS:**

State and Federal law prohibits children between the ages of 14 and 18 from being employed in manufacturing, mining, and other occupations that are deemed hazardous. (See section 7 of this report.)

### **3. HAZARDOUS OCCUPATION EXCEPTIONS FOR 16 AND 17 YEAR OLDS:**

An individual who is 16 or 17 years old may be employed in a hazardous occupation as an apprentice or a student learner.

#### **A. APPRENTICESHIP:**

A 16 or 17 year old may be employed in a hazardous occupation as an apprentice if the following criteria are met:

- 1) The apprentice is employed in a craft recognized as an apprenticeable trade.
- 2) The work of the apprentice in the occupations declared hazardous is incidental to his or her training.
- 3) The work is intermittent and for short periods of time and is under the direct and close supervision of a journeyman as a necessary part of the apprenticeship training.
- 4) The apprentice is registered with the Vermont Department of Labor.

#### **B. STUDENT-LEARNER:**

A 16 or 17 year old may be employed in a hazardous occupation when enrolled in a course of study and training in a cooperative vocational training program approved by the State Board of Education.

Vermont law gives responsibility for overseeing career technical education to the State Board of Education. (16 V.S.A. § 1531.) The Board has adopted rules allowing students to enroll in approved cooperative technical education courses which allow student-learners to gain work experience as part of their technical education.

The Board has delegated the authority to approve technical education programs to the Regional Advisory Board.

In order to be approved all cooperative technical education courses must meet the following requirements:

- 1) Each placement shall be planned and supervised by the school and employer so that the experience contributes to the student's education and employability.
- 2) The minimum age of students placed shall be 16.
- 3) All local, state, and federal laws applying to wage and hour regulations shall be followed.
- 4) Students shall be covered by workers' compensation or comparable individual, school, or employer insurance while on the job.
- 5) Students shall have on file at the school a properly completed training agreement signed by the student, the student's parent, the cooperative technical education coordinator and the employer.
- 6) Students shall be visited regularly at the work site by the coordinator to assess student progress.
- 7) Students shall receive an educational program that addresses core technical competencies and tasks directly related to job-seeking and job-keeping skills.
- 8) Students shall be eligible to receive credit toward graduation upon successful completion of approved cooperative technical education programs when it is part of a state-approved course of study in technical education. (Vermont Agency of Education Vocational-Technical Education Rule 2385(2)(B)).

#### **4. INTERNSHIPS:**

An internship that meets the criteria established by the Fair Labor Standards Act is not considered employment; therefore the prohibition on employment in hazardous occupations does not apply.

A private "for-profit" employer may use unpaid interns if the following criteria are met:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under the supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern, and on occasion its operations may actually be impeded;

5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If the employer cannot meet the criteria, the internship would be considered employment and would be prohibited if it was in a hazardous occupation.

#### **5. MINIMUM WAGE:**

Students working during all or any part of the school year or regular vacation periods are exempt from Vermont's minimum wage law. (21 V.S.A. § 383.) Therefore, an employer may pay a student the Federal minimum wage of \$7.25 instead of the Vermont minimum wage of \$9.15.

#### **6. STUDENT SUBMINIMUM WAGE:**

The Federal law allows an employer to pay an hourly wage of \$5.44 to a student who is at least 16 years of age and is:

- 1) receiving instruction in an accredited school, college, or university; and
- 2) is employed on a part-time basis pursuant to a bona fide vocational training program.

Note: This subminimum wage only applies to 16 and 17 year olds employed in a nonhazardous occupation. 16 and 17 year olds employed in a hazardous occupation pursuant to the student-learner exception in section 3 of this report would be required to be paid \$7.25 hourly.

#### **7. HAZARDOUS OCCUPATIONS:**

The following occupations are prohibited for all minors except for 16 and 17 year olds working as an apprentice or student-learner.

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| 1. Manufacturing and storing explosives.                           | 9. Mining, other than coal mining                                    |
| 2. Motor vehicle driving.  | 10. Slaughtering, meatpacking, processing, or rendering.             |
| 3. Coal mining.  | 11. Power-driven bakery machines.                                    |
| 4. Logging and sawmilling.   | 12. Power-driven paper-products machines,                            |
| 5. Power-driven woodworking machines.                              | 13. Manufacturing brick, tile, and kindred products.                 |
| 6. Exposure to radioactive substances.                             | 14. Power-driven circular saws, band saws, and<br>guillotine shears. |
| 7. Power-driven hoisting apparatus.                                | 15. Wrecking, demolition, and shipbreaking operations.               |
| 8. Power-driven metal forming,<br>punching, and shearing machines. | 16. Roofing operations.  |
|  | 17. Excavation operations.   |

## **8. PERMITTED OCCUPATIONS FOR 14 AND 15 YEAR OLDS IN RETAIL, FOOD SERVICE, AND GASOLINE SERVICE STATIONS**

1. Office and clerical work, including operation of office machines.
2. Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping.
3. Price marking and tagging by hand or by machine, assembling orders, packing and shelving.
4. Bagging and carrying out customers' orders.
5. Errand and delivery work by foot, bicycle, and public transport.
6. Cleanup work, including the use of vacuum cleaners and non-commercial floor waxers, and maintenance, of grounds, but not including the use of power driven mowers or cutters.
7. Kitchen work and other work involved in preparing and serving food and beverages, including the operations of machines and devices used in the performance of such work, such as dishwashers, toasters, dumb waiters, popcorn poppers, and milkshake blenders.
8. Work in connection with cars and trucks, if confined to the following: Dispensing gas and oil. Courtesy services on the premises of the gasoline service station. Hand car cleaning, washing, and polishing. Other occupations permitted by this section, **BUT NOT INCLUDING WORK: *involving the use of pits, racks, or lifting apparatus, or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring.***
9. Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing, and stocking goods when performed in areas physically separate from areas where meat is prepared for sale, and outside freezers or meat coolers.