

Law Bulletin



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Law you need to know from OSU Extension's Farm Office

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Youth Labor on the Farm: Laws Farmers Need to Know

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Youth labor laws have existed at both the state and federal levels for more than a century now. The laws themselves have changed over the years, but their intent largely remains the same: to protect youth from potential hazards and risks that may arise while working, ensure that they attend school, and prevent exploitation of child labor.

Early on, agriculture was largely exempt from the restrictions imposed by labor laws for minors in recognition that youth are important to the workings of a family farm. While that remains true to an extent, there are a number of laws that do apply to employing youth on the farm. It's important for the farm community to know these laws and understand the parameters of using minors to assist with farm work.

This law bulletin explains federal and state laws that regulate employers who have youth doing agricultural work on a farm. The federal youth labor laws are based upon the Fair Labor Standards Act (FLSA) and its rules in the Code of Federal Regulations (CFR). Employers in Ohio must follow these federal laws in addition to complying with the state labor laws that are in the Ohio Revised Code (ORC), which can be *more restrictive* but not more lenient than the federal laws. We've designated the federal laws as "CFR" and the state laws as "ORC" in the information below.

What is agriculture?

An introductory issue to understand is what is "agriculture" or "agricultural work" for purposes of youth employment? The intent of both federal and state laws is to address the types of task a youth would do on a working agricultural production operation. Under FLSA, "agriculture" means farming, which includes the cultivation and tillage of soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including forestry or lumbering operations), that is performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage, to market, or to carriers for transportation to market. This means that agribusinesses are not considered to be "agriculture" or "agricultural employment." Those types of businesses and other "non-farm" businesses employing youth must comply with the general labor laws for minors rather than the agricultural provisions.

Youth labor laws unique to agriculture

There are five areas of law that are unique to involving youth in agricultural work on the farm:

1. Exemptions for children and grandchildren
2. Recordkeeping obligations
3. Wage and hour requirements
4. Job and task restrictions
5. Parental consent provisions

We explain each of these areas in the following sections. Some of the laws vary according to the age of the minor, so we've pulled all of the laws together into a chart at the end of the bulletin. The chart highlights the different requirements and restrictions for different age groups.

1. Exemptions for children and grandchildren

Parents or legal guardians are exempt from federal youth labor laws in regards to children working on farms owned or operated by the parents. This exemption includes step children, adopted children, and foster children. Ohio also exempts grandparents from state youth labor laws if their grandchildren are working on farms that they own or operate. Employment of youth on farms by uncles, aunts, cousins, or any other family members is not exempt, and those family members are subject to the federal and state youth labor laws we explain below.

2. Recordkeeping obligations

Federal law requires a farm employer to request and maintain certain information about all minors under 18 working on the farm. The information includes the minor's full name, permanent address and where living when working, if different than the permanent address, and the youth's date of birth. An employer should also keep records of any written parental consent required by law, which we explain below. Ohio law does not have any additional recordkeeping requirements that apply to employers of minors engaged in agricultural work.

3. Wage and hour requirements

Federal and state laws also address wages for youth and the amount of hours and times of day when youth can work in agriculture. Many farms are exempt from federal and state minimum wage requirements for both youth and adult employees, as long as the farm is a "small farm," which means that the farm did not use more than 500 man-days of agricultural labor during any calendar quarter of the preceding calendar year. A man-day is any day during which an employee performs at least one hour of agricultural labor on a farm. Immediate family members of the farmer are completely exempt from minimum wage laws. As is the case for adult employees, farmers are exempt from overtime wage requirements for youth employees.

Ohio law requires farm employers to furnish a youth with written evidence of the wages the youth shall receive and a statement of earnings on or before each payday. An employer can't withhold wages for

presumed negligence, rules violations, harm to machinery or alleged incompetence.

Neither federal or state law requires a farmer to obtain a school "work permit" for any youth, but laws addressing the number of hours and times of day when youth can work on a farm vary according to the age of the youth. There are also differences depending upon whether the youth is working on a school day or during summer break, which is from June 1 to September 1. We present these provisions for each age group in the charts below. Ohio law mandates that a 30-minute break period be provided for any youth that has worked more than five consecutive hours.

