The Nonprofit Advocate

Covering Legal Issues for Nonprofit Organizations

