

## **Chapter 4109: EMPLOYMENT OF MINORS**

### **4109.01 Employment of minors definitions.**

As used in this chapter:

- (A) "Employ" means to permit or suffer to work.
- (B) "Employer" means the state, its political subdivisions, and every person who employs any individual.
- (C) "Enforcement official" means the director of commerce or the director's authorized representative, the superintendent of public instruction or the superintendent's authorized representative, any school attendance officer, any probation officer, the director of health or the director of health's authorized representative, and any representative of a local department of health.
- (D) "Minor" means any person less than eighteen years of age.
- (E) "Seasonal amusement or recreational establishment" means both of the following:
  - (1) An amusement or recreational establishment that does not operate for more than seven months in any calendar year;
  - (2) An amusement or recreational establishment whose average receipts for any six months during the preceding calendar year were not more than thirty-three and one-third per cent of its average receipts for the other six months of that calendar year.

Effective Date: 07-01-2000; 03-30-2006 .

### **4109.02 Age and schooling certificate for minor of compulsory school age.**

(A) Except as provided in division (B) of this section or in section [4109.06](#) of the Revised Code, no minor of compulsory school age shall be employed by any employer unless the minor presents to the employer a proper age and schooling certificate as a condition of employment.

A valid certificate constitutes conclusive evidence of the age of the minor and of the employer's right to employ the minor in occupations not denied by law to minors of that age under section [4109.06](#) of the Revised Code or rules adopted under that section.

(B) Minors aged sixteen or seventeen are not required to provide an age and schooling certificate as a condition of employment if they are to be employed during summer vacation months after the last day of the school term in the spring and before the first day of the school term in the fall, in nonagricultural and nonhazardous employment as defined by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 201, and similar state statutes, or in other employment not prohibited to minors age sixteen or seventeen by law.

(C) To be hired for the type of employment described in division (B) of this section, minors shall provide the employer with the following:

(1) Evidence of proof of age in the same manner as proof of age is provided the superintendent of schools or chief administrative officer under division (A)(3) of section 3331.02 of the Revised Code;

(2) A statement signed by the minor's parent or guardian consenting to the proposed employment. For the purposes of this section, in the absence of a parent or guardian, a person over eighteen years of age with whom the minor resides may sign the statement.

Effective Date: 08-28-2002; 03-30-2006 .

### **4109.03 Prohibited acts.**

No employer shall employ a minor before thoroughly reviewing the minor's age and schooling certificate, required by law, or fail to give notice to the superintendent of schools or chief administrative officer who issued such certificate of the nonuse of the certificate within five working days from such minor's withdrawal or dismissal from the employer's service, or continue to employ a minor after the minor's age and schooling certificate is void, or refuse to permit an enforcement official to observe the conditions under which minors are employed, or to make reasonable inquiry of minors or persons supposed by such official to be under eighteen in regard to matters pertaining to their age, employment, or schooling.

Effective Date: 08-28-2002 .

### **4109.04 Participation or acquiescence in violations prohibited.**

No employer or officer or agent of an employer shall participate or acquiesce in any violation of law relating to compulsory education or employment of minors.

Effective Date: 01-12-1979 .

### **4109.05 Rules prohibiting employment of minors in hazardous or detrimental occupations.**

(A) The director of commerce, after consultation with the director of health, shall adopt rules, in accordance with Chapter 119. of the Revised Code, prohibiting the employment of minors in occupations which are hazardous or detrimental to the health and well-being of minors.

In adopting the rules, the director of commerce shall consider the orders issued pursuant to the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 201, as amended.

(B) No minor may be employed in any occupation found hazardous or detrimental to the health and well-being of minors under the rules adopted pursuant to division (A) of this section.

Effective Date: 07-01-2000 .

