

Employing Youth 16 and Older

by *Katie S. Thurber and Scott Asmus*

The Nebraska Department of Labor was contacted by several manufacturers seeking advice on how to expose youth to the workplace. Employers were interested in retaining local talent and developing a skilled workforce. From this question, the Nebraska Department of Labor, the Nebraska Department of Education and the Nebraska Department of Economic Development began working together to promote youth in the workplace. The agencies are focused on developing a trained workforce that possesses skill sets Nebraska employers need. As part of this partnership, traditional views of youth in the workplace were reexamined. Historically, many industries that involve dangerous work have avoided having anyone under 18 onsite. Specifically, construction and manufacturing industries have struggled to hire youth under the age of 18. Many employers have even hesitated to bring youth onsite. Safety should always be the top priority of any employer, but in Nebraska both state and federal law provides employers more flexibility with youth in the workplace than most employers previously allowed. Apprenticeship and Student-Learner programs allow youth 16 and older to potentially work in hazardous occupations.

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The Fair Labor Standards Act (FLSA) 29 USC §§201 - 219, prohibits youth under the age of 18 from working in hazardous occupations. Hazardous Occupations 29 CFR §570 Subpart E defines occupations particularly hazardous to youth between 16 and 18 years of age. If an occupation is not considered hazardous, then there is no specific child labor provision that applies to youth between 16 and 18 years of age. The following 17 occupations, excluding agriculture, are defined by the United States Department of Labor (USDOL) as hazardous:

- 29 CFR §570.51 Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components;
- 29 CFR §570.52 Occupations of motor-vehicle driver and outside helper;
- 29 CFR §570.53 Coal-mine occupations;
- 29 CFR §570.54 Forest fire fighting and forest fire prevention occupations, timber tract occupations, forestry service occupations, logging occupations, and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill;
- 29 CFR §570.55 Occupations involved in the operation of power-driven woodworking machines;
- 29 CFR §570.57 Exposure to radioactive substances and to ionizing radiations;

Scott Asmus

Scott Asmus was hired in 2016 by NDOL as a result of the ApprenticeshipUSA State Accelerator Grant. The purpose of the grant is to assist expansion and integrate Registered Apprenticeship into the Nebraska workforce system.

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- 29 CFR §570.58 Occupations involved in the operation of power-driven hoisting apparatus;
- 29 CFR §570.59 Occupations involved in the operation of power-driven metal forming, punching, and shearing machines;
- 29 CFR §570.60 Occupations in connection with mining, other than coal;
- 29 CFR §570.61 Occupations in the operation of power-driven meat-processing machines and occupations involving slaughtering, meat and poultry packing, processing, or rendering;
- 29 CFR §570.62 Occupations involved in the operation of bakery machines;
- 29 CFR §570.63 Occupations involved in the operation of balers, compactors, and paper-products machines;
- 29 CFR §570.64 Occupations involved in the manufacture of brick, tile, and kindred products;
- 29 CFR §570.65 Occupations involving the operation of circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs;
- 29 CFR §570.66 Occupations involved in wrecking, demolition, and shipbreaking operations;
- 29 CFR §570.67 Occupations in roofing operations and on or about a roof; and
- 29 CFR §570.68 Occupations in excavation operations.¹

Generally, youth under the age of 18 cannot work in any occupation defined as hazardous by the USDOL. However, the USDOL has outlined exemptions to the rule for student-learners and apprentices. The following hazardous occupations have a student-learner and apprentice exemption:

- 29 CFR §570.55 Occupations involved in the operation of power-driven wood-working machines;
- 29 CFR §570.59 Occupations involved in the operation of power-driven metal forming, punching, and shearing machines;
- 29 CFR §570.61 Occupations in the operation of power-driven meat-processing machines and occupations involving slaughtering, meat and poultry packing, processing, or rendering;
- 29 CFR §570.63 Occupations involved in the operation of balers, compactors, and paper-products machines;

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Youth 16 & 17 years old may work in any position that is not listed as hazardous. When employing youth, it is critical to keep safety in mind. All youth must be properly trained and supervised. For additional information on employing youth, visit the following websites: <https://www.osha.gov/youngworkers/employers.html> and <https://www.youthrules.gov/know-the-limits/hazards/index.htm>

Youth employed as Student Learners may be eligible to participate in some "hazardous" occupations.

