

TITLE 40. SOCIAL SERVICES AND ASSISTANCE  
PART XX. Texas Workforce Commission  
CHAPTER 817. Child Labor

The Texas Workforce Commission proposes repeals to §§817.1-817.8 and new §§817.1-817.5, 817.21-23, and 817.31-33, concerning Child Labor.

The repeals and new sections result in a rearrangement of the rules into a new format incorporating technical and clarity changes.

The technical changes include items such as changing "Texas Employment Commission" to "Texas Workforce Commission," changing "administrator" to "executive director," and changing "agency" to "commission." The technical changes are proposed to conform terms to those required by the Texas Labor Code, Chapter 51, and Texas Workforce Commission's enabling legislation. The clarity changes include items such as adding subchapters, breaking down old sections into several shorter sections, naming sections accordingly and adding clarifying language to the rules as needed. New language is proposed clarifying the expiration date of a special authorization for child actors employed as extras. A comparison of the new language and structure with the old language may be obtained from Jerry Ramos at (512) 795-6605.

Randy Townsend, Director of Finance, has determined that for the first five-year period the repeals are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

LaSha Barefield, Deputy Director of Labor Law Enforcement, Education & Regulation, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be to provide a clear understanding of the rules implementing and interpreting the provisions of the Texas Labor Code, Chapter 51, Employment of Children. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the proposed repeal and new rules.

Comments on the proposal may be submitted to Jerry Ramos, Child Labor Department, Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778-0001; (512) 795-6605; facsimile number (512) 346-5047.

40 TAC §§817.1-817.8

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Labor Code, Chapter 51, Employment of Children. The proposed repeals affect the Texas Labor Code, Title 4, and Texas Labor Code, Chapter 51, Employment of Children.

§817.1. Definitions.

§817.2. Certificates of Age.

§817.3. Hardship Waiver of Hours Requirements for 14 and 15 Year Olds.

§817.4. Employment of 14 and 15 Year Old Children.

§817.5. Employment of 16 and 17 Year Old Children.

§817.6. Statement of Commission Intent.

§817.7. Restriction of Employment.

§817.8. Child Actors.

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.

Issued in Austin, Texas, on October 20, 1997.

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

#### SUBCHAPTER A. General Provisions

##### 40 TAC §§817.1-817.5

The new sections are proposed under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Labor Code, Chapter 51, Employment of Children.

The proposed new rules affect the Texas Labor Code, Title 4, and Texas Labor Code, Chapter 51, Employment of Children.

##### §817.1. Title and Purpose.

- (a) Title. These rules may be cited as the Texas Child Labor Rules.
- (b) Purpose. The purpose of these rules is to implement and interpret the provisions of the Texas Labor Code, Chapter 51, Employment of Children.

##### §817.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Applicant--A child or the child's parent, legal guardian, legal custodian, or prospective employer.

Child--An individual under 18 years of age.

Child actor--A child under the age of 14 who is to be employed as an actor or other performer.

Commission--Texas Workforce Commission.

Executive director--The executive director of the Texas Workforce Commission or the executive director's designee.

##### §817.3. Employment of Children.

Employment of children not permitted by Subchapter B of this Chapter (relating to Limitations on the Employment of Children), Subchapter C of this Chapter (relating to Employment of Child Actors), or the Texas Labor Code, Chapter 51, is prohibited.

##### §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 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 regulations are consistent with Texas Labor Code, Chapter 51.

##### §817.5. Certificate of Age.

(a) To request a certificate of age, an applicant must submit the following:

- (1) a completed application on a form provided by the Commission;
- (2) a recent photograph (color or black and white) approximately 1 1/2 inches by 1 1/2 inches, showing a full head shot of the applicant; and
- (3) proof of age. A copy of one of the following documents is required as proof of age:

(A) birth certificate;

(B) baptismal certificate showing the date of birth;

(C) life insurance policy insuring the life of the child reflecting the date of

birth;

(D) passport or certificate of arrival in the United States issued not more than one year prior to the date of application for certificate; or

(E) the school record or the school-census record of the age of the child, together with the sworn statement of a parent, guardian, or person having custody of the child as to the age of the child and also a certificate signed by a physician specifying his opinion as to the age of the child, and the height, weight, and other facts relating to development upon which his opinion concerning age is based.

(b) Certificates of age are effective from the date of their issuance until the applicant reaches 18 years of age. No renewal is necessary, but lost certificates may be reissued upon new application.

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.

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#### SUBCHAPTER B.Limitations on the Employment Children

##### 40 TAC §§817.21-817.23

The new sections are proposed under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Labor Code, Chapter 51, Employment of Children.

The proposed new rules affect the Texas Labor Code, Title 4, and Texas Labor Code, Chapter 51, Employment of Children.

##### §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. 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.

##### §817.22.Hardship Waiver of Hours Requirements for 14 and 15 Year Old Children.

(a) An applicant applying for a hardship waiver from the limitations on hours worked for 14 and 15 year old children must obtain a certificate of age under the provisions of §817.5 of this title (relating to Certificate of Age) and file a hardship application. The applicant may file both applications concurrently.

