

FLSA... Wage and Hour Law

Employers covered by FLSA must comply with the act if an employment relationship exists. The FLSA does not apply if work is done in the course of training rather than employment. Most WBL experiences are paid and covered by the Federal FLSA or state labor laws; however, unpaid WBL is possible.

UNPAID Learning Experiences

The following classifications of unpaid work experiences are not considered "employees" under the FLSA:

- **Student Learners.** A student enrolled in a learning experience would not be considered an employee within the meaning of the FLSA, if ALL of the following six criteria are met: (1) training is progressive, (2) experience is for the benefit of trainee, (3) no displacement of regular employees, (4) no direct benefits to employer, (5) no job entitlement, and (6) no wage entitlement.
- **Volunteers.** True volunteers are not likely to be considered to have an employment relationship provided they are treated as volunteers and not as employees. Although they are not paid, expense reimbursement is permitted. Generally, a worker cannot volunteer to do the same job he/she is paid to do.
- **Volunteers with an IEP.** To help students with disabilities transition from school to employment, they may participate in unpaid learning experiences under the following conditions: (1) student is placed according to his/her IEP, (2) the time per week at work site is limited by the IEP, (3) student supervised by school or business, (4) no displacement of regular employees, (5) no direct benefits to employer, and (6) no job entitlement.

PAID Work Experiences

If a student does not meet the FLSA criteria for unpaid wage status, they must be paid at least the Federal minimum wage.

- **Minimum Wage.** As of July 24, 2008, the FLSA minimum wage is \$6.55 per hour. Effective July 24, 2008 the FLSA minimum wage is \$7.25 per hour. Overtime must be paid at the rate of 1.5 times the regular pay for each hour worked in excess of 40 hours per week.
- **Youth Subminimum Wage.** Youth under 20 years of age enrolled in a bonafide training program may receive a subminimum wage of 75% of the applicable minimum wage during the first 90 consecutive calendar days of employment with an employer. Employers using a subminimum wage are prohibited from displacing any employee or reducing their hours, wages, or employment benefits.
- **Tip Credit.** Tipped employees (e.g., waiters and waitresses) must be paid at least \$2.13 an hour, and receive at least the minimum wage per hour when combined with an employee's tips. If the combined minimum wages and tips do not equal the minimum hourly wage, the employer must make up the difference.
- **Subminimum Wage.** The FLSA does allow for other wage rates below the minimum wage in special training situations for full-time students in some occupations, students with severe disabilities, part-time cooperative education student-learners, and apprentices.

FLSA... Child Labor Law

Federal child labor laws were enacted to protect minors from injury in the workplace and to prevent work from interfering with education. All states also have child labor laws. If the FLSA and the state's child labor laws regulate the same activity, the stricter labor standard is the one that applies. When a child reaches the age of eighteen, the child labor law does not apply.

The requirements of the FLSA child labor provisions have been divided into two categories: *agricultural occupations* and *nonagricultural occupations*. The laws spell out the age, hours, and occupational limitations for employment of youth under 18 years of age in each occupational category. The child labor provisions also provide for exceptions to the occupational limitations for youth enrolled in state approved cooperative education programs.

Resources:

The following publications are available from US Dept. of Labor:

Child Labor Requirements in Nonagricultural Occupations Under the Fair Labor Standards Act. Child Labor Bulletin No. 101.

Child Labor Requirements in Agricultural Under the Fair Labor Standards Act. Child Labor Bulletin No. 102.

Handy Reference Guide to the Fair Labor Standards Act, WH Publication 1282.

Employment Relationship Under the Fair Labor Standards Act, WH Pub. 1297

U.S. Department of Labor
Employment Standards Administration, Wage/Hour Division
200 Constitution Avenue, NW
Washington, D.C. 20210
www.youthrules.gov.

Nebraska Work Based Learning Manual
Nebraska Department of Education

www.education.ne.gov/wbl

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This brochure is intended as a reference only, not as a legal interpretation, and is not a substitute for legal advice. It is in no way a complete statement of the child labor laws, but a simplified interpretation intended for use by educators, employers, policy makers, and parents as they plan and implement work-based learning opportunities. For more complete information regarding state and federal law, consult the resources listed below. Those needing legal advice should consult an attorney.



Overview of

Work-Based Learning

Legal Issues



Work-Based Learning
Nebraska Department of Education

2013

Work-Based Learning

Work-Based Learning (WBL) is a combination of *school site* and *work site experiences* designed to enable students to acquire skills, and knowledge in a real world setting. WBL helps today's youth:

- strengthen workplace readiness and technical skills.
- explore career options.
- foster positive relationships with adults.
- understand the relevance of and application to academic learning.
- observe all aspects of a company's operation.
- develop an awareness of careers so they can more effectively plan postsecondary education pursuits.

Work-Based Learning opportunities range in type and intensity in the workplace; from gaining career awareness through job shadowing, to learning occupational and employability skills by working in internships or youth apprenticeships.

Structured WBL includes a planned program of training and work experience at progressively higher levels, is related to the career interest of the student, and is coordinated with the school site learning component. There **MUST** be a connection between the work experience and the school curriculum.

