

Child Labor Law and the Age of Lifeguards

While the American Red Cross sets the minimum age for receiving a Lifeguarding certificate at 15, the hiring age is set by federal, state and local law.

In the area of child labor, 16 and 17-year-olds may perform any work unless the Secretary of Labor says that a certain occupation is prohibited. Fourteen and 15-year-olds may *not* perform any work unless the Secretary says they may.

The U.S. Department of Labor/Wage and Hour Division (DOL/WHD) has responsibility for the enforcement of Child Labor Law. Further it may make some alterations in it. Most recently, in January 2006, DOL/WHD modified and clarified its enforcement position on the employment of 15-year-old lifeguards. The final ruling includes the statement: "Trained and certified 15-year-olds are permitted to work as lifeguards at most facilities in a waterpark." Prior to January 2006, the occupation of lifeguard was not specifically authorized under the department's regulations for 14 and 15-year-olds, except for "traditional swimming pools." The prior change to allow for guards at age 15 in traditional pools was at the initiative of the American Red Cross. The January 2006 change was at the initiative of Red Cross and the waterpark industry.

A copy of the January 17, 2006 DOL letter is available.

In July 2005, the operator of a waterpark in the Midwest was visited by DOL and told that the facility could not employ 15-year-old lifeguards on waterslides, wave pools, lazy rivers, and other waterpark attractions.

After this event, meetings were held with the DOL Deputy Administrator and current head of the Wage and Hour Division, Child Labor Team Leader and other key DOL staff members. As a result of the meetings, WHD agreed to conduct site visits at some waterparks. The site visits resulted in a detailed analysis by the Wage and Hour Division which are evident in the ruling just received stating:

"Trained and certified 15-year-olds are permitted to work as lifeguards at most facilities in a waterpark. However, fifteen-year-olds specifically are not permitted to work as dispatchers or attendants at the top of water slides. The reasoning was based both on height concerns and "tending" of the slide. Workers under 16 are not permitted to tend machinery, including amusement rides, and while no machinery is directly involved, the DOL believes that the position at the top of a slide is more that of an attendant who is tending the ride, and therefore prohibited employment for 15-year-olds."

"They may work as lifeguards on all other attractions in a water park, such as catch pools at the bottom of water slides and on wave pools, lazy rivers, and play areas."

Child Labor Law and the Age of Lifeguards (Continued)

Still standing is the requirement for waterfronts, about which the letter states:

“Not included in the definition of a traditional swimming pool or a water amusement park would be such natural environment swimming facilities as rivers, streams, lakes, reservoirs, wharfs, piers, canals, or oceanside beaches at which WHD will continue to enforce a minimum age of 16 years for the employment of lifeguards.”

The letter further states that:

“The WHD, as a matter of discretion, will not assert a violation with regard to the employment of a 15-year-old in the occupation of “lifeguard” at a traditional swimming pool and at most facilities of a water amusement park provided that the minor has been trained and certified by the American Red Cross or a similarly recognized certifying organization.”

The Red Cross applauds the efforts of The U.S. Department of Labor, Wage and Hour Division. They have clearly demonstrated their willingness to work with the industry, and to go beyond the call of duty, for the safety and well being of aquatic facility employees and guests.

The DOL/WHD position is fully presented in [Fact Sheet #60: Application of the Federal Youth Employment Provisions of the Fair Labor Standards Act \(FSLA\) to the Employment of Lifeguards](#) on the DOL Web site.

Some state and local governments do set higher age standards. So, aquatic facilities need to be informed of the state and local laws affecting them. As DOL/WHD notes in its January 2006 communication, “when state provisions differ from the federal provisions, employees are held to the more stringent standard.” The following Web site can help aquatic facility management identify the appropriate state level office: www.dol.gov/esa/contacts/state_of.htm.



JAN 17 2006

Dear

This is in further response to your inquiries about the May 25, 2005 enforcement position adopted by the Wage and Hour Division (WHD) regarding the employment of 15-year-olds as lifeguards at swimming pools and water amusement parks. I appreciate the cooperation you and your colleagues have extended to the WHD staff.