(b) A hardship application must contain:

(1) full details of the prospective employment and the proposed hours to be worked;

(2) a written statement that it is necessary for the child to work to support himself or his immediate family, with supporting information;

(3) a written statement from the principal of the school in which the child is enrolled as to the advisability of allowing the child to work the hours identified; and

(4) a written statement from the prospective employer. The prospective

employer's statement shall provide:

- (A) that the child will be employed; and
- (B) full details of the work, including rate of pay, hours to be worked, and expected duration of employment.
- (c) A hardship application may contain any other information the applicant believes would support the granting of the waiver.
- (d) All waivers shall be valid for one year unless established for a shorter period and may be extended at the sole discretion of the executive director.
- (e) After all pertinent information has been reviewed by the Commission, the waiver will be granted or denied. If additional information is needed before a decision is made, the Commission may gather additional facts and schedule a conference to review the merits of the application with interested persons.
- (f) At any conference the Commission will be represented by an employee designated by the executive director who shall make a written report to the executive director within 20 working days following the conference. The report shall contain a determination as to whether or not the waiver should be granted. Unless changed by the executive director, the initial determination shall remain in full force and effect. All interested parties will be advised in writing of the final determination of the Commission as soon as practicable. No appeal to the Commissioners is authorized.
- (g) This proceeding is not a contested case under the Texas Government Code, Chapter 2001, Administrative Procedure Act.

#### §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. 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.

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#### SUBCHAPTER C.Employment of Child Actors

##### 40 TAC §§817.31-817.33

The new sections are proposed under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Labor Code, Chapter 51, Employment of Children.

The proposed new rules affect the Texas Labor Code, Title 4, and Texas Labor Code, Chapter 51, Employment of Children.

#### §817.31.Child Actor Authorization.

(a) A child under 14 years of age may be employed in Texas as a child actor only by compliance with the provisions of this Subchapter.

(b) Every person applying for child actor authorization must submit:

- (1) an application for authorization on a form provided by the Commission and signed by a parent, guardian, or person having custody of the child;

(2) proof of age; and

(3) a photograph that complies with §817.5 of this title (relating to Certificate of Age).

(c) An authorization is effective when issued and expires when the child reaches 14 years of age, unless the Commission establishes a shorter time period. Lost authorization certificates may be reissued upon new application.

#### §817.32.Application Exceptions.

(a) Special authorization for child actors to be employed as extras is granted without the need for filing an application if the employer or its agent:

(1) communicates with the Commission prior to the actual work being performed, identifying the employer, the project, the approximate number of extras intended to be employed on the particular project, and the anticipated dates of employment;

(2) prior to employment, uses reasonable efforts to establish that each prospective child actor extra is under 14 years of age;

(3) secures the written consent of a parent, guardian, or person having custody of the child to his or her employment as an extra on the particular project;

(4) notifies all affected school principals of the intent to employ their students as extras, furnishing such details concerning the nature and duration of the work as to give school authorities reasonable information concerning the proposed use of their students in the particular project; and

(5) submits a written post-production report to the Commission, within 10 days following the last day extras are employed, identifying the name, social security number, date of birth, and inclusive dates of employment for each child actor so employed, certifying compliance with Texas Labor Code, Chapter 51 and this Chapter 817 (relating to Child Labor).

(b) Special authorizations for extras are deemed effective upon employment and expire as soon as one of the following events occurs:

(1) the child reaches age 14;

(2) the child receives a Child Actor Authorization;

(3) the parent, guardian, or person having custody of the child revokes consent in writing; or

(4) the child's employment on the particular project by that employer ends.

#### §817.33.Limitations on Employment of Child Actors.

No child actor under 14 years of age may be employed:

(1) in a manner that results in a failure to receive class credits because of unexcused class absences, or any violation of the State Compulsory School Attendance Law, Texas Education Code, §25.085, either as it is presently worded or may hereafter be amended to read, or of any rules promulgated thereunder;

(2) in a position declared hazardous by the Commission;

(3) during hours that would not be within the limits set by Texas Labor Code, §51.013, for 14 and 15 year old children, except that the child is permitted, with parental consent, to work during otherwise prohibited hours, so long as the child does not work again for the same employer within 12 hours after completing work for the particular session and does not by being so employed work in excess of eight hours in one day or 48 hours in one week;

(4) where the child is required to use a dressing room that is simultaneously occupied by an adult or by a child of the opposite sex;

(5) where the child is not provided with a suitable place to rest or play;

(6) where the child is sent to wardrobe, makeup, or hair-dressing, unless the child is under the general supervision of the child's parent, guardian, or person having custody of the child if the parent, guardian or person having custody is physically present at the place of employment;

(7) where the child's parent, guardian, or person having custody of the child is

prevented from being present at the place of employment while the child is working;

(8) where the child's parent, guardian, or person having custody of the child is prevented from being within sight and sound of the child at any time during employment; or

(9) for more than two consecutive school days during a school year in which the child is legally required to attend school without being furnished a tutor for the child's continuing education. The tutor shall be certified to teach in Texas by the Texas Education Agency or the State Board for Educator Certification, and shall make reasonable efforts to coordinate subjects and assignments with the child's classroom teachers.

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.

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