



New York State Department of Labor
David A. Paterson, Governor
M. Patricia Smith, Commissioner

May 29, 2008

[REDACTED]

Re: Request for Opinion
Minors - Employment of
Docket No. RO-08-0043

Dear [REDACTED]

I have been asked to respond to your letter of April 16, 2008 in which you ask whether high school students may work on a diving project. Please be advised that you have not provided enough information for a definitive answer to your question.

You state that you are the Dive Safety Officer for [REDACTED]. The [REDACTED] is performing the [REDACTED] Lake Milfoil¹ Eradication Project. You state that you will "be removing Milfoil by hand or with hand tools, and using suction to get them to the surface, where it is bagged in Onion Bags." You further state that all workers on this project "will be required to work underwater using surface supplied air and will work topside keeping the suction pumps and air pumps running, as well as changing bags when they are full. On occasion they may operate the pontoon boat." You further state the workers will be employed Monday through Friday, 7:30 a.m. until 4 p.m. You also state that this is considered a commercial diving project by OSHA. You have stated that "there is some interest from High School students." You ask whether such students may be employed on this project.

Enclosed for your consideration please find a copy of Section 133 of the New York State Labor Law, which describes: in section 1, the types of work prohibited to minor under the age of sixteen; in section 2, the types of employment prohibited to minor of any age; and in section 3, the exceptions to those prohibitions. In comparing these prohibitions with your description of the work to be performed, it is possible that some parts of this employment may be prohibited to minors, including but not limited to "keeping the suction pumps and air pumps running" (*see* Labor Law §133(2)(e)), "removing Milfoil by hand or with hand tools" (*see* Labor Law §133(2)(n)), and "may operate the pontoon boat" (*see* Labor Law §133(2)(r)).

Therefore, before giving a definitive opinion on whether minors may perform this type of work, this Department will have to know exactly how this work will be performed, and the exact types of tools that will be used to do it. Please review Labor Law §133 and provide this office with the necessary information at your earliest convenience.

¹ It is my understanding, from research performed on-line, that Milfoil is an underwater plant that grows at an accelerated rate.

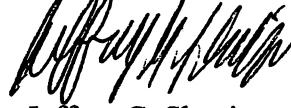
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Furthermore, you should also take note of New York State Penal Law §260.10, which defines the criminal offence of Endangering the Welfare of a Child as, among other things, directing or authorizing a person less than seventeen years old "to engage in an occupation involving a substantial risk of danger to his life or health."

This opinion is based on the information provided in your letter of April 16, 2008. A different opinion might result if any facts provided have been inaccurately stated, or if there are other relevant facts that have not been disclosed. If you have any further questions, please feel free to contact me.

Very truly yours,

Maria L. Colavito, Counsel



By: Jeffrey G. Shapiro
Associate Attorney

JGS: jc
Enc.

cc: Carmine Ruberto

from employer for such injury; employer failed to produce employment certificate to establish that claimant was lawfully employed, despite having been granted adjournment to procure such certificate.

Provoncha v. Anytime Home Care, Inc. (3 Dept. 2005) 15 A.D.3d 770, 789 N.Y.S.2d 760, leave to appeal denied 4 N.Y.3d 882, 798 N.Y.S.2d 726, 831 N.E.2d 971. Workers' Compensation § 1674

§ 133. Prohibited employments of minors

1. Minors under sixteen. No minor under sixteen years of age shall be employed in or assist in:

a. painting or exterior cleaning in connection with the maintenance of a building or structure;

b. any occupation in or in connection with a factory, except as provided in subdivision four of section one hundred thirty-one of this chapter;

c. the operation of washing, grinding, cutting, slicing, pressing or mixing machinery;

d. any employment in institutions in the department of mental hygiene, provided, however, that for the purposes of this paragraph, participation in recreation and leisure activities, social skills development, companionship and/or entertainment as part of an organized volunteer program approved by the commissioner of mental hygiene, shall not constitute employment or assistance in employment and may be performed by youthful volunteers at least fourteen years of age. Nothing contained in this paragraph shall be construed to permit services prohibited in subdivisions one and two hereof.

2. Minors of any age. No minor of any age shall be employed in or assist in:

a. the care or operation of a freight or passenger elevator, except that a minor over sixteen may operate automatic push button control elevators;

b. or in connection with the manufacturing, packaging, or storing of explosives;

c. operating or using any emery, tripoli, rouge, corundum, stone, silicon carbide, or any abrasive, or emery polishing or buffing wheel, where articles of the baser metals or iridium are manufactured;

d. penal or correctional institutions, if such employment relates to the custody or care of prisoners or inmates;

e. adjusting belts to machinery or cleaning, oiling or wiping machinery;

f. packing paints, dry colors, or red or white leads;

g. preparing any composition in which dangerous or poisonous acids are used;

h. operating steam boilers subject to section two hundred four of this chapter;

i. any occupation at construction work, including wrecking, demolition, roofing or excavating operations and the painting or exterior cleaning of a building structure from an elevated surface;

j. any occupation involving exposure to radioactive substances or ionizing radiation, or exposure to silica or other harmful dust;

k. logging occupations and occupations in the operation of any sawmill, lath mill, shingle mill or cooperage-stock mill;

l. any occupation in or in connection with a mine or quarry;

m. any occupation involved in the operation of power-driven woodworking, metal-forming, metal-punching, metal-shearing, bakery, and paper products machines;

n. any occupation involved in the operation of circular saws, bandsaws and guillotine shears;

o. any occupation in or about a slaughter and meat-packing establishment, or rendering plant;

p. any occupation involved in the operation of power-driven hoisting apparatus;

q. any occupation involved in the manufacture of brick, tile and kindred products;

r. as a helper on a motor vehicle;

s. as a dancer or performer in any portion of a facility open to the public wherein performers appear and dance or otherwise perform unclothed, under circumstances in which such employment would be harmful to such person in the manner defined in subdivision six of section 235.20 of the penal law.

