



Current Report

Division of Agricultural Sciences and Natural Resources • Oklahoma State University

Employing Children

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Note: This publication is intended to provide general information about legal issues. It should not be cited or relied upon as legal authority. State laws vary and no attempt is made to discuss laws of states other than Oklahoma. For advice about how these issues might apply to your individual situation, consult an attorney.

How old must children be before I can hire them to work on my operation?

The Fair Labor Standards Act (FLSA) makes it illegal to employ children under the age of sixteen in most industries; however, several exceptions are made for agriculture. The following criteria can be used to determine if a child can be employed in agricultural work.

- If you are the child's parent, there is no minimum age that must be reached before he/she can work on a farm that you either own or operate.
- Children less than twelve years old can work on someone else's farm, with parental consent, if the farm in question used less than 500 man-days of agricultural labor per quarter¹ last year.
- Children between twelve and thirteen years old can work, with the consent of their parents or guardians, on someone else's farm. They may also work on a farm where a parent or guardian is employed.
- Children over the age of fourteen are allowed to work on farms.

In most cases, significant restrictions will apply to the tasks children can perform, as well as when and how long they can work. Be sure to read the section of this sheet regarding the restrictions on child labor.

Do I have to pay children minimum wages and overtime?

At the time this sheet was printed, the minimum wage was \$5.15 per hour. However, children are exempt from the minimum wage and overtime standards if they fall into one of the following categories:

- You (the employer) are the child's parent.
- The child is working as a hand-harvest laborer and meets all three of the following requirements:
 - 1) He/she is paid on a piece-rate basis and is working in an operation that is generally recognized as paying its workers on a piece-rate basis.
 - 2) The child is working on the same farm as their parent or guardian.
 - 3) The child is paid the same piece-rate for his/her work as employees who are over sixteen years of age.
- If your farm used less than the "500 man-days per quarter" agricultural labor standard¹ last year, children working for you are exempt from minimum wage and overtime requirements.

Also, if an employee is under 20 years of age, he/she can be paid at a wage of \$4.25 or more per hour for the first 90 consecutive calendar days of employment.

What are the restrictions on child labor on the farm?

Jobs Children Can Perform

With the exception of children employed on their parents' or guardians' farms, children under the age of sixteen cannot be employed in any of the activities declared hazardous by the Occupational Safety and Health Administration (OSHA). See Table 1 for a listing of these occupations.

Hours Children Can Work

Regardless of who employs them, children can't work during school hours. During a school day, they can work for

a maximum of three hours. On a non-school day, they can work eight hours. In total, children can work a maximum of eighteen hours during a week when school is in session, and 40 hours in a week when school is not in session. In the Oklahoma Statutes, "in session" is defined as the first Tuesday after Labor Day through May 31st of the following year.

Children are not allowed to work between the hours of seven o'clock p.m. and seven o'clock a.m., except during the summer (summer is defined in the Oklahoma Statutes as June 1st through Labor Day). On a day that precedes a non-school day (for example, a Friday in most school districts), children can work until nine o'clock p.m.

Children under the age of sixteen must be allowed a one-hour cumulative rest period for each eight consecutive hours worked, and they must be allowed a one-half-hour rest period for each five consecutive hours worked.

Educational Requirements / Proof of Age

Children can't work unless they either (1) are able to read and write, or (2) have attended school during the preceding year. The child's age and educational status must be documented by an "age and schooling" certificate, which the child must present before beginning work. This certificate serves as evidence, confirmed by the child's parents and a principal (or headmaster), that the child is of the stated age and education level. A sample "age and schooling" certificate can be found in title 40 of the Oklahoma Statutes, section 80. As long as you employ the child, you need to keep the certificate on record. When the child's employment ends, you must give the certificate back to them.

Additional Records

In addition to keeping the age and schooling certificate on file, you must also keep the following records on file if you employ a child or children under age sixteen:

- a list of all such children
- the time your establishment opens and closes
- the number of hours of labor required or permitted

- the hours that work starts and ends
- the time allowed for meals
- If there are two or more shifts at your operation, the number of hours in each shift during which the employees are required or permitted to work must be recorded.

It may seem awkward to record some of the times for an agricultural operation; try to use the best approximations you can.

Legal References:

The Fair Labor Standards Act (FLSA) 29 USC 201 et seq.
Oklahoma Statutes 40 OS 71 et seq.