### **4109.06 Chapter not applicable.**

(A) This chapter does not apply to the following:

(1) Minors who are students working on any properly guarded machines in the manual training department of any school when the work is performed under the personal supervision of an instructor;

(2) Students participating in a vocational program approved by the Ohio department of education;

(3) A minor participating in a play, pageant, or concert produced by an outdoor historical drama corporation, a professional traveling theatrical production, a professional concert tour, or a personal appearance tour as a professional motion picture star, or as an actor or performer in motion pictures or in radio or television productions in accordance with the rules adopted pursuant to division (A) of section [4109.05](#) of the Revised Code;

(4) The participation, without remuneration of a minor and with the consent of a parent or guardian, in a performance given by a church, school, or academy, or at a concert or entertainment given solely for charitable purposes, or by a charitable or religious institution;

(5) Minors who are employed by their parents in occupations other than occupations prohibited by rule adopted under this chapter;

(6) Minors engaged in the delivery of newspapers to the consumer;

(7) Minors who have received a high school diploma or a certificate of attendance from an accredited secondary school or a certificate of high school equivalence;

(8) Minors who are currently heads of households or are parents contributing to the support of their children;

(9) Minors engaged in lawn mowing, snow shoveling, and other related employment;

(10) Minors employed in agricultural employment in connection with farms operated by their parents, grandparents, or guardians where they are members of the guardians' household. Minors are not exempt from this chapter if they reside in agricultural labor camps as defined in section [3733.41](#) of the Revised Code;

(11) Students participating in a program to serve as precinct officers as authorized by section [3501.22](#) of the Revised Code.

(B) Sections [4109.02](#), [4109.08](#), [4109.09](#), and [4109.11](#) of the Revised Code do not apply to the following:

(1) Minors who work in a sheltered workshop operated by a county board of developmental disabilities;

(2) Minors performing services for a nonprofit organization where the minor receives no compensation, except for any expenses incurred by the minor or except for meals provided to the minor;

(3) Minors who are employed in agricultural employment and who do not reside in agricultural labor camps.

(C) Division (D) of section [4109.07](#) of the Revised Code does not apply to minors who have their employment hours established as follows:

(1) A minor adjudicated to be an unruly child or delinquent child who, as a result of the adjudication, is placed on probation may either file a petition in the juvenile court in whose jurisdiction the minor resides, or apply to the superintendent or to the chief administrative officer who issued the minor's age and schooling certificate pursuant to section [3331.01](#) of the Revised Code, alleging the restrictions on the hours of employment described in division (D) of section [4109.07](#) of the Revised Code will cause a substantial hardship or are not in the minor's best interests. Upon receipt of a petition or application, the court, the superintendent, or the chief administrative officer, as appropriate, shall consult with the person required to supervise the minor on probation. If after that consultation, the court, the superintendent, or the chief administrative officer finds the minor has failed to show the restrictions will result in a substantial hardship or that the restrictions are not in the minor's best interests, the court, the superintendent, or the chief administrative officer shall uphold the restrictions. If after that consultation, the court, the superintendent, or the chief administrative officer finds the minor has shown the restricted hours will cause a substantial hardship or are not in the minor's best interests, the court, the superintendent, or the chief administrative officer shall establish differing hours of employment for the minor and notify the minor and the minor's employer of those hours, which shall be binding in lieu of the restrictions on the hours of employment described in division (D) of section [4109.07](#) of the Revised Code.

(2) Any minor to whom division (C)(1) of this section does not apply may either file a petition in the juvenile court in whose jurisdiction the person resides, or apply to the superintendent or to the chief administrative officer who issued the minor's age and schooling certificate pursuant to section [3331.01](#) of the Revised Code, alleging the restrictions on the hours of employment described in division (D) of section [4109.07](#) of the Revised Code will cause a substantial hardship or are not in the minor's best interests.

If, as a result of a petition or application, the court, the superintendent, or the chief administrative officer, as appropriate, finds the minor has failed to show such restrictions will result in a substantial hardship or that the restrictions are not in the minor's best interests, the court, the superintendent, or the chief administrative officer shall uphold the restrictions. If the court, the superintendent, or the chief administrative officer finds the minor has shown the restricted hours will cause a substantial hardship or are not in the minor's best interests, the court, the superintendent, or the chief administrative officer shall establish the hours of employment for the minor and shall notify the minor and the minor's employer of those hours.

(D) Section [4109.03](#), divisions (A) and (C) of section [4109.02](#), and division (B) of section [4109.08](#) of the Revised Code do not apply to minors who are sixteen or seventeen years of age and who are employed at a seasonal amusement or recreational establishment.