3. a. The provisions of subdivision two of this section shall not apply to (1) an apprentice who is individually registered in an apprenticeship program which is duly registered with the commissioner in conformity with the provisions of article twenty-three of this chapter; or

(2) a student-learner who 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; or

(3) a trainee in an on-the-job training program approved by the commissioner; or

(4) a minor who is employed in the occupation in which he has completed training as a student-learner as provided in subparagraph (2) of this subdivision or as a trainee as provided in subparagraph (3) of this subdivision; or

(5) a minor who is employed in the occupation in which he has completed a work training program of a non-profit organization or a training program which is publicly funded in whole or in part, and as part of such program received safety instruction and training in the use of machinery, provided that such safety program has been approved by the commissioner. As used in this paragraph the term "non-profit organization" means an organization operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

b. An employment certificate required by subdivision two of section one hundred thirty-two of this article shall for the purposes of section fourteen-a of the workmen's compensation law¹ be deemed to authorize employment under subparagraphs (3), (4) and (5) of this subdivision.

4. In addition to the cases provided for in this section, the commissioner, when it is found upon investigation that any particular trade, process of manufacture, occupation, or method of carrying on the same, is dangerous or injurious to the health of minors, may adopt rules prohibiting or regulating the employment of such minors therein. In addition to the adoption of such rules, the commissioner may also adopt such other rules and regulations as are determined necessary to carry out the purposes of this section.

5. In addition to the rulemaking authority set forth in subdivision four of this section, when it is found upon investigation that employment on a farm is dangerous or injurious to the health of minors, the commissioner may adopt rules prohibiting or regulating the employment of such minors therein, which rules shall be in accordance with and consistent with those promulgated by the United States secretary of labor in this regard.

[6. Repealed.]

(Added L.1962, c. 582, § 2; amended L.1966, c. 498, §§ 1, 2; L.1966, c. 975, § 22; L.1967, c. 294, § 1; L.1971, c. 433; L.1971, c. 434; L.1973, c. 377, §§ 5, 6; L.1974, c. 939, § 2; L.1976, c. 124, § 1; L.1991, c. 642, §§ 2, 3; L.2007, c. 160, § 1, eff. Sept. 1, 2007)

¹ Now Workers' Compensation Law.

Historical and Statutory Notes

L.2007, c. 160 legislation Subd. 2, par. (s). L.2007, c. 160, § 1, Subd. 2, par. (r). L.2007, c. 160, § 1, substituted a semi-colon for a period at the end of the subdivision. added par. (s).

Research References**Encyclopedias**

NY Jur. 2d, Elevators & Escalators § 45, Children.
 NY Jur. 2d, Employment Relations § 31, Minors Fourteen or Fifteen.
 NY Jur. 2d, Employment Relations § 32, Minors Sixteen or Seventeen.
 NY Jur. 2d, Explosives & Fires § 22, Provisions as to Minors.

Treatises and Practice Aids

Employment Coordinator Compensation § 25:66, Prohibitions.
 Employment Coordinator Compensation § 25:67, Exemptions.
 Guide to Employment Law and Regulation 2d § 53:9, Child Labor Law.

Notes of Decisions**10. Workers' compensation**

Substantial evidence supported Workers' Compensation Board's finding that claimant was entitled to an award of double compensation, on ground that his employment at time of accident violated statute prohibiting employment of minors in any occupation involving operation of power-driven hoisting apparatus and manufac-

ture of brick, tile, and kindred products; employer manufactured concrete products by pouring concrete into molds, and claimant's position required him to help in assembly and disassembly of those molds using forklifts. *Paiz v. Coastal Pipeline Products Corp.* (3 Dept. 2004) 9 A.D.3d 717, 780 N.Y.S.2d 656. Workers' Compensation ⇐ 1674

§ 134. Placement of minors by employment agencies**Research References****Encyclopedias**

NY Jur. 2d, Businesses & Occupations § 445, Improper Placements or Referrals.

§ 135. Duties of employers

1. The employer of any minor required to have an employment certificate:
 - a. Shall, before employment begins, file at the place of the minor's employment such certificate so that it may be readily accessible to any person authorized by law to examine such document;
 - b. Shall, upon the termination of the minor's employment, return the employment certificate to the minor;
 - c. (i) Shall, if the employer is engaged in a business of assigning employees for temporary services at another establishment, and the employer compensates the employee for such services rendered, keep on file in his or her office the employment certificate and shall cause to be delivered to each establishment where the child will perform his or her services a true copy of