The WHD, part of the U. S. Department of Labor's Employment Standards Administration, is responsible for administering the Fair Labor Standards Act (FLSA). The FLSA is the federal law of most general application concerning wages, hours of work and youth employment. The youth employment provisions were enacted to ensure that when young people work, the work is safe, age-appropriate, and does not jeopardize their health, well-being, or schooling.

In defining "oppressive child labor," FLSA section 3(l) expressly prohibits children under the age of 16 from performing any work other than that which the Secretary of Labor permits, by order or regulation, because it does not interfere with their schooling or health and well-being (*see* 29 U.S.C. 203(l)). The Secretary's declaration of what forms of labor are not deemed "oppressive" for children between the ages of 14 and 16 appears in Child Labor Regulation No. 3 (Reg. 3), 29 C.F.R. §§ 570.31-.38. Copies of the FLSA and Regulations, 29 C.F.R. part 570, are enclosed for your convenience.

Reg. 3 also identifies a number of occupations or activities which are specifically prohibited for youth between the ages of 14 and 16 without regard to the industry or the type of business in which their employer is engaged (*e.g.*, "operation or tending.... of any power-driven machinery other than office machines") (*see* 29 C.F.R. § 570.33). This section of Reg. 3 incorporates by reference all of the prohibitions contained in the Hazardous Occupations Orders (*see* 29 C.F.R. §§ 570.50-.68) that identify occupations that are "particularly hazardous" and, therefore, are banned for 16- and 17-year-olds (*e.g.*, occupations involved in the operation of power-driven metal forming, punching and shearing machines) (*see* 29 C.F.R. § 570.33(e)). Further, Reg. 3 includes special rules for youth engaged in retail, food service, and gasoline service establishments - expressly authorizing certain activities (*see* § 570.34(a)) and expressly prohibiting others

(see § 570.34(b)). For example, clerical work, cashiering and clean-up work are authorized, but “all work requiring the use of ladders, scaffolds, or their substitutes” is prohibited. These special rules apply only in the designated types of business.

The occupation of “lifeguard” is not specifically authorized in Reg. 3 as an occupation that 14- and 15-year-olds may perform. Therefore, a strict interpretation of the statute and Reg. 3 could prohibit any employee under age 16 from working as a lifeguard. In fact, the WHD enforced such an interpretation until August of 2000. At that time, a local chapter of the American Red Cross contacted the WHD to inquire whether 15-year-olds could legally be employed as lifeguards under the youth employment provisions of the FLSA. The WHD responded that, although Reg. 3 does not specifically permit such employment, it would not assert, as a matter of its discretion, a violation of the youth employment provisions with regard to the employment of a 15-year-old in the occupation of lifeguard *provided that* the minor was trained and certified by the American Red Cross in aquatics and water safety. That letter also detailed certain activities that a young lifeguard may or may not perform and stated that the WHD would enforce all the other applicable provisions of Reg. 3.

In 2003, a city government contacted the WHD to ask whether this limited enforcement position applied to pools operated by state and local governments. The WHD, in a letter dated September 2, 2003 (copy enclosed), amended the August 2000 enforcement position by expressly including swimming pools owned and operated by state and local governments. In addition, the WHD clarified the conditions of the enforcement position, identifying the tasks 15-year-old lifeguards may or may not perform. In May of 2005, upon consideration of the points raised by your organization and others, the WHD again clarified its limited enforcement position and applied it to both private and publicly owned/operated swimming pools and water amusement parks under certain conditions.

Upon further consideration of the information provided, and after site visits by WHD staff, it is necessary to further clarify our enforcement position and amend it to permit the employment of 15-year-olds as lifeguards at swimming pools and water amusement parks under the conditions described below.