HAZARDOUS OCCUPATIONS WITH STUDENT LEARNER EXEMPTIONS	HAZARDOUS OCCUPATIONS WITHOUT STUDENT LEARNER EXEMPTIONS
Power-driven woodworking machines.	Manufacturing and storing of explosives
Power-driven metal-forming, punching, and shearing machines.	Motor-vehicle driving and outside helper on a motor vehicle.
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.	Coal mining
Power-driven balers, compactors, and paper processing machines.	Occupations in forest fire-fighting, forest fire prevention, timber tract operations, forestry service, logging, and sawmilling
Power-driven circular saws, bandsaws, chain saws, guillotine shears, wood chippers, and abrasive cutting discs.	Exposure to radioactive substances
Roofing operations and all work on or about a roof	Power-driven hoisting apparatus, including forklifts.
Excavation operations	Mining, other than coal mining
	Power-driven bakery machines including vertical dough or batter mixers
	Manufacturing bricks, tile, and kindred products
	Wrecking, demolition, and shipbreaking operations

Student Learners participating in hazardous occupations with a Student Learner exemption must meet the following criteria:

- Must be at least 16
- 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
- Student and Employer sign written agreement that includes:
 - Such student-learner is employed under a written agreement which provides:
 - i. That the work of the student-learner in the occupations declared particularly hazardous shall be incidental to his training;
 - ii. That such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person;
 - iii. That safety instructions shall be given by the school and correlated by the employer with on-the-job training; and
 - iv. 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 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.
 - A high school graduate may be employed in an occupation in which he has completed training as provided in this paragraph as a student-learner, even though he is not yet 18 years of age.

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- 29 CFR §570.65 Occupations involving the operation of circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs;
- 29 CFR §570.67 Occupations in roofing operations and on or about a roof; and
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Pursuant to 29 CFR §570.50 the student-learner exemption applies when:

- 1) 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
- 2) Such student-learner is employed under a written agreement which provides:
 - i. That the work of the student-learner in the occupations declared particularly hazardous shall be incidental to his training;
 - ii. That such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person;
 - iii. That safety instructions shall be given by the school and correlated by the employer with on-the-job training; and
 - iv. 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. A high school graduate may be employed in an occupation in which he has completed training as provided in this paragraph as a student-learner, even though he is not yet 18 years of age.

The Nebraska Department of Education is working with schools to assist with educational requirements for work-based learning programs. Work-based learning programs can be for both hazardous and non-hazardous occupations. A student-learner exemption to work in a hazardous occupation must be a part of a work-based learning program. If an employer is interested in implementing a work-based learning program, they should work with the local schools in their area. Employers must review their insurance policies and ensure coverage for the student-learners. Work-based learning programs can be structured as paid or unpaid training opportunities. The Nebraska Department of Education has established a website for workplace experiences available at: <http://www.nebraskaworkplaceexperiences.com/>.

Pursuant to 29 CFR §570.50 the apprentice exemption applies when:

- 1) The apprentice is employed in a craft recognized as an apprenticeable trade;

2) The work of the apprentice in the occupations declared particularly hazardous is incidental to his training;

3) Such work is intermittent and for short periods of time and is under the direct and close supervision of a journeyman as a necessary part of such apprentice training; and

4) The apprentice is registered by the Bureau of Apprenticeship and Training of the United States Department of Labor as employed in accordance with the standards established by that Bureau, or is registered by a state agency as employed in accordance with the standards of the state apprenticeship agency recognized by the Bureau of Apprenticeship and Training, or is employed under a written apprenticeship agreement and conditions which are found by the Secretary of Labor to conform substantially with such federal or state standards.

