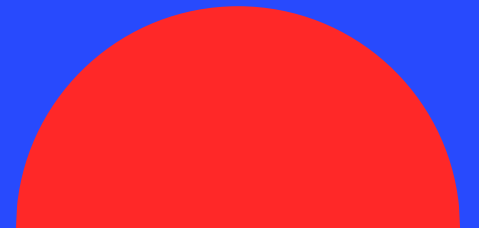
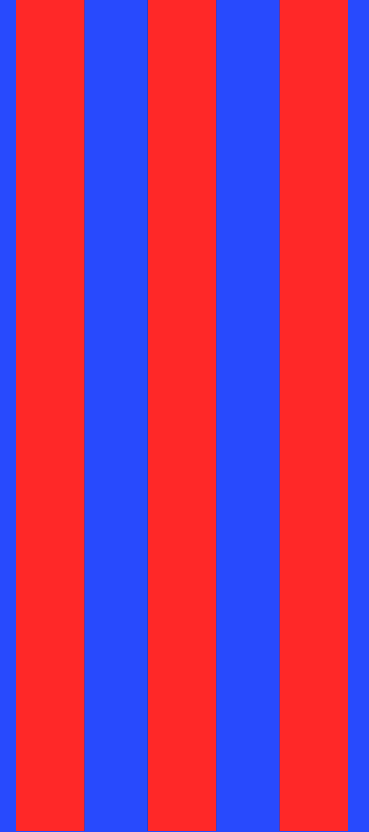


Educational Learning Opportunities

**Presented by Lexie Rojas
Director of Inspections
NH Department of Labor**



Introduction

- ✓ Discuss the Law that Permits Students to engage for subminimum wage rates
- ✓ What is weighed when accepting a program
- ✓ Discuss the information necessary for oversight



Applicable Laws

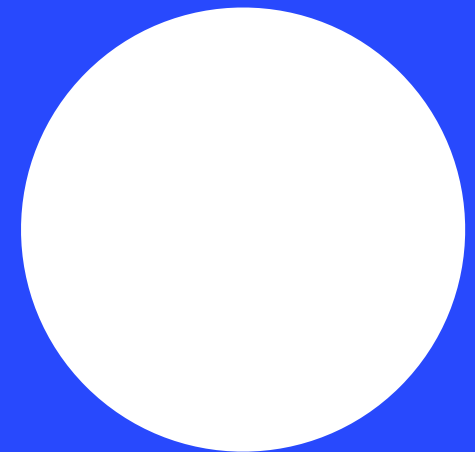
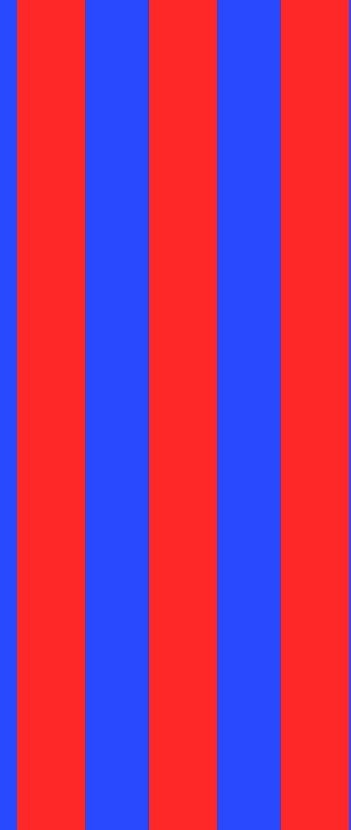
- RSA 279:22-aa High School and Post Secondary Students; Workers with Disabilities

- Lab Rule 802.03

- Lab Rule 805

- RSA 276-A:4 Prohibitions

- Lab Rule 1003.01



RSA 279:22-aa High School and Post Secondary Students; Workers with Disabilities

- I. Upon application by a participating employer or proper school authority, the labor commissioner may establish a sub-minimum wage rate, or no rate, for high school or post secondary students working for practical experience, if circumstances warrant. Guidelines shall be established by the labor commissioner to determine whether an employer-employee relationship exists between participating parties for such work in respect to existing labor laws. No such student shall be allowed to replace an existing worker or a laid-off worker.
- II. Upon application by a proper post-secondary organization or rehabilitation facility as defined by and in a manner established by the labor commissioner, the commissioner may establish a practical experience/training program at a sub-minimum wage rate or no wage rate for individuals with disabilities. If such program is established, the commissioner shall establish guidelines to determine whether an employer-employee relationship exists between the parties for work performed through the program that is consistent with state and federal law. No such individual with disabilities, while in the program, shall be allowed to replace an existing worker or a laid-off worker.

What does this mean?