Employment of Youth Under 18 Years of Age

Employers, schools and students are impacted by a number of labor laws as they participate in WBL activities. Coverage is primarily affected by the determination of whether an employer-employee relationship exists between the employer and student. The participants status at the work site is critical in the design, implementation, and monitoring of all work site experiences. Participants will usually have one of the following work site roles.

Paid Roles (considered employees)

- **Student Learner.** Participant is enrolled in a career education program of study and in a cooperative training program under a recognized state/local educational authority or private school.
- **Apprentice.** Participant is employed in a craft recognized as an apprenticeable trade that is registered by the Bureau of Apprenticeship and Training.
- **Employee.** Participant is hired by private/public employer to perform work. No structured relationship exists between school and work.

Unpaid Roles (not considered employees)

- **Student/Visitor/Observer.** Participant visits the work site to observe and learn about a career, work activity, or other aspects of an industry.
- **Volunteer.** Participant serves unpaid for public service or humanitarian objectives.
- **Unpaid Trainee.** Participant is trained at a business/industry work site without compensation. Company permits student to work under direct supervision to gain exposure to a particular occupation.

Insurance/Liability

A risk financing plan provides for the financing of a potential loss. A complete risk management plan requires adequate insurance coverage and use of liability shields.

Insurance Coverage

Adequate insurance coverage for any type of WBL program can be arranged by working in conjunction with an agent or broker who is familiar with the program and with the schools or agencies who may be parties to the program. The following types of insurance need to be in place to cover WBL activities.

- **Workers Compensation.** The purpose of this type of insurance is to provide coverage to employees when they sustain injuries that arise out of, and in the course of employment. State law governs the issue of workers compensation, which provides a means of recovery for workers where an employee/employer relationship exists (individual receives some type of compensation). Unpaid trainees and volunteers are not ordinarily covered. Employers limit their liability because worker benefits are limited by statute.
- **Injury to Participants.** Medical expenses for *employees* will ordinarily be paid by the company's workers compensation policy. For the *student/visitor, volunteer, or unpaid trainee*, expenses are usually paid by the injured individuals (or parents) health insurance policy. The medical payments provision of a company's general liability policy would also provide similar coverage for an injured non-employee.
- **Coverage for Lawsuits.** A company's liability policy pays claims and provides legal defense against most types of suits brought against a company and its employees, but such policies do not usually cover a student/visitor, volunteer, or unpaid trainees. An endorsement may extend coverage to these individuals.

Liability Shields

Liability shields are used to assign responsibility from a business to another person or organization in case of an accident or property damage. Four common liability shields are:

- **Waivers.** Documents in which participants waive their right to bring a lawsuit in the event of injury or damage. Courts seldom allow waivers to excuse negligence or a duty owed a minor.
- **Consent Forms.** Documents that inform the participant (and parent/guardian) of the risks involved in the activity that he/she is about to perform. Consent forms are generally upheld by courts, but do not excuse a company/school from responsibilities for its own negligence.
- **Permission Slips.** Documents that inform parent/guardian about the nature, location, and details of an activity (e.g., field trips, job shadowing). Helpful as a form of protection - well-informed parents/guardians may not be as likely to bring suit.
- **Indemnification Agreements.** Used to shift financial burden for injuries or damages arising from activities from one party to another (e.g., an insurance policy).

Transportation

Insurance liability issues arise in work site learning activities because students are required to leave school premises in order to continue learning at the workplace. In general, the party responsible for transportation is also liable in the case of an accident. If the school is transporting the student, the school transportation policies apply. The same is true if an employer, parent, or teacher provides transportation.

In the case of a student driving him/herself to the workplace during the school day, there should be no difference from liability issues for students getting to school or an extra-curricular activity. When students drive personal vehicles, conditions of transportation should be defined. Typically, conditions include verification of student drivers license and insurance coverage, limiting transportation to student driver (no passengers); and limiting transportation for the sole purpose of getting to and from the work site.

Health/Safety

Health and safety issues affect the planning of WBL opportunities for minors under the age of 18. Check with your local or state Health Department and state Department of Labor regarding the health and safety requirements in your area.

Medical

Immunizations and protection from disease are important for your students and the people they are in contact with during their work experience. Health and safety measures in some occupations may require that students have up-to-date immunizations. Check with local agencies to determine who pays for the cost of these tests.

Safety Instruction

A written student training plan is recommended that includes a checklist of the safety instruction to be provided and by whom. At the work site, students must follow the same health and safety rules governing regular employees.

Federal Fair Labor Standards Act (FLSA)

The FLSA was passed in 1938 and is a federal law enforced by the U.S. Department of Labor's Wage and Hour Division. It covers employees who work for any one type of enterprise that is either:

- engaged in interstate commerce.
- producing goods for interstate commerce.
- handling, selling, or otherwise working on goods or materials that have been moved or produced for interstate commerce.

FLSA applies to all fifty states, ninety percent of nonagricultural businesses, all businesses with annual gross sales of >\$500,000 and all hospitals, schools, and public agencies. It applies **only** when an employment relationship exists. There are NO waivers to the FLSA. The two major components of the FLSA are the Wage and Hour Law and the Child Labor Laws.