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 exits 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 <u>up to</u> \$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, <u>AT THE TIME WE CONDUCTED</u> <u>OUR RESEARH</u>, 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:YesNo			
Reason for rejection:			
DOL authorized signature:			
Date:			
Pre-Screen Form 20221011			

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** <u>commissioner.</u>

PART Lab 1003 INCORPORATION BY REFERENCE

Lab 1003.01 <u>Hazardous Occupations</u>. 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 <u>Child Labor Bulletin No. 101</u> contained in "Child Labor Requirements in Nonagricultural Occupations Under the Fair Labor Standard Act", <u>publication</u> <u>WH-1330</u>, 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 <u>Child Labor Bulletin No. 102</u> contained in "Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standard Act", <u>publication WH-1295</u>, 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, <u>or on determination by the</u> <u>commissioner after all parties have been given</u> <u>an opportunity to be heard thereon.</u>

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



State of New Hampshire

Department of Labor

Inspec

COOPERATIVE EDUCATION PROGRAM

Memorandum of Understanding

School:	Employer:
School Email:	Employer Email:

This vocational education cooperative work experience (training) program has been appro the terms of this agreement, including the following conditions:

- 1. The program is under the direct supervision of a full-time coordinator with adequate re
- 2. The signature will indicate approval of all parties involved.
- The student-learner will be receiving instruction in an approved school and will be emp to a bona fide Vocational Cooperative Education Program in order to further his/her vo education.
- The student-learner will neither displace a regular worker now employed, nor substitut who would ordinarily be needed by the employer.
- A schedule of organized and progressive work processes to be performed on the job I prepared.
- Safety instruction will be given by the school. While on the job, the student will receive instruction from and under the direct supervision of a qualified representative of the er organization. Specific machines upon which he/she will work and other hazardous ope he/she will work are itemized.
- The student-learner agrees to perform his/her duties in a loyal and faithful manner and best interest of all concerned.
- This program may be terminated at any time by the high school vocational director, the the principal to assure the best interest of all concerned.
- 9. This program shall comply with all federal, state, and local laws and regulations.
- 10. If applicable, the waiver of hazardous occupation restrictions (New Hampshire Youth E Chapter 276-A:4,1) is granted when this agreement is approved by the Department of <u>NOTE</u>. This exemption for employment of a student-learner may be revoked in any in wherein it is found that reasonable precautions have not been observed for the safety employed there under.
- 11. The employer agrees to furnish an evaluation of the student-learner's progress, adapt attitude approximately once a month. (Forms will be furnished by the coordinator).
- 12. "The employer and school assures that students will be accepted and assigned to job! treated without regard to race, color, national origin, sex, or handicap."



This program, as set forth in the Memorandum of Understanding, has been reviewed by the New Hampshire Labor for compliance with New Hampshire labor laws. The hazardous occupations restrictions, if any, are h during the hours of training as stated herein. Employment Standards for 16- and 17-Year-Olds in Nonagricultural Employment

The Hazardous Occupations Orders (HOs) for Nonagricultural Employment

These Orders are published in Subpart E of Part 570 of Title 29 of the Code of Federal Regulations.

The FLSA provides a minimum age of 18 years for any nonagricultural occupations which the Secretary of Labor "shall find and by order declare" to be particularly hazardous for 16- and 17-year-old persons, or detrimental to their health and well-being. This minimum age applies even when the minor is employed by the parent or person standing in place of the parent.

The seventeen HOs apply either on an industry basis, specifying the occupations in the industry that are not permitted, or an occupational basis irrespective of the industry in which found. Some of the HOs contain limited exemptions.

- HO 1 Manufacturing and storing of explosives.
- HO 2 Motor-vehicle driving and outside helper on a motor vehicle.
- HO 3 Coal mining.
- HO 4 Occupations in forest fire fighting, forest fire prevention, timber tract operations, forestry service, logging, and sawmilling.
- HO 5* Power-driven woodworking machines. HO 6 Exposure to radioactive substances.
- HO 7 Power-driven hoisting apparatus, including forklifts.
- HO 8* Power-driven metal-forming, punching, and shearing machines.
- HO 9 Mining, other than coal mining.

*These HOs provide limited exemptions for 16and 17-year-olds who are bona-fide studentlearners and apprentices.

- HO 10* Operating power-driven meat processing equipment, including meat slicers and other food slicers, in retail establishments (such as grocery stores, restaurants kitchens and delis) and wholesale establishments, and most occupations in meat and poultry slaughtering, packing, processing, or rendering.
- HO 11 Power-driven bakery machines including vertical dough or batter mixers.
- HO 12*Power-driven balers, compactors, and paper processing machines.
- HO 13 Manufacturing bricks, tile, and kindred products.
- HO 14*Power-driven circular saws, bandsaws, chain saws, guillotine shears, wood chippers, and abrasive cutting discs.
- HO 15 Wrecking, demolition, and shipbreaking operations.
- HO 16*Roofing operations and all work on or about a roof.

HO 17*Excavation operations.



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anation of work and equipment used. Hazardous work is , intermittent and for short periods of time.

Program App RSA 279:22-a

- Program must be approve
- Business partner must be
- Seeking no Employer / Er
- Program is not just employ
- Program is designed to as



Department of Labor	603.271.0127 Email: nspectiondiv@dol.nh.gov			
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:	State Zip Code			
If disabled learner check one: VR AA CMHC Provider Agency	State 20 Code			
No Wage Rate Sub-Minimum Wage Rate Requested, amount \$				
Program Name:				
Contact Person: Title: Te	el:			
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? Over No Explain Solution Sector S				
O Yes O 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 Da	te			
Reason for Rejection: Piease provide a more detailed Career Interest & Objective, or attach a course description or syllabus				
Other				

State of New Hampshire

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Phone:

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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 <u>NEEDS</u> to exist that <u>partners</u> with the employer

When are the Laws NOT triggered?

The laws do not apply to:

- Strict job shadow
- Volunteers for <u>charitable organizations</u> or <u>municipalities</u>
 - 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