

FEDERAL YOUTH LABOR LAWS

The Fair Labor Standards Act (FLSA) sets wage, hours worked, and safety requirements for minors (under age 18) in jobs. Rules below apply to nonagricultural employment, and vary depending upon the job involved. Additional questions can be directed to the U.S. DOL, Wage and Hour Division in Sioux Falls at 605.330.4241. For more information, reference the Child Labor Bulletins at dol.gov/agencies/whd/youthrules.

Employers are generally subject to both state child labor laws and the federal child labor provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. 212(c), and the FLSA regulations at 29 CFR Part 570. Certain provisions of South Dakota state law may be less restrictive than federal law, and employers covered by the FLSA that only follow a less restrictive provision of South Dakota state law will be in violation of federal law. See 29 U.S.C. 218(a). For more information on federal child labor law, please visit the U.S. Department of Labor's Wage and Hour Division Website at www.dol.gov/whd.

FREQUENTLY ASKED QUESTIONS

Guidance for 16- and 17-year-olds

Q: 1 *What hours may 16- and 17-year-olds work?*
A: Any occupation and unlimited hours, so long as the occupation has not been deemed “hazardous”.

Q: 2 *What occupations are deemed “hazardous”?*

- Manufacturing or storing explosives;
- Driving or working outside on motor vehicles;
- Forest fire fighting & prevention, timber tract, forestry service, and occupations in logging & sawmilling;
- Using power-driven woodworking machines;
- Exposure to radioactive substances and ionizing radiation;
- Using power-driven hoisting apparatus;
- Using power-driven metal-forming, punching and shearing machines;
- Mining;
- Using meat-processing machines, slaughtering, meat and poultry packing, processing, or rendering;
- Using bakery machines;
- Using balers, compactors, and paper-products machines;
- Manufacturing brick, tile, and related products;
- Using circular, band, chain or reciprocating saws, guillotine shears, wood chippers, and cutting discs;
- Working in wrecking, demolition, and ship-breaking operations;
- Roofing and work performed on or about a roof;
- Trenching or excavating.

Q: 3 *Are there exceptions to hazardous work prohibitions under a formal Work/Educational experience?*
A: Yes, if a 16- or 17-year-old is in a **Youth Apprenticeship** or **Student-Learner Program** which meets certain criteria. The limited exemption applies to the following:

- Power-driven woodworking machines;
- Power-driven metal-forming, punching and shearing machines;
- Power-driven meat-processing machines, slaughtering and meat packing plants;
- Balers, compactors, and power-driven paper-products machines;
- Power-driven circular, band, chain, or reciprocating saws, guillotine shears, wood chippers, and cutting discs;
- Roofing operations and work performed on or about a roof; and
- Trenching and excavation operations.

Q: 4 *What are the criteria for Youth Apprenticeship or Student-Learner Programs?*

A: A Youth Apprenticeship or Student-Learner Program can give a 16- or 17-year-old the opportunity to work. A Youth Apprenticeship is when the youth is employed under a written Registered Apprenticeship agreement with U.S. DOL. In a Student-Learner Program the youth is employed under a student learner agreement and enrolled in a course of study and training in a cooperative vocational training program under a recognized State or local education authority.

The youth apprenticeship must meet the following criteria:

- The youth must be employed in a craft recognized as an apprentice-able trade;
- The hazardous work is incidental to the youth's training;
- The hazardous work is intermittent and for short periods of time; (less than 20% of time spent in hazardous work);
- The hazardous work is performed under the direct and close supervision of a journeyman; and
- The youth is:
 - registered by the Bureau of Apprenticeship and Training of the U.S. DOL as employed in accordance with the standards established by the Bureau;
 - registered by a State agency as employed in accordance with the standards of the State apprenticeship agency recognized by U.S. DOL, Bureau of Apprenticeship and Training; or employed under a written apprenticeship agreement and conditions which are found by U.S. DOL to conform substantially with Federal or State standards.

The student learner program must meet the following criteria:

- The student-learner is enrolled in a course of study and training in a cooperative 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; and
- Such student-learner is employed under a written agreement which provides:
 - The hazardous work is incidental to the youth's training;
 - The hazardous work is intermittent and for short periods of time (less than 20% of time spent in hazardous work);
 - The hazardous work is performed under the direct and close supervision of a qualified and experienced person;
 - That safety instruction shall be given by the school and correlated by the employer with on-the-job training; and
 - That a schedule of organized and progressive work processes to be performed on the job shall have been prepared.
- Each such written agreement shall contain the name of the student-learner, and shall be signed by the employer and the school coordinator or principal. Copies of each agreement shall be kept on file by both the school and the employer.
- This exemption for the employment of student-learners may be revoked in any individual situation where it is found that reasonable precautions have not been observed for the safety of minors employed thereunder.

Q: 5 *Is workers' compensation coverage available to youth in a Work/Educational program?*

A: If a youth is employed in work not deemed "hazardous", an employer should be able to cover the youth just as other employees are covered. The South Dakota Department of Labor and Regulation (DLR) has been advised that age is not a factor considered when underwriting a workers' compensation policy.

Workers' compensation coverage would not be available for youth illegally employed in a "hazardous" occupation not as part of a Work/Educational program. The employer cannot hire a youth in the occupation by federal law; therefore, workers' compensation coverage should be prohibited.

However, if a youth is involved in a Work/Educational program meeting the criteria of an approved exemption from the prohibition against "hazardous" work, the employer may be able to cover the youth the same as other employees. For certain programs where DLR pays the wage or portion of the youth's wage, DLR may provide the workers' compensation coverage.

Q: 6 *Are there any exceptions or exemptions for agricultural employment?*

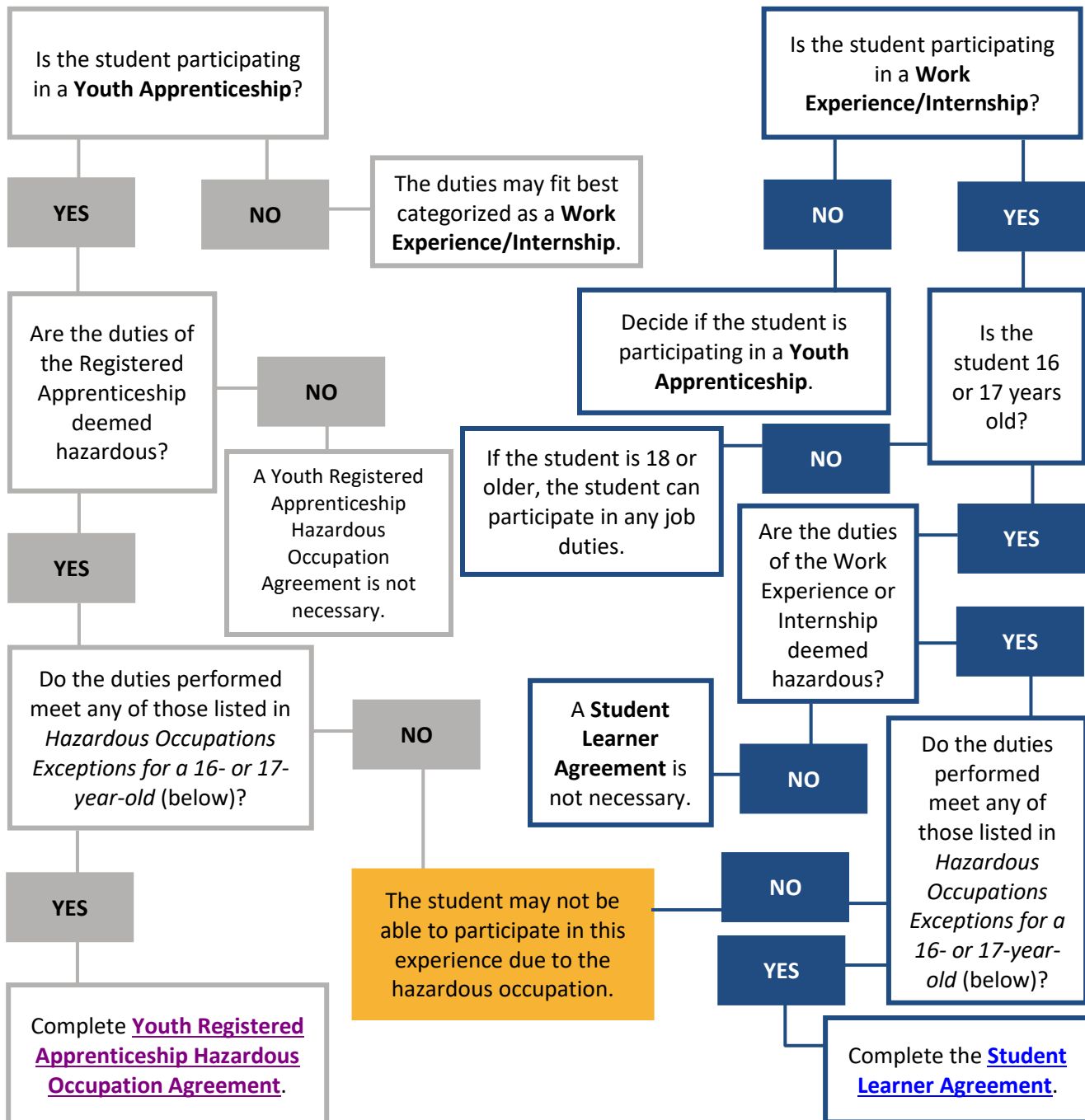
A: A different set of laws applies to work performed on farms and ranches. Generally speaking, there are not restrictions on agricultural employment for anyone 16 years old or older. Fourteen and 15-year-olds can work on a farm or ranch outside of school hours if the job doesn't involve any hazardous work. Jobs considered hazardous include:

- Operating a tractor of over 20 PTO horsepower or connecting or disconnecting implements to such a tractor.
- operating or working with 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 nongravity-type self-unloading wagon or trailer, power post-hole digger, power post driver, or nonwalking-type rotary tiller;
- operating or working with a trencher or earthmoving equipment, fork lift, potato combine, or power-driven circular, band or chain saw;
- working 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, buckling, skidding, loading, or unloading timber with a butt diameter or more than 6 inches;
- working from a ladder or scaffold at a height of over 20 feet;
- driving a bus, truck or automobile to transport 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; an upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position; a manure pit; or a horizontal silo while operating a tractor for packing purposes;
- handling or applying toxic agricultural chemical identified by the words "danger," "poison," or "warning" or a skull and crossbones on the label;
- handling or using explosives; and
- transporting, transferring, or applying anhydrous ammonia.

There are a couple exceptions to these laws. The prohibition does not apply to youths employed on farms owned operated by their parents. In addition, there are some exemptions from the prohibitions:

- 14- and 15-year-old student learners enrolled in vocational agricultural programs are exempt from certain hazardous occupations when certain requirements are met; and
- 14- and 15-year-olds who hold certificates of completion of training under a 4-H or vocational agriculture training program may work outside school hours on certain equipment for which they have been trained.
- 12- and 13-year-olds may work outside of school hours in non-hazardous jobs on a farm with their parents' written consent or working with their parents on the same farm.

DO I NEED A HAZARDOUS OCCUPATION AGREEMENT?



HAZARDOUS OCCUPATIONS EXCEPTIONS FOR A 16- OR 17-YEAR-OLD:

- Power-driven woodworking machines.
- Power-driven metal-forming, punching and sheering machines.
- Power-driven meat-proceession machines, slaughtering and meat packing plants.
- Balers, compactors, and power-driven paper-products machines.
- Power-driven circular, band, chain or reciprocating saws, guillotine shears, wood chippers, and cutting discs.
- Roofing operations and work performed on or about a roof.
- Trenching and excavation operations.

More information on age exemptions specific to manufacturing equipment can be referenced on the **MANUFACTURING AND CONSTRUCTION EQUIPMENT CHART** at dlr.sd.gov/workforce_services/individuals/training_opportunities/documents/apprenticeship_youthho_exemptionchart.pdf.