¹ The "500 man-days per quarter" agricultural labor standard

The Fair Labor Standards Act (29 USC § 201 et seq.) provides exemption from minimum wage and maximum hours (overtime) requirements for employees that work on agricultural operations that did not use more than 500 man-days of agricultural labor in any calendar quarter of the previous calendar year. A "man-day" of agricultural labor is a day on which one employee worked for an hour or more on agricultural tasks. For example, if an employee works for an hour or more on agricultural tasks on three different days, he/she has performed three man-days of labor. Two employees working on those days would have performed six man-days of labor. You do not need to count the labor of immediate family members toward this measure.

A calendar quarter is one of the three month segments that are divided as January 1st through March 31st, April 1st through June 30th, July 1st through September 30th, and October 1st through December 31st. Thus, a farming operation that did not use more than 500 man-days of agricultural labor during any calendar quarter of the last calendar year is eligible for the appropriate exemptions.

Table 1 – Occupations in Agriculture Considered Hazardous to Children

The following occupations in agriculture have been found to be particularly hazardous for the employment of children below the age of sixteen.

- (1) Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.
 - (2) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
 - (i) Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;
 - (ii) Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity type self-unloading wagon or trailer; or
 - (iii) Power post-hole digger, power post driver, or nonwalking type rotary tiller.
 - (3) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
 - (i) Trencher or earthmoving equipment;
 - (ii) Fork lift;
 - (iii) Potato combine; or
 - (iv) Power-driven circular, band, or chain saw.
 - (4) Working on a farm in a yard, pen, or stall occupied by a:
 - (i) Bull, boar, or stud horse maintained for breeding purposes; or
 - (ii) Sow with suckling pigs, or cow with newborn calf (with umbilical cord present)
 - (5) Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches.
 - (6) Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.
 - (7) Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.
 - (8) Working inside:
 - (i) A fruit, forage, or grain storage structure designed to retain an oxygen deficient or toxic atmosphere;
 - (ii) An upright silo within two weeks after silage has been added or when a top unloading device is in operating position;
 - (iii) A manure pit; or
 - (iv) A horizontal silo while operating a tractor for packing purposes.
 - (9) Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) as having Category I toxicity, identified by the word "poison" and the "skull and crossbones" on the label; or having Category II toxicity, identified by the word "warning" on the label;
 - (10) Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or
 - (11) Transporting, transferring, or applying anhydrous ammonia.
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Occupational definitions. In applying the machinery, equipment, or facility terms used in this list, guidance can be found in the definitions contained in the current edition of *Agricultural Engineering*, a dictionary and handbook, Interstate Printers and Publishers, Danville, Ill. Copies of this dictionary and handbook are available for examination in Regional Offices of the Wage and Hour Division, U.S. Department of Labor.

Legal reference: 29 CFR Sec. 570.71

The Oklahoma Cooperative Extension Service

Bringing the University to You!

The Cooperative Extension Service is the largest, most successful informal educational organization in the world. It is a nationwide system funded and guided by a partnership of federal, state, and local governments that delivers information to help people help themselves through the land-grant university system.

Extension carries out programs in the broad categories of agriculture, natural resources and environment; home economics; 4-H and other youth; and community resource development. Extension staff members live and work among the people they serve to help stimulate and educate Americans to plan ahead and cope with their problems.

Some characteristics of the Cooperative Extension system are:

- The federal, state, and local governments cooperatively share in its financial support and program direction.
- It is administered by the land-grant university as designated by the state legislature through an Extension director.
- Extension programs are nonpolitical, objective, and based on factual information.
- It provides practical, problem-oriented education for people of all ages. It is designated to take the knowledge of the university to those persons who do not or cannot participate in the formal classroom instruction of the university.
- It utilizes research from university, government, and other sources to help people make their own decisions.
- More than a million volunteers help multiply the impact of the Extension professional staff.
- It dispenses no funds to the public.
- It is not a regulatory agency, but it does inform people of regulations and of their options in meeting them.
- Local programs are developed and carried out in full recognition of national problems and goals.
- The Extension staff educates people through personal contacts, meetings, demonstrations, and the mass media.
- Extension has the built-in flexibility to adjust its programs and subject matter to meet new needs. Activities shift from year to year as citizen groups and Extension workers close to the problems advise changes.

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