- An employer or school authority (including home school) may apply and ask the Department to:
 - **Permit them to have students or workers with disabilities provide work for less than minimum wage (less than \$7.25) or no wage**
 - **The employer or school authority must demonstrate that this is for practical experience (a learning component outside what you would typically see as employee training)**
 - **No student or worker with disabilities can be used to replace an existing worker or laid off worker**
 - **Based on information provided by the employer or school authority the Department can also determine if an employer-employee relationship exists**

What happens if we waive the employer-employee relationship?

The student or disabled worker may not be protected by workers' compensation laws

- No money to the student for medical bills for injuries sustained while working
- No monetary reimbursement for lost earning potential
- If Primex is involved, under some circumstances there is up to \$10,000 that can be applied to the injury, but this is not guaranteed
- The waiver is LIMITED to the program terms so we need to know SPECIFICALLY what they are DOING

Lab 805 (805.01; 805.02, 805.03; 805:04; 805:05)

- Lab 805:01
 - Establishes the purpose of the rules
- Lab 805:02
 - Sets forth what we would like in the application
 - Does not preclude us from asking for more information, it just sets a base
- Lab 805:03
 - Sets forth the base for evaluation
- Lab 805:04
 - Talks about the base information we need for the prescreening of the business partner
- Lab 805.05
 - Establishes the protocol for approval or rejection of the request for the student to work for the employer

What is a Prescreen?

A prescreen involves us looking at the business partner or employer applicant to determine if they are a suitable location for students or workers with disabilities to be conducting work.

- Do they have prior violations that were never corrected?
- Do they have a workers' compensation policy?
- Do they have a safety summary form?
- What have the past hiring practices been? (do they consistently hire 40 employees and now suddenly report 0 but want 40 student workers?)
- **If we approve a prescreen it does not mean that we have approved your request to permit the student to engage in work you still have to submit a program approval form.**
 - **It just means that, AT THE TIME WE CONDUCTED OUR RESEARCH, this business partner has not raised a concern for us in the past or if they have a past, they have course corrected such that they can oversee youth**
 - **It is JUST a snapshot in time**

Prescreen Form



STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
PO BOX 2076
CONCORD, NH 03302-2076
FAX (603) 271-2668
InspectionDiv@dol.nh.gov

APPLICATION FOR PRE-SCREENING OF SCHOOL TO WORK

School _____

School Coordinator _____

Telephone _____

FAX _____

E-Mail _____

TO BE COMPLETED BY THE BUSINESS PARTNER

The Department of Labor will review this request and notify the school district and employer of the status of the application when the review is complete. If an application is rejected, the notice will include the reason for rejection. The organization's compliance with regulated safety requirements, loss history and labor violations will be considered. If the business named has any questions or concerns, they should contact Department of Labor at (603) 271-0127.

Business Name: _____ Federal I.D. Number: _____

Address: _____

City/Town: _____, NH Zip code: _____

Number of Employees: _____

Contact Name: _____

Telephone #: _____

Email Address: _____

DOL AUTHORIZATION: ___ Yes ___ No

Reason for rejection: _____

DOL authorized signature: _____

Date: _____

RSA 276-A:4 Prohibitions

- I. No youth shall be employed or permitted to work in any hazardous occupation, except in an apprenticeship, vocational rehabilitation, or training program approved by the commissioner.

PART Lab 1003 INCORPORATION BY REFERENCE

Lab 1003.01 Hazardous Occupations. Under the authority of RSA 276-A:8, and in reference to the term hazardous occupation, as defined in RSA 276-A:3, V, employers shall comply with the following federal orders regulating youth employment in hazardous occupations:

- a) The following standards and orders of the Child Labor Bulletin No. 101 contained in "Child Labor Requirements in Nonagricultural Occupations Under the Fair Labor Standard Act", publication WH-1330, available as noted in Appendix II:
 - (1) The occupation standards for 14- and 15-year olds;
 - (2) The employment standards for 16- and 17-year olds; and
 - (3) The exemptions for apprentices and student-learners.

- b) The following standards and orders of the Child Labor Bulletin No. 102 contained in "Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standard Act", publication WH-1295, available as noted in Appendix II:
 - (1) The Hazardous Occupation Orders for Agricultural Employment;
 - (2) The exemptions for Student-Learners, 4-H Federal Extension Service; and
 - (3) Vocational Agriculture Training Programs.

RSA 276-A:3 Definitions. –

V. The term "hazardous occupation" shall mean employment so determined by the Children's Bureau of the United States Department of Labor pursuant to the provisions of the Fair Labor Standards Act, or on determination by the commissioner after all parties have been given an opportunity to be heard thereon.

What does this mean?