(E) As used in this section, "certificate of high school equivalence" means either:

(1) A statement issued by the department of education that the holder of the statement has achieved the equivalent of a high school education as measured by scores obtained on a high school equivalency test approved by the department pursuant to division (B) of section [3301.80](#) of the Revised Code;

(2) A statement issued by a primary-secondary education or higher education agency of another state that the holder of the statement has achieved the equivalent of a high school education as measured by scores obtained on a similar nationally recognized high school equivalency test.

Amended by 131st General Assembly File No. TBD, HB 113, §1, eff. 9/14/2016.

Amended by 128th General Assembly ch.9, SB 79, §1, eff. 10/6/2009.

Effective Date: 08-28-2002; 01-27-2006; 03-30-200.

### **4109.07 Restrictions on hours of employment.**

(A) No person under sixteen years of age shall be employed:

(1) During school hours except where specifically permitted by this chapter;

(2) Before seven a.m.;

(3) After nine p.m. from the first day of June to the first day of September or during any school holiday of five school days or more duration, or after seven p.m. at any other time;

(4) For more than three hours a day in any school day;

(5) For more than eighteen hours in any week while school is in session;

(6) For more than eight hours in any day which is not a school day;

(7) For more than forty hours in any week that school is not in session.

(B) No person under sixteen years of age may be employed more than forty hours in any one week nor during school hours unless employment is incidental to bona fide programs of vocational cooperative training, work-study, or other work-oriented programs with the purpose of educating students, and the program meets standards established by the state board of education.

(C) No employer shall employ a minor more than five consecutive hours without allowing the minor a rest period of at least thirty minutes. The rest period need not be included in the computation of the number of hours worked by the minor.

(D) No person sixteen or seventeen years of age who is required to attend school under Chapter 3321. of the Revised Code shall be employed:

(1) Before seven a.m. on any day that school is in session, except such person may be employed after six a.m. if the person was not employed after eight p.m. the previous night;

(2) After eleven p.m. on any night preceding a day that school is in session.

(E) As used in this section, "school" refers to either a school the child actually attends or a school he is required to attend pursuant to Chapter 3321. of the Revised Code.

Effective Date: 04-10-1991 .

### **4109.08 Enforcing age and schooling certificate requirements.**

(A) No minor shall be employed unless the employer keeps on the premises a complete list of all minors employed by the employer at a particular establishment and a printed abstract to be furnished by the director of commerce summarizing the provisions of this chapter.

The list and abstract shall be posted in plain view in a conspicuous place which is frequented by the largest number of minor employees, and to which all minor employees have access.

(B) An enforcement official may require any employer, in or about whose establishment an employee apparently under eighteen years of age is employed and whose age and schooling certificate is not on file with the director of commerce as required by section 3331.01 of the Revised Code, to furnish the enforcement official satisfactory evidence that the employee is in fact eighteen years of age or older. The enforcement official shall require from the employer the same evidence of age of the employee as is required by section 3331.02 of the Revised Code upon the issuance of an age and schooling certificate. No employer shall fail to produce the evidence.

(C) Any employee apparently under eighteen years of age, working in any occupation or establishment with respect to which there are restrictions by rule or law governing the employment of minors, with respect to whom the employer has not furnished satisfactory evidence that the person is at or above the age required for performance of employment with the employer after being requested to do so, and who refuses to give to an enforcement official the employee's name, age, and place of residence may be taken into custody and charged with being an unruly child or other appropriate charge under Chapter 2151. or 2152. of the Revised Code.

(D) No person shall, with the intent to assist a minor to procure employment, make a false statement by any means, including by submitting falsified forms electronically, to any employer or to any person authorized to issue an age and schooling certificate.

Effective Date: 08-28-2002 .

#### **4109.09 Notice of nonuse of minor's age and schooling certificate.**

(A) After a minor employee has made a written request that an employer give notice of the nonuse of the minor's age and schooling certificate, should the employer fail to mail the document to the issuing authority within three days of receipt of the request, the minor shall be entitled to recover from the employer an amount equal to the wages which would have been earned had the minor continued in employment for the period between the receipt of the request by the employer and the initiation of the suit or compliance with the request by the employer.