The WHD, as a matter of discretion, will not assert a violation with regard to the employment of a 15-year-old in the occupation of “lifeguard” at a traditional swimming pool and at most facilities of a water amusement park *provided that* the minor has been trained and certified by the American Red Cross or a similarly recognized certifying organization. The occupation of lifeguard, as used in this enforcement position, encompasses the duties of rescuing swimmers in danger of drowning, the monitoring of activities at a swimming pool to prevent accidents, the teaching of water safety, and providing assistance to patrons. Lifeguards may also help to maintain order and cleanliness in the pool and pool areas, give swimming instructions, conduct or officiate

at swimming meets, and administer first aid. Additional ancillary lifeguard duties may include checking in and out such items as towels, rings, watches and apparel. Properly certified 15-year-old lifeguards are also permitted to use a ladder to access and descend from the lifeguard chair; use hand tools to clean the pool and pool area; and test and record water quality for temperature and/or pH levels, using all of the tools of the testing process including adding chemicals to the test water sample. Such youth, however, would be prohibited from entering or working in any chemical storage areas, including any areas where the filtration and chlorinating systems are housed. The other provisions of Reg. 3, including the restrictions on hours of work contained at § 570.35(a), would continue to apply to the employment of 15-year-old lifeguards.

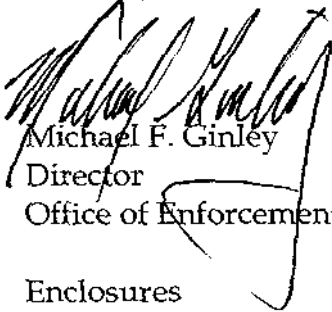
A traditional swimming pool, for purposes of this enforcement position, means a water-tight structure of concrete, masonry, or other approved materials located either indoors or outdoors, used for bathing or swimming and filled with a filtered and disinfected water supply, together with buildings, appurtenances and equipment used in connection therewith. A water amusement park means an establishment that not only encompasses the features of a traditional swimming pool, but also includes additional attractions such as wave pools; lazy rivers; specialized activities areas such as baby pools, waterfalls, and sprinklers; and elevated water slides. Properly certified 15-year-olds would be permitted to be employed as lifeguards at these water amusement park features, except as noted below. Not included in the definition of a traditional swimming pool or a water amusement park would be such natural environment swimming facilities as rivers, streams, lakes, reservoirs, wharfs, piers, canals, or oceanside beaches at which WHD will continue to enforce a minimum age of 16 years for the employment of lifeguards.

It is important to note that § 570.33(b) prohibits the employment of 14- and 15-year-olds in occupations involving the operation or tending of power-driven machinery, except office machines. This prohibition has always encompassed the operation or tending of all power-driven amusement park and recreation establishment rides - including elevated slides found at water amusement parks. Such slides, which often reach heights of over 40 feet, rely on power-driven machinery that pump water to the top of the slides which facilitates the descents of the riders to the "splash-down" area at the base of the slides. Minors less than 16 years of age may not be employed as *dispatchers* or *attendants* at the top of elevated water slides - employees who maintain order, direct patrons as to when to depart the top of the slide, and ensure that patrons have safely begun their ride - because such work constitutes "tending" as used in Reg. 3. Accordingly, even if 15-year-old minors have been properly certified as lifeguards, they may not be employed as dispatchers, attendants, or in similar positions at the top of an elevated water slide. Properly certified 15-year-old lifeguards, however, may be stationed at the "splashdown pools" located at the bottom of the elevated water slides to perform traditional lifeguard duties.

Finally, we note that all states have their own youth employment provisions and may not recognize this federal limited enforcement position. When state provisions differ from the federal provisions, employers are held to the more stringent standard. For information about the youth employment provisions established by a specific state, you may wish to contact the office in that state responsible for administering youth employment provisions. The following Web site can help you identify the appropriate state office: www.dol.gov/esa/contacts/state_of.htm.

We trust that you and your colleagues will find this information helpful. Please note that in addition to the materials we have enclosed with this letter, a wealth of compliance assistance information is available on the Department of Labor's *YouthRules!* Web site located at www.youthrules.dol.gov.

Sincerely,



Michael F. Ginley
Director
Office of Enforcement Policy

Enclosures