4. Job and task restrictions

Both state and federal law speak to the types of jobs and tasks an employer can assign to youth employees. First, be aware that Ohio law in ORC 4109.06(A)(9) carves out an exemption from the laws on youth employment if the youth is "engaged in law mowing, snow shoveling, and other related employment." Those tasks are not restricted, and youth who complete them are not subject to the laws explained in this bulletin.

On the other hand, the FLSA prohibits farm employers from assigning certain "hazardous" jobs and tasks to minors, and the prohibitions vary according to the minor's age. Exceptions exist if the youth is a certain age and obtains a certificate of completion for attending an approved safe tractor and machinery operation program. Information about Ohio's approved program is available at <https://agsafety.osu.edu/programs/tractor-machinery-certification-program>.

The jobs and tasks deemed as "hazardous" under federal law and adopted into Ohio law include:

- Operating a tractor with over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such tractor.
- Operating or assisting to operate a corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, mobile pea viner, feed grinder, crop dryer, forage blower, auger conveyor, unloading mechanism of a non-gravity-type self-unloading wagon or trailer, power post-

hole digger, power post driver or non-walking type rotary tiller, trencher or earthmoving equipment, fork lift, potato combine, or power-driven circular, band, or chain saw. This includes starting, stopping, adjusting, feeding, or any other activity involving physical contact with the equipment.

- Working on a farm in a yard, pen, or stall occupied by a bull, boar, or stud horse maintained for breeding purposes, a sow with suckling pigs, or a cow with a newborn calf with umbilical cord present.
- Felling, bucking, skidding, loading, or unloading timber with a butt diameter of more than 6 inches.
- Working from a ladder or scaffold at a height of over 20 feet.
- Driving a bus, truck, or automobile when transporting passengers or riding on a tractor as a passenger or helper.
- Working inside a fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere.
- Working inside an upright silo within two weeks after silage has been added or when a top unloading device is in operating position.
- Working inside a manure pit.
- Working inside a horizontal silo while operating a tractor for packing purposes.
- Handling or applying toxic agricultural chemicals that are identified on the label by the word "poison," "warning," or a skull and crossbones symbol, including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying such chemicals.
- Handling or using a blasting agent, including dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord.
- Transporting, transferring or applying anhydrous.

5. Parental consent provisions

A final legal requirement that a farm employer might have for a youth working on the farm is to obtain written permission from the youth's parents or legal guardians. This is a provision in federal law, but note that Ohio law doesn't explicitly address youth under 14, as we explain below in "Minimum employment age for youth." The FLSA does allow youth over the age of 14 to do agricultural work without providing written parental consent to the employer. But youth that are

12 or 13 years old must have written parental consent, although permission is not necessary if the youth's parent(s) work on the same farm. Youth under 12 years of age must have written parental consent to work on a farm, and may do so only on farms where none of the employees are subject to FLSA minimum wage requirements, which we explained above. And remember that no youth under 16 may engage in a "hazardous" job—even with parental permission.

The Ohio Department of Commerce provides a parental consent form for the employment of youth, available at https://www.com.ohio.gov/documents/laws_ParentOrGuardianConsentForm-LAWS.pdf. A farm employer should use this form or a similar written consent form to obtain approval from the parents or legal guardian of any youth under 14 that will be working on the farm, and should maintain a record of the consent form in the minor's employment file.

Minimum employment age for youth

Whether there is a minimum working age for youth is a complicated question. As we explain in other parts of this bulletin, federal law allows youth under the age of 14 to be employed as long as certain requirements are met--the employer must obtain written parental consent and follow work hour and task restrictions.

States may choose to preempt federal law by being more restrictive on legal requirements for youth. Ohio's employment laws, however, do not address youth under the age of 14. The law neither explicitly permits or prohibits youth under 14 from being employed. This means that it's unclear whether Ohio is more restrictive than the federal law in regards to a minimum age for employed youth. Be aware that the Ohio Department of Commerce has stated that it interprets this silence in Ohio law as a *prohibition against employing youth under 14*. This creates a compliance risk for employers, as Ohio may deem employment of youth under 14 to be a violation of state law. Due to the lack of clarity in Ohio law, an employer who wants to hire youth under 14 for jobs other than the exempted tasks of lawn mowing, snow shoveling, or similar work should *seek an attorney's advice on whether to employ a youth under 14 for the tasks in mind*.

Other employment laws can apply to youth

In this bulletin, we've explained the unique labor laws that apply to minors working in agriculture. Note that there are other employment laws that apply to youth in the same way that they apply to adults. For example, verification of employment eligibility applies to both minor and adult employees, and farmers should complete a federal Form I-9 for each minor employee. Note that federal law allows a parent to complete the I-9 form for a minor under the age of 18. Employers must also treat minors the same as adults for tax withholding purposes. Likewise, Ohio law requires employers to carry and pay for workers' compensation insurance for all full-time and part-time employees, including minors. These laws do not distinguish between youth and adult employees. Be sure to consult with an attorney or accountant if unsure about how these and other employment laws apply to minors.

Pulling it all together: youth agricultural labor laws by age groups

Understanding youth labor laws is a bit like putting a puzzle together, and it's important to get the pieces in the right places. To help an employer focus in on the laws that apply to a minor of a particular age, we've organized the laws in the chart below according to the four age groups addressed in the laws: 16 to 17 year olds, 14 to 15 year olds, 12 to 13 year olds, and under the age of 12. At the beginning of the chart, we note the laws that apply to all youth under the age of 18.

Remember, parents, grandparents and legal guardians can be exempt from the laws below. The federal provisions (designated as "CFR") don't apply to youth working on a farm owned or operated by their parents or legal guardians. The state laws (designated as "ORC") don't apply to youth working on a farm owned or operated by their parents, a legal guardian, or their grandparents.

Laws that apply to youth working on farms, by age groups

**Note: The provisions below for youth under the age of 12 summarize federal laws.*

Ohio law is not clear on whether an employer may employ a youth under the age of 14, as we explain above.

Consult with an attorney to determine if you may legally hire any youth under 14 for your job needs.

All youth under 18	
<i>Recordkeeping</i> 29 CFR § 516.33(f)	<ul style="list-style-type: none"> • Employer must maintain a record of a minor employee's full name, permanent address and where living while employed if different than permanent address, and date of birth. If required based upon the minor's age, the employer must maintain a record of a minor's parental consent forms.
<i>Minimum wage and overtime wages</i>	<ul style="list-style-type: none"> • Minimum wage does not apply as long as the farm is a "small farm," which means the farm did not use more than 500 man-days of agricultural labor during any calendar quarter of the preceding calendar year. A man-day is any day during which an employee performs at least one hour of agricultural labor on a farm. • Overtime wages are not required by law.
<i>Wage restrictions</i> ORC § 4109.10	<ul style="list-style-type: none"> • Employer must provide a written agreement to the minor of the wages or compensation the minor will receive and may not reduce the minor's wages or compensation without providing at least 24 hours' notice and a new written agreement. • On or before each payday, employer must provide the minor with a statement of the earnings due and the amount to be paid to the minor. • Employer may not withhold wages or compensation due to a minor's presumed negligence, failure to comply with rules, breakage of machinery, or alleged incompetence.
<i>Break requirement</i> ORC § 4109.07(C)	<ul style="list-style-type: none"> • Employer must provide at least a 30 minute rest period if youth works more than five consecutive hours, but the rest period does not have to be included in tallying the number of hours worked.

16 and 17 year olds

<i>Task restrictions</i>	<ul style="list-style-type: none"> • No restrictions; may perform jobs and tasks defined as "hazardous."
<i>Time restrictions</i> ORC § 4109.07	<ul style="list-style-type: none"> • Cannot work before 7:00 a.m. on school days. • EXCEPTION: can work starting at 6:00 a.m. if was not working past 8:00 p.m. the night before. • Cannot work after 11:00 p.m. on a school night (a night when the minor has school the next day).
<i>Hour restrictions</i> ORC § 4109.07	<ul style="list-style-type: none"> • No daily or weekly hour limits.
<i>Parental consent</i> 29 CFR § 570.2(b)	<ul style="list-style-type: none"> • No written parental consent required.

14 and 15 year olds

<i>Task restrictions</i> 29 CFR § 570.72	<ul style="list-style-type: none"> • May not perform tasks defined as "hazardous." • EXCEPTION: may perform certain hazardous tasks if employer has a record on file that the minor holds a 4-H or vocational agriculture certificate of completion for tractor or machine operation.
<i>Time restrictions</i> ORC § 4109.07	<ul style="list-style-type: none"> • Cannot work during school hours while school is in session. • Cannot work before 7:00 a.m. or after 7:00 p.m. • EXCEPTION: can work until 9:00 p.m. from June 1 to September 1. • EXCEPTION: can work until 9:00 p.m. during any school holiday or break lasting more than 5 weekdays.
<i>Hour restrictions</i> ORC § 4109.07	<p>Daily hour limits:</p> <ul style="list-style-type: none"> • Cannot work more than 3 hours during a school day. • Cannot work more than 8 hours during a non-school day. <p>Weekly hour limits:</p> <ul style="list-style-type: none"> • Cannot work more than 18 hours in a week while school is in session. • Cannot work more than 40 hours in a week while school is not in session. • EXCEPTION: weekly hour limits may be relaxed when the job is part of a work education program, such as vocational training or work study.
<i>Parental consent</i> 29 CFR § 570.2(b)	<ul style="list-style-type: none"> • No written parental consent required.

12 and 13 year olds

**Note: The provisions below summarize federal laws on employing youth under the age of 12. Ohio law is not clear on whether an employer may employ a youth under the age of 14, as we explain above, but the Ohio Department of Commerce states that youth under 14 may be employed. Consult with an attorney to determine if you may legally hire any youth under 14 for your job needs*

<i>Task restrictions</i> (Federal law)	<ul style="list-style-type: none"> • May not perform jobs and tasks defined as "hazardous."
<i>Time restrictions</i> ORC § 4109.07 *Same as for 14-15	<ul style="list-style-type: none"> • Cannot work during school hours while school is in session. • Cannot work before 7:00 a.m. or after 7:00 p.m. • EXCEPTION: can work until 9:00 p.m. from June 1 to September 1. • EXCEPTION: can work until 9:00 p.m. during any school holiday or break lasting more than 5 weekdays.
<i>Hour restrictions</i> ORC § 4109.07 *Same as for 14-15, but no 4-H or vo-ag certificate exception	<p>Daily hour limits:</p> <ul style="list-style-type: none"> • Cannot work more than 3 hours during a school day. • Cannot work more than 8 hours during a non-school day. <p>Weekly hour limits:</p> <ul style="list-style-type: none"> • Cannot work more than 18 hours in a week while school is in session. • Cannot work more than 40 hours in a week while school is not in session.
<i>Parental consent</i> 29 CFR § 570.2(b)	<ul style="list-style-type: none"> • Written parental consent required. • EXCEPTION: written parental consent is not required if the minor will be working on a farm where the minor's parent or legal guardian is also employed.

Under 12 years old

**Note: The provisions below summarize federal laws on employing youth under the age of 12. Ohio law is not clear on whether an employer may employ a youth under the age of 14, as we explain above, but the Ohio Department of Commerce states that youth under 14 may be employed. Consult with an attorney to determine if you may legally hire any youth under 14 for your job needs.*

<p><i>Task restrictions</i> 29 CFR § 570.2(b)</p>	<ul style="list-style-type: none"> • Can only work on a farm where employees are exempt from the federal minimum wage, which includes a farms of an immediate family member or a “small farm” that used fewer than 500 “man days” of agricultural labor in any calendar quarter the preceding year. A “man day” is a day during which an employee performs agricultural work for at least one hour. • EXCEPTION: Local youths 10 and 11 may hand harvest short-season crops outside school hours for no more than 8 weeks between June 1 and October 15 if their employers have obtained special waivers from the U.S. Secretary of Labor. • May not perform jobs and tasks defined as “hazardous.”
<p><i>Time restrictions</i> ORC § 4109.07</p> <p>*Same as for 14-15</p>	<ul style="list-style-type: none"> • Cannot work during school hours while school is in session. • Cannot work before 7:00 a.m. or after 7:00 p.m. • EXCEPTION: can work until 9:00 p.m. from June 1 to September 1. • EXCEPTION: can work until 9:00 p.m. during any school holiday or break lasting more than 5 weekdays.
<p><i>Hour restrictions</i> ORC § 4109.07</p> <p>*Same as for 14-15, but no 4-H or vo-ag certificate exception</p>	<p>Daily hour limits:</p> <ul style="list-style-type: none"> • Cannot work more than 3 hours during a school day. • Cannot work more than 8 hours during a non-school day. <p>Weekly hour limits:</p> <ul style="list-style-type: none"> • Cannot work more than 18 hours in a week while school is in session • Cannot work more than 40 hours in a week while school is not in session
<p><i>Parental consent</i> 29 CFR § 570.2(b)</p>	<ul style="list-style-type: none"> • Written parental consent required.

RESOURCES AND REFERENCES

"Agricultural Employer's Pocket Guide on Youth Employment," U.S. DEPARTMENT OF LABOR, https://www.dol.gov/whd/AG/ag_pocket_guide.pdf.

"Child Labor Bulletin 102: Child Labor Requirements in Agricultural Occupations Under the Fair Labor Standards Act," *Publication WH1295*, U.S. DEPARTMENT OF LABOR WAGE AND HOUR DIVISION (revised Nov. 2016) <https://www.dol.gov/whd/regs/compliance/childlabor102.pdf>.

Chris Zoller, "Know the Rules When Employing Minors on Your Farm," *Publication ANR-26-10*, Ohio State University Extension, THE OHIO STATE UNIVERSITY (Aug. 30, 2010) <https://ohioline.osu.edu/factsheet/ANR-26>.

Code of Federal Regulations, Title 29 Subtitle B Chapter V Subchapter A – Regulations, <https://www.dol.gov/whd/regs/compliance/whdfs40.pdf>.

"Completing Form I-9 for Minors," U.S. Citizenship and Immigration Services, <https://www.uscis.gov/i-9-central/complete-correct-form-i-9/complete-section-1-employee-information-and-verification/minors>.

"Fact Sheet #40: Overview of Youth Employment (Child Labor) Provisions of the Fair Labor Standards Act (FLSA) for Agricultural Occupations," *Publication FS40*, U.S. DEPARTMENT OF LABOR WAGE AND HOUR DIVISION (revised Dec. 2016) <https://www.dol.gov/whd/regs/compliance/whdfs40.pdf>.

Ohio Department of Commerce Division of Industrial Compliance, Wage and Hour Section, <https://www.com.ohio.gov/dico/default.aspx>.

Ohio Revised Code Chapter 4109: Employment of Minors, <http://codes.ohio.gov/orc/4109>.

Peggy Hall and Catharine Daniels, "Youth on the Farm: What Type of Farm Work Can They Perform?," Ohio State University Extension Agricultural & Resource Law Program, THE OHIO STATE UNIVERSITY (Jun. 10, 2013) <https://ohioaglaw.wordpress.com/2013/06/10/youth-on-the-farm-what-type-of-farm-work-can-they-perform/>.

"Understanding Workers' Compensation," Ohio Bureau of Workers' Compensation, <https://info.bwc.ohio.gov/>.

U.S. Department of Labor, Wage and Hour Division, <https://www.dol.gov/whd/childlabor.htm>.

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