(B) If any minor fails to appear for work without explanation for three days, an employer shall consider the employment terminated, and shall give notice of the nonuse of the age and schooling certificate to the issuing authority.

Effective Date: 08-28-2002 .

#### **4109.10 Written agreements as to wages.**

(A) No employer shall give employment to a minor, without agreeing with him as to the wages or compensation he shall receive for each day, week, month, or year; or per piece, for work performed. The employer shall furnish the minor with written evidence of the agreement and, on or before each payday, with a statement of the earnings due and the amount to be paid to him. No employer shall reduce the wages or compensation of any minor without giving him notice at least twenty-four hours previous to the reduction, at which time a written agreement shall be entered into with the minor as in the case of original employment.

(B) No employer shall retain or withhold from a minor in his employ the wages or compensation, or any part thereof, agreed to be paid and due the minor for work performed or services rendered because of presumed negligence or failure to comply with rules, breakage of machinery, or alleged incompetence to produce work or perform labor according to any standard of merit.

(C) No employer shall receive a guarantee, bonus, money deposit, or other form of security to obtain or secure employment for a minor or to ensure faithful performance of labor, guarantee strict observance of rules, or make good losses which may be charged to the minor's incompetence, negligence, or inability.

Effective Date: 01-12-1979 .

### **4109.11 Records.**

Every employer shall keep a time book or other written records which shall state the name, address, and occupation of each minor employed, the number of hours worked by such minor on each day of the week, the hours of beginning and ending work, the hours of beginning and ending meal periods, and the amount of wages paid each pay period to each minor. The director of commerce or the director's authorized representative shall have access to and the right to copy from the time book or records. Records shall be kept for a period of two years. No employer shall fail to keep such time book or records, or knowingly make false statements therein, or refuse to make the time book and records accessible, upon request, to the director or the director's authorized representative.

Effective Date: 07-01-2000 .

### **4109.12 Violations.**

(A) No person shall continue to employ any minor in violation of any law relating to the employment of minors after being notified of the violation in writing by the director of commerce or other enforcement official.

Failure of the director or other enforcement official to give such notice does not excuse or negate a conviction for any offense except a violation of this division.

(B) No employer shall employ, and no person having under the person's control as parent, guardian, or custodian, any minor, shall permit or suffer a minor to be employed in violation of any law relating to the employment of minors for which a penalty is not otherwise provided by law.

Effective Date: 07-01-2000 .

### **4109.13 Designation of enforcement officials.**

(A) The director of commerce shall designate enforcement officials to enforce this chapter.

(B) An enforcement official, upon discovery of a violation of this chapter and after notice to the employer, shall make a complaint against the offending employer in any court of competent jurisdiction.

(C) Enforcement officials shall make complaint by filing a complaint before a court having competent jurisdiction against any person violating any law relating to the employment of minors. This section shall not be construed to limit the right of other persons to make those complaints.

(D) County courts, municipal courts, and juvenile courts have jurisdiction to try offenses under this chapter. Juvenile courts have exclusive original jurisdiction to try offenses under section 3321.38 of the Revised Code.

(E) No person or enforcement official instituting proceedings under this section shall be required to file or give security for the costs. If a defendant is acquitted, the judge before whom the case is brought shall certify the costs to the county auditor. The county auditor shall examine the amount and, if necessary, correct it. The county auditor shall issue a warrant on the county treasurer in favor of the persons to whom the costs are due.

(F) Fines collected for violations of this chapter and section 3321.38 of the Revised Code shall be paid into the funds of the school district in which the offense was committed.

Effective Date: 09-04-2000 .

### **4109.14 to 4109.20 [Repealed].**

Effective Date: 01-12-1979 .

### **4109.21 Registering as employer of minors conducting door-to-door sales activity.**

(A) No employer shall employ any minor who is under sixteen years of age in any door-to-door sales activity unless that employer is registered pursuant to this section and otherwise is in compliance with the requirements of this chapter.

