



LIABILITY AND INSURANCE FOR EMPLOYING MINORS

Policy Academy on Scaling Work-Based Learning

July 28, 2021

Summary and Background

Employers can be hesitant to participate in youth work-based learning (WBL) programs due to concerns about the liability and insurance costs of hosting minors in the workplace. Although regulatory protections do increase for younger workers, states and employers can partner to address these concerns and lower the cost of compliance.

This brief explores the legal issues surrounding the employment of youth and their participation in WBL programs. It also highlights state and private strategies for addressing risk and features resources that states use in their communications with employers on this issue.

Common state actions to reduce risk include:

- Providing a single source for information on legal protections for underage workers in their state.
- Providing a clear and responsive channel for business leaders to ask questions about WBL.
- Providing an intermediary institution that employs students on behalf of participating businesses.
- Reimbursing insurance costs for WBL programs.
- Providing tax incentives to cover the administrative costs of participating in a WBL program.
- Offering identification or “hold harmless” contracts to businesses in which schools extend their liability policies to cover all WBL-related activities.

Legal Protections for Underage Workers

Workplace regulations from the Occupational Safety and Health Act (OSHA) apply to minors as well as adults. Regardless of age or employment status, everyone in the workplace must be provided with appropriate safety training, adequate protective equipment, and all other reasonable means necessary to ensure safety. States can coordinate with employers and school districts on safety training to ensure there is no false assumption of compliance.

Regulations for employing minors differ by state and industry. The Fair Labor Standards Act¹ (FLSA) and other federal rules² set a national minimum employment age of 14 for non-agriculture positions, restrict the hours those younger than 16 may work, and prohibit all minors from being employed in hazardous occupations. States often expand on these federal baselines with their own additions and allowances.³

Occupational Restrictions for Minors

Child labor laws limit the types of hazardous work minors can perform. However, FLSA allows exemptions for WBL programs. These exemptions permit supervised students in apprenticeships and other WBL programs to perform some functions in dangerous occupations. However, these exemptions are not categorical allowances. Each comes

¹ <https://www.dol.gov/agencies/whd/flsa>

² <https://www.dol.gov/agencies/whd/child-labor#LawRegs>

³ Where federal and state laws differ, the more protective standard applies.

with a set of safety standards an employer must meet if they work with minors in these settings. States can guide employers through compliance with federal rules⁴ and any more protective state standards that apply.

Occupations Prohibited for Workers Under 18	
No WBL Exemption	WBL Exemptions May Apply
<ul style="list-style-type: none"> • Manufacturing and storing explosives • Driving a motor vehicle and performing tasks on the outside of the motor vehicle while it is in motion • Mining • Firefighting and fire prevention, including forestry services, logging and lumber mill occupations • Exposure in any capacity to radioactive substances • Operating power-driven hoisting machines • Manufacturing brick, tile and ceramic products (extreme heat exposure and heavy machinery) • Demolitions 	<ul style="list-style-type: none"> • Operating woodworking machines • Use of power-driven metal forming, punching and shearing machines • Use of balers, compactors, and paper products machines • Roofing • Excavation • Meat and poultry packing and processing

Paid and Unpaid Programs

Paid and unpaid students are treated differently by insurance providers. Students must be paid at least the federal minimum wage unless the program meets the criteria for an unpaid educational experience. These criteria are:

1. Both the student and employer have agreed there is no expectation of compensation. If compensation beyond a learning experience is implied or promised, the student is considered an employee.
2. The program is considered educational by all parties, regardless of setting.
3. The program benefits the student's education in a tangible way, such as applying foundational knowledge or certifying a skill.
4. Students contribute under the close supervision of existing staff and do not eliminate an otherwise open role or displace current workers.
5. The program accommodates the student's academic commitments and schedule.
6. The program is constrained to the time-period of learning and does not extend beyond educational pursuits.
7. Both the employer and student understand the student is not entitled to wages for the time spent in the program at its conclusion.

Liability Insurance

Employers are required to have workers' compensation insurance for all paid employees. Except when state laws mandate further protection, no additional coverage is required to employ a minor. Since students in unpaid WBL experiences are not technically employees, they are not covered by standard insurance and on-the-job injuries are the responsibility of the school or university sponsoring the program. These cases are typically covered by the school or district's insurance plan, but states should collaborate with districts to ensure there are no gaps in protection.

Examples of State Assistance for Business

The following state actions have been effective in addressing insurance and liability concerns for businesses. Most originated in legislative action, while others are being executed by state education and workforce leaders.

⁴ <https://crsreports.congress.gov/product/pdf/R/R44548/4>

Georgia: Employers can apply for up to a 5% (up to \$2,500) insurance credit based on the number of WBL students they employ.

Kentucky: State and business leaders partnered to develop a [pre-apprentice, co-op, and internship program](#) in which a third-party covers the cost of workers compensation insurance, handles payroll for youths and provides long-term management and support for students.

Tennessee: The [Rutherford Chamber of Commerce](#) protects employers from liability by partnering with a third-party that serves as the “employer of record” for the chamber’s internship program. The third-party provides funding, liability coverage and insurance support to participating businesses. Tennessee also created a state [Work Based Learning Toolbox](#) and grants employers up to [\\$5,000](#) to offset costs for WBL programs.

Utah: State law protects employers from liability by [categorizing students](#) in unpaid WBL programs as volunteer state government workers.

Washington: The state [cuts oversight costs](#) for participating businesses by not requiring a work permit for unpaid students in certain WBL programs and carves out exceptions to the state age/hour and hazardous employment restrictions.

Examples of State-based Resources:

The following resources were created by states to address employers’ liability and insurance concerns. These documents typically summarize state and federal regulation and provide legal context through a local lens.

Alabama, [Ensuring Youth Access to Work-Based Learning Opportunities and Apprenticeships in Alabama \(2021\):](#) This document was written in response to local business owners’ hesitancy to engage in apprenticeship programs on account of liability concerns. It details the information provided to those business leaders as well as legislative change that was made in 2018 to further reduce risk.

Kansas, [Work-Based Learning Guide:](#)

This one-page summary outlines WBL safety and liability information for businesses. It includes a table of occupational restrictions for those under 18 and WBL exceptions to those regulations permitted in Kansas.

Kentucky, [Working with Students Under 18 \(2021\):](#)

Kentucky published this webpage that details the state’s WBL program, child labor laws, and applicable federal regulations.

Minnesota, [Youth Skills Training Program Guide \(2021\):](#) This document outlines partnerships and grants between the state, school districts, and employers. Grants can be up to \$100,000 to cover the costs of recruitment, retention, operation and transportation for WBL programs with the caveat that they may not be used to pay a student's wages.

Rhode Island, [Legal Questions Around Student Internships from the Governor’s Workforce Board \(2018\):](#)

This document summarizes the rules, regulations, and recommendations from the Governors Workforce Board about student internships.

Additional resources:

[Child Labor Resource Library](#) (Department of Labor, 2021): This website offers a library of child labor resources including federal rules and regulations, informational packets, presentations, and frequently asked questions.

[Developing High-Quality State Work-Based Learning Programs](#) (ExcelinEd, 2020): This article presents a systematic review and analysis of best practices for developing WBL programs in states. It outlines specific steps and considerations, lists common legal and insurance barriers to participation, and offers suggestions for overcoming those barriers.

[Removing Legal Barriers Around Work-Based Learning](#) (Advance CTE, 2016): This study details occupational and workplace liabilities and pathways to cost mitigation for business owners. It includes examples of state programs that reduce liability.

[Work-Based Learning Toolkit](#) (U.S. Department of Education, 2021): This toolkit informs state leaders of the components and considerations of growing WBL. It outlines key steps in establishing a program, engaging with employers, collecting data, and scaling programs. Each of these sections includes articles, links, and state examples.

[Fair Labor Standards Act Child Labor Provisions](#) (Congressional Research Service, 2016): This report was created by the U.S Congressional Research Service to ensure proper understanding of and compliance with child labor laws by collecting and synthesizing child labor provisions in the Fair Labor Standards Act.

[Index to NCSL Labor and Employment Resources](#) (National Conference of State Legislators, 2021): This library compiles labor regulations in a searchable format. It allows users to research questions by a wide range of issues including child labor, work-based learning, apprenticeship, the Fair Labor Standards Act, and more.