Apprenticeship opportunities are expanding in Nebraska and across the county. A wide range of employers are using apprenticeship programs to address talent shortages and skill gaps. Programs can be designed for existing employees, new employees, or youth. The United States has registered apprenticeship programs in over 1,000 occupations including advanced manufacturing, construction, health care, and IT industries.

The Nebraska Department of Labor (NDOL) was awarded the ApprenticeshipUSA State Accelerator Grant in June of 2016 to facilitate expansion and integration of Registered Apprenticeship into the Nebraska workforce system. In federal fiscal year 2017, Nebraska increased employer program participation by 17%. This was the largest one-year increase since before 2011. Due to increased outreach efforts Registered Apprenticeship is expected to continue stable growth in federal fiscal year 2018.

Registered Apprenticeship programs are structured training strategies to develop an apprentice with low or no occupational specific skills to complete occupational aptitude. Registered Apprenticeship programs are required to meet the standards of the National Apprenticeship Act, known as the Fitzgerald Act, 29 U.S.C. 50. Registered Apprenticeship programs must have a plan that meets the terms and conditions for qualification, recruitment, selection, employment and training of apprentices required under 29 CFR parts 29 and 30. Program plans and requirements are designed to protect the well-being of the apprentice.

Registered Apprenticeship programs can be sponsored by single employers, employer associations, and labor organizations. Not only do apprentices remain with the sponsoring employer following the completion of a program, but apprentices that successfully complete a program earn a nationally recognized credential that confirms competency in the trained occupation.

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Although Registered Apprenticeship program sponsors identify the specific minimum qualifications to apply into their apprenticeship program, USDOL provides guidelines as well. USDOL provided examples of minimum qualifications in order to participate in a Registered Apprenticeship program.

- The minimum age of an apprentice can be no less than 16.
- Program sponsors may choose to add minimum qualifications and credentials in order to apply.
- Supplementary qualification standards, such as aptitude assessments, interviews, and previous work experience may be considered.

Recently, Nebraska has made strides to encourage Youth Registered Apprenticeship in partnership with local high schools and employers. Career Pathways Institute (CPI) and Grand Island Public Schools are partnering with area employers to provide apprenticeship opportunities (CNC operators) for students during their junior and senior years of high school. Once the students graduate, they will finish their Registered Apprenticeship with one of the partnered companies and continue as permanent employees.

In November of 2017, Dramco Tool collaborated with CPI to establish Nebraska's first Youth Registered Apprenticeship program. Students participating in CPI's CNC operators program, will have the option to interview and obtain employment as an apprentice with Dramco Tool while completing their high school education. Following high school graduation, apprentices will complete their Registered Apprenticeship program and remain as employees of Dramco Tool.

The Nebraska Department of Labor is working with employers to establish more apprenticeship programs across the state. Registered apprenticeship programs are being developed in manufacturing, healthcare, and telecommunications. Each Registered apprenticeship program is tailored to meet the needs of the sponsoring employer and provide the best possible education and training to the apprentices. If you are interested in creating a program, please contact us at 402-471-9928.

If an employer is interested in employing youth between the ages of 16 and 18, they first must determine if the job is hazardous as defined by the FLSA. Remember the definition of hazardous is specific and excludes many occupations that may be dangerous. A common misconception is that welding is a hazardous occupation. Welding is not defined as a hazardous occupation under the FLSA. If the job is not hazardous, there are no additional child labor restrictions. Employers should speak with their insurance providers to ensure youth will be

properly covered. If the occupation is hazardous, employers must look to see if there is a student-learner and apprentice exemption. If there is no exemption, all employees must be 18 or older to work in that occupation. If there is an exemption, employers may participate in either a work-based learning program or a registered apprenticeship program to employ youth between 16 and 18 years of age.

Both work-based learning and registered apprenticeship programs allow the student or apprentice the opportunity to earn as they learn. In addition, these programs provide an avenue for employers to fill the workforce pipeline with the skilled workers that the modern workplace requires. 

Endnote

- ¹ For more specific information about each occupation determined hazardous, please see the specific regulation cited for the occupation.

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