(B) To obtain registration as a door-to-door employer, an employer shall apply to the director of commerce, on forms provided by the director. The application form shall include all of the following:

(1) The name, principal business address, and telephone number of the applicant. If the applicant is a partnership or association, the names of all the members also shall be stated and, if the applicant is a corporation, the names of its president and each of its officers also shall be stated.

(2) A certification that the applicant and its employees:

(a) Are in compliance with and will comply with all applicable Ohio and federal laws and regulations relating to the employment of minors;

(b) Will provide at least one supervisor who is over the age of eighteen, for each six minor employees, who is at all times available and responsible for assuring the minor's well-being, and who remains in the general area and in visual contact with each minor employed in door-to-door sales activities at least once every twenty minutes;



(c) Will require all minors to work at least in pairs with others who are engaged in substantially the same activity, employing insofar as possible canvassing techniques that keep the persons working in pairs in close proximity and view of each other;

(d) Are in compliance with Ohio's motor vehicle financial responsibility, workers' compensation, unemployment compensation, and all other applicable laws; and

(e) Will not employ any minor who does not have an appropriate age and schooling certificate if that minor is required by Ohio law to have the certificate to be employed.

(3) A certification, as evidenced by a current official inspection sticker issued by the Ohio state highway patrol, that each motor vehicle used by the applicant and the applicant's employees for the purpose of transport of minors for door-to-door sales activities complies with all applicable motor vehicle safety laws;

(4) A certification that any person who transports by motor vehicle minors for purposes of door-to-door sales activities possesses a valid and properly issued Ohio motor vehicle driver's license, which license is not under suspension.

(C)

(1) The director shall issue a registration to each applicant who satisfactorily submits an application pursuant to this section and otherwise meets all of the requirements of this section. If the director fails to issue or deny a registration or its renewal within fifteen days of submission of the application or renewal, the applicant is deemed registered under this section. Each registration expires one year after its issuance. To obtain a renewal of registration, the holder of the registration shall apply for renewal to the director according to the procedures of division (B) of this section for the initial issuance of the registration.

(2) Each employer issued a registration pursuant to this section shall provide each minor employee who is engaged in door-to-door sales, prior to beginning employment with the employer, an identification card in a form prescribed by the director. The card shall include, at a minimum, a picture of the minor employee, the minor employee's name, the name and address of the employer, a statement that the employer is registered with the director of commerce, and the employer's registration number.

(D) The director, pursuant to a hearing conducted in accordance with Chapter 119. of the Revised Code, may refuse to issue or renew a door-to-door sales registration or revoke a door-to-door sales registration if the director determines that the applicant, registrant, any member of an applicant's or registrant's partnership or association, or any officer or employee of an applicant or registrant has done any of the following:

(1) Obtained or attempted to obtain a registration by fraud or misrepresentation;

(2) Been guilty of gross misconduct in the pursuit of the door-to-door sales profession;

(3) Violated or is threatening to violate any provision of this or any other state or federal law or regulation which regulates the employment of minors.

(E) No employer whose registration has been revoked under this section may apply for registration for two years from the date of the revocation. The director may require such employer upon application for a registration to meet conditions in addition to those provided in

this section for registration and renewal as the director determines necessary to safeguard the interests of minors to be employed by the employer.

(F) No employer may employ:

(1) Any minor who is under sixteen years of age in any door-to-door sales activity before seven a.m. or after seven p.m. or during school hours except where specifically permitted by this chapter;

(2) Any minor who is sixteen or seventeen years of age in any door-to-door sales activity before seven a.m. or after eight p.m. or during school hours except where specifically permitted by this chapter.

(G) As used in this section, "door-to-door sales activity" means any activity involving selling or offering to sell any candy, cookies, flowers, newspapers, magazines, newspaper or magazine subscriptions, household cleaning products, or any other merchandise or commodity at a place of business other than the employer's place of business but does not mean any such activity conducted in connection with a bona fide educational, charitable, or religious activity or for a newspaper subscription drive provided that the minor also is engaged in the delivery of newspapers to the consumer for the newspaper in which the subscription drive is conducted and further provided that the subscription drive is supervised by an individual who is eighteen years of age or older and an employee of the newspaper's subscription drive.

Effective Date: 07-01-2000 .