

Chapter 817. Child Labor

The Texas Workforce Commission (Commission) proposes amendments to §§817.4, 817.21, and 817.23, relating to employment of children in the State of Texas.

The purpose of amending §817.4 is to clarify the intent of the Commission regarding applicability of federal laws, including any and all amendments. The purpose of amending §§817.21 and 817.23 is to clarify that the Commission will comply with federal regulations to the extent they are consistent with the federal law. If the federal regulations are not consistent with federal law, the Commission will comply with the federal law.

The Texas Child Labor Law, found at Chapter 51 of the Texas Labor Code, addresses the employment of children in Texas and ensures the protection of children from employment in occupations that are detrimental to a child's safety, health, or well being.

Proceeding under the Commission's rulemaking authority, the Commission adopted rules incorporating sections of the Code of Federal Regulations addressing child labor to the extent that they governed the employment of 14 and 15 year old children and 16 and 17 year old children, and to the extent that such regulations were consistent with the Texas Labor Code, Chapter 51. The incorporated federal regulations were based on the Fair Labor Standards Act. By adopting the relevant federal regulations as Texas law, the Commission was able to attain its purpose of consistency with federal law to the extent the Legislature did not address such child labor law issues.

Two amendments to the Fair Labor Standards Act have resulted in an inconsistency between the federal statute and the federal regulations governing child labor. The first amendment, affecting Order 2 at 29 C.F.R. §570.52, establishes a minimum age of 17 years for any on-the-job driving on public roads. The current federal regulations under Order 2 reflect that 16 and 17 year olds may drive if the driving is incidental and occasional to employment, thus failing to follow the FLSA amendment. The second amendment, affecting federal Order 12 at 29 C.F.R. §570.63, allows children age 16 and 17 to load scrap paper balers provided the employer abides by statutory conditions. The present version of the regulations at 29 C.F.R. §570.63 does not yet reflect this FLSA amendment. Without the forgoing amendments to the child labor law rules, the Commission is compelled to enforce child labor laws that do not reflect the Fair Labor Standards Act amendments, thereby causing confusion and inconsistency with federal child labor laws.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the amendments are in effect, the following statements will apply:

there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules;

there are no estimated reductions in costs to the state or to local governments expected as a result of enforcing or administering the rules;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing and administering the rule;

there are no foreseeable implications relating to costs or revenues to the state or to local governments as a result of enforcing or administering the amendments; and

there are no anticipated costs to persons who are required to comply with the rule as proposed.

Randy Townsend, Chief Financial Officer, has determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering these amendments because the amendments do not impose any burden not imposed by federal law.

Chester Skorupa, Director of Labor Law, has determined that for each year of the first five years that the amendments will be in effect, the public benefit anticipated as a result of amending these sections will be to ensure that Texas is consistent with federal child labor laws

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of these proposed amendments.

Comments on the proposed amendments may be submitted to Chester Skorupa, Labor Law Department, Texas Workforce Commission, 101 East 15th Street, Suite G-1, Austin, Texas 78778; Fax Number 512-834-3632; or E-mail to chester.skorupa@twc.state.tx.us.

Comments must be received by the Commission no later than 30 days from the date this proposal is published in the *Texas Register*.

Subchapter A. General Provisions

40 TAC §817.4

The amendment is proposed under Texas Labor Code §51.023 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of child labor laws in Texas.

The proposal affects the Texas Labor Code, Title 2.

§817.4. Statement of Commission Intent.

In adopting §817.21 of this title (relating to Limitations on the Employment of 14 and 15 Year Old Children) and §817.23 of this title (relating to Limitations on the Employment of 16 and 17 Year Old Children), the Commission intends for the federal child labor laws [~~regulations~~] to govern the employment of children in Texas unless a provision of this chapter or Texas Labor Code, Chapter 51, clearly indicates otherwise. The Commission so intends only to the extent the federal laws [~~regulations~~] are consistent with Texas Labor Code, Chapter 51.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on January 29, 1999.

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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 14, 1999

For further information, please call: (512) 463-8812

Subchapter B. Limitations on the Employment of Children

40 TAC §817.21, §817.23

The amendments are proposed under Texas Labor Code §51.023 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of child labor laws in Texas.

The proposal affects the Texas Labor Code, Title 2.

§817.21. Limitations on the Employment of 14 and 15 Year Old Children.

The Commission adopts by reference §§570.31 through 570.34 and §§570.70 through 570.72 of Title 29 of the Code of Federal Regulations, to the extent that they are consistent with the Fair Labor Standards Act (FLSA), 29 United States Code §201, et seq. . In the event of any inconsistency between federal regulations and the FLSA, the FLSA shall take precedence. The Commission adopts these regulations as state rules governing the employment of 14 and 15 year old children in Texas. These rules will apply to such employment whether or not that employment is subject to the federal Fair Labor Standards Act (FLSA), 29 United States Code §201, et seq. The application of this rule is limited to the extent it is consistent with Texas Labor Code, Chapter 51.

§817.23. Limitations on the Employment of 16 and 17 Year Old Children.

The Commission adopts by reference §§570.50 through 570.68 of Title 29 of the Code of Federal Regulations, to the extent that they are consistent with the Fair Labor Standards Act (FLSA), 29 United States Code §201, et seq. . In the event of any inconsistency between federal regulations and the FLSA, the FLSA shall take precedence. The Commission adopts these regulations as state rules governing the employment of 16 and 17 year old children in Texas. These rules will apply to such employment whether or not that employment is subject to the federal Fair Labor Standards Act (FLSA), 29 United States Code §201, et seq. The application of this rule is limited to the extent it is consistent with Texas Labor Code, Chapter 51.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on January 29, 1999.

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J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

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