

Wage and Hour Division, Labor

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hour periods—that is identical to the work-week the employer establishes for the employee under § 778.105 of this title.

Week when school is in session refers to any week the local public school district where the minor resides while employed is in session and students are required to attend for at least one day or partial day.

(c) *Exceptions.* (1) School is not considered to be in session, and exceptions from the hours limitations standards listed in paragraphs (a)(1), (3), and (5) of this section are provided, for any youth 14 or 15 years of age who:

- (i) Has graduated from high school;
- (ii) Has been excused from compulsory school attendance by the state or other jurisdiction once he or she has completed the eighth grade and his or her employment complies with all the requirements of the state school attendance law;
- (iii) Has a child to support and appropriate state officers, pursuant to state law, have waived school attendance requirements for this minor;
- (iv) Is subject to an order of a state or federal court prohibiting him or her from attending school; or
- (v) Has been permanently expelled from the local public school he or she would normally attend, unless the youth is required, by state or local law or ordinance, or by court order, to attend another school.

(2) In the case of minors 14 and 15 years of age who are employed to perform sports-attending services at professional sporting events, *i.e.*, baseball, basketball, football, soccer, tennis, etc., the requirements of paragraphs (a)(2) through (a)(6) of this section shall not apply, provided that the duties of the sports-attendant occupation consist of pre- and post-game or practice setup of balls, items and equipment; supplying and retrieving balls, items and equipment during a sporting event; clearing the field or court of debris, moisture, etc., during play; providing ice, drinks, towels, etc., to players during play; running errands for trainers, managers, coaches, and players before, during, and after a sporting event; and returning and/or storing balls, items and equipment in club house or locker room after a sporting event. For purposes of this exception, impermissible duties include grounds or field maintenance such as grass mowing, spreading or rolling tarpaulins used to cover playing areas, etc.; cleaning and repairing equipment; cleaning locker rooms, showers, lavatories, rest rooms, team vehicles, club houses, dugouts or similar facilities; loading and unloading balls, items and equipment from team vehicles before and after a sporting event; doing laundry; and working in concession stands or other selling and promotional activities.

(3) Exceptions from certain of the hours standards contained in paragraphs (a)(1) and (a)(3) of this section are provided for the em-

ployment of minors who are enrolled in and employed pursuant to a school-supervised work-experience and career exploration program as detailed in § 570.36.

(4) Exceptions from certain of the hours standards contained in paragraphs (a)(1) and (a)(5) of this section are provided for the employment of minors who are participating in a work-study program designed as described in § 570.37.

§ 570.35a Work experience and career exploration program.

(a) This section varies some provisions of this subpart for the employment of minors between 14 and 16 years of age who are enrolled in and employed pursuant to a school-supervised and school-administered work-experience and career exploration program which meets the requirements of paragraph (b) of this section, in the occupations permitted under paragraph (c) of this section, and for the periods and under the conditions specified in paragraph (d) of this section. With these safeguards, such employment is found not to interfere with the schooling of the minors or with their health and well-being and therefore is not deemed to be oppressive child labor.

(b)(1) A school-supervised and school-administered work-experience and career exploration program shall meet the educational standards established and approved by the State Educational Agency in the respective State.

(2) The State Educational Agency shall file with the Administrator of the Wage and Hour Division a letter of application for approval of a State program as one not interfering with schooling or with the health and well-being of the minors involved and therefore not constituting oppressive child labor. The application must include information concerning the criteria listed in paragraph (b)(3) of this section. The Administrator of the Wage and Hour Division shall approve the application, or give prompt notice of any denial and the reasons therefor.

(3) The criteria to be used in consideration of applications are the following:

- (i) *Eligibility.* Any student aged 14 or 15 years who authoritative local school personnel identify as being able to benefit from the program shall be eligible to participate.

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(ii) *Credits.* Students shall receive school credits for both in-school related instruction and on-the-job experience.

(iii) *Size.* Each program unit shall be a reasonable size. A unit of 12 to 25 students to one teacher-coordinator would be generally considered reasonable. Whether other sizes are reasonable would depend upon the individual facts and circumstances involved.

(iv) *Instructional schedule.* There shall be (a) allotted time for the required classroom instruction in those subjects necessary for graduation under the State's standards and (b) regularly scheduled classroom periods of instruction devoted to job-related and to employability skill instruction.

(v) *Teacher-coordinator.* Each program unit shall be under the supervision of a school official to be designated for the purpose of the program as a teacher-coordinator, who shall generally supervise the program and coordinate the work and education aspects of the program and make regularly scheduled visits to the work stations.

(vi) *Written training agreement.* No student shall participate in the program until there has been made a written training agreement signed by the teacher-coordinator, the employer, and the student. The agreement shall also be signed or otherwise consented to by the student's parent or guardian.

(vii) *Other provisions.* Any other provisions of the program providing safeguards ensuring that the employment permitted under this section will not interfere with the schooling of the minors or with their health and well-being may also be submitted for use in consideration of the application.

(4) Every State Educational Agency having students in a program approved pursuant to the requirements of this section shall comply with the following:

(i) *Permissible occupations.* No student shall be assigned to work in any occupation other than one permitted under paragraph (c) of this section.

(ii) *Records and reports.* The names and addresses of each school enrolling work experience and career exploration program students and the number of enrollees in each unit shall be kept at the State Educational Agency office. A

copy of the written training agreement for each student participating in the program shall be kept in the State Educational Agency office or in the local educational office. The records required for this paragraph shall be kept for a period of 3 years from the date of enrollment in the program and shall be made available for inspection or transcription to the representatives of the Administrator of the Wage and Hour Division.

(c) Employment of minors enrolled in a program approved pursuant to the requirements of this section shall be permitted in all occupations except the following:

(1) Manufacturing and mining.

(2) Occupations declared to be hazardous for the employment of minors between 16 and 18 years of age in subpart E of this part, and occupations in agriculture declared to be hazardous for employment of minors below the age of 16 in subpart E-1 of this part.

(3) Occupations other than those permitted under §§ 570.33 and 570.34, except upon approval of a variation by the Administrator of the Wage and Hour Division in acting on the program application of the State Educational Agency. The Administrator shall have discretion to grant requests for special variations if the applicant demonstrates that the activity will be performed under adequate supervision and training (including safety precautions) and that the terms and conditions of the proposed employment will not interfere with the health or well-being or schooling of the minor enrolled in an approved program. The granting of a special variation is determined on a case-by-case basis.

(i) The Administrator's decision on whether to grant a special variation will be based on information provided in the application filed by the State Educational Agency, and/or any supplemental information that may be requested by the Administrator.

(ii) The Administrator's decision shall be in writing, and may designate specific equipment safeguards or other terms and conditions governing the work-activity approved by variation. If the request is denied, in whole or part, the reason(s) for the decision will be

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provided to the applicant, who may request reconsideration.

(iii) A special variation will be valid only during the period covered by an approved program, and must be renewed with the filing of a new program application.

(iv) The Administrator shall revoke or deny a special variation, in whole or in part, where there is reason to believe that program participants have been or will be employed contrary to terms and conditions specified for the variation, or these regulations, other provisions of the Fair Labor Standards Act, or otherwise in conditions detrimental to their health or well-being or schooling.

(v) Requests for special variations and related documentation will be available for examination in the Branch of Child Labor and Polygraph Standards, Wage and Hour Division, Room S3510, 200 Constitution Avenue, NW., Washington, DC 20210. Any interested person may oppose the granting of a special variation or may request reconsideration or revocation of a special variation. Such requests shall set forth reasons why the special variation should be denied or revoked.

(d) Employment of minors enrolled in a program approved pursuant to the requirements of this section shall be confined to not more than 23 hours in any 1 week when school is in session and not more than 3 hours in any day when school is in session, any portion of which may be during school hours. Insofar as these provisions are inconsistent with the provisions of §570.35, this section shall be controlling.

(e) The employment of a minor enrolled in a program pursuant to the requirements of this section must not have the effect of displacing a worker employed in the establishment of the employer.

(f) Programs shall be in force and effect for a period of two (2) school years from the date of their approval by the Administrator of the Wage and Hour Division. A new application for approval must be filed at the end of that period. Failure to meet the require-

ments of this section may result in withdrawal of approval.

(The information collection requirements contained in paragraphs (b)(3)(vi) and (4) were approved by the Office of Management and Budget under control number 1215-0121)

[40 FR 40801, Sept. 4, 1975; 40 FR 44130, Sept. 25, 1975; 47 FR 145, Jan. 5, 1982; 47 FR 28095, June 29, 1982, as amended at 49 FR 18294, Apr. 30, 1984; 60 FR 19339, Apr. 17, 1995]

EFFECTIVE DATE NOTE: At 75 FR 28452, May 20, 2010, §570.35a was redesignated as §570.36, and paragraph (c)(3) introductory text of newly redesignated §570.36 was revised, effective July 19, 2010. For the convenience of the user, the revised text is set forth as follows:

§ 570.36 Work experience and career exploration program.

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(c) * * *

(3) Occupations other than those permitted under §570.34, except upon approval of a variation by the Administrator of the Wage and Hour Division in acting on the program application of the State Educational Agency. The Administrator shall have discretion to grant requests for special variations if the applicant demonstrates that the activity will be performed under adequate supervision and training (including safety precautions) and that the terms and conditions of the proposed employment will not interfere with the health or well-being or schooling of the minor enrolled in an approved program. The granting of a special variation is determined on a case-by-case basis.

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§ 570.36 Effect of a certificate of age under this subpart.

The employment of any minor in any of the occupations to which this subpart is applicable, if confined to the periods specified in §570.35, shall not be deemed to constitute oppressive child labor within the meaning of the act if the employer shall have on file an unexpired certificate, issued in substantially the same manner as that provided for the issuance of certificates in subpart A of this part relating to certificates of age, certifying that such minor is of an age between 14 and 16 years.

[16 FR 7008, July 20, 1951. Redesignated at 27 FR 4165, May 2, 1962, and 28 FR 1634, Feb. 21, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]