- Anyone under the age of 18 cannot engage in any hazardous work
- The federal government has Hazardous Orders or laws that prohibit 17 specific activities, NH has adopted these prohibitions in addition to other acts deemed hazardous
- The law allows us to waive 7 hazardous work orders for 16 and 17 year olds while they are receiving specialized instruction under an NH DOL approved program
- Once they complete the program, the waiver expires, and they cannot lawfully engage in that activity until they reach 18 years of age

Program App RSA 279:22-a

- Program must be approved
- Business partner must be approved
- Seeking no Employer / Employee
- Program is not just employment
- Program is designed to assist

*Programs run while
relationship ends*



Approval Form for Sub-Minimum Wage or No Wage Rate for Work-Based Activities under RSA 279:22-aa

School/Institution/Organization _____ Secondary Post-secondary Other

Address: _____
Street Town/City State Zip Code

If disabled learner check one: VR AA CMHC Provider Agency

No Wage Rate Sub-Minimum Wage Rate Requested, amount \$ _____

Program Name: _____

Contact Person: _____ Title: _____ Tel: _____

Email: _____

Type of Placement (check only one):

- Job Shadow Clinical Work Experience Internship Service Learning
 Mentor Program Situational Assessment Training Program Other _____

Career Interest & Objective (or attach a course description or syllabus):

See Attached

Is academic credit given for this program? Yes No

Hours per day: _____ Days per week: _____ Total number of days at business site: _____

Supervision: Please describe how the student/learner(s) will be supervised and by whom _____

- Does each place of business have a safety program? Yes No Explain _____
- Is there any hazardous equipment involved? Yes No Type _____
- Has all Safety Training been completed (as applicable to each site)? Including specific training for equipment as noted above
 Yes No Explain _____

The information above as provided is accurate and we guarantee that this placement in no way establishes an employee/employer relationship between the student(s) and the business site at which they are placed.

Attach Pre-Screening Forms for each business participating in this placement. Notify the DOL of any additions to this list, via additional Pre-Screening Forms. Also attach a sample copy of Agreement or Contract for this placement.

Print Name _____ Authorized Signature _____

Title _____

For DOL use only
 Approved Rejected DOL Authorized Signature _____ Date _____

Reason for Rejection:

Please provide a more detailed Career Interest & Objective, or attach a course description or syllabus

Other

Department of Labor
Minimum
or
employment.

*ilities. When the
submitted.*

When is RSA 279:22-aa triggered?

- Whenever a student or worker with disabilities is engaging in work and they are not going to be paid at least \$7.25
- Whenever a student or worker with disabilities is engaging in work and the employer does not want them considered an employee
- A school is not needed, you just need a student

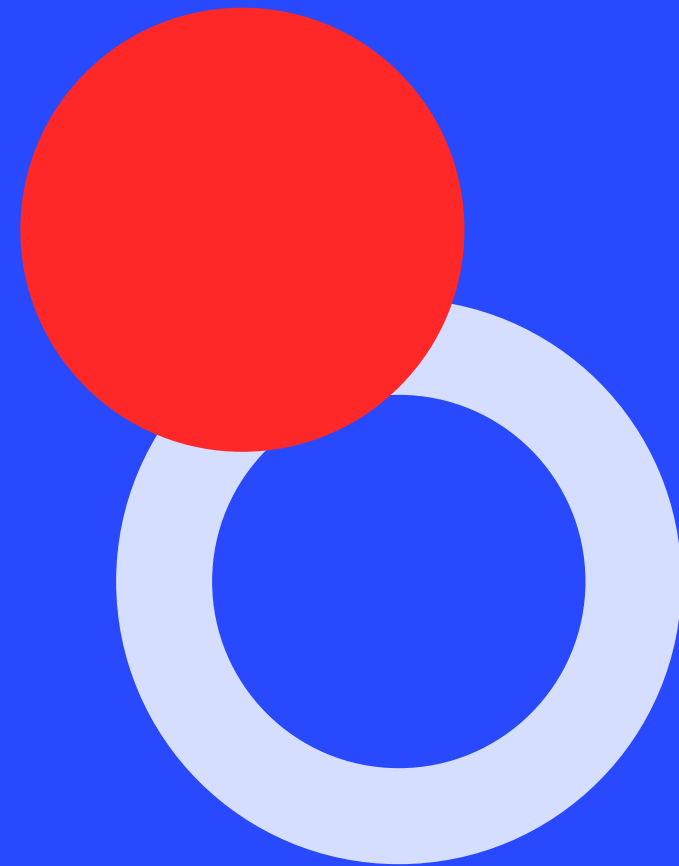
When is RSA 276-A:3 triggered?

- Whenever a youth is going to be engaging in hazardous work that involves waiver of the Federal Hazardous Orders
- The employer cannot be solo
 - An apprenticeship, vocational rehabilitation, or training program NEEDS to exist that partners with the employer

When are the Laws NOT triggered?

The laws do not apply to:

- Strict job shadow
- Volunteers for charitable organizations or municipalities
 - Volunteers can only be assigned duties that do not necessarily or traditionally lead to paid employment
 - Charitable organizations must meet the statutory definition



Wage & Hour Inspection Division

Phone Numbers:

603.271.0127

Email Address:

InspectionDiv@dol.nh.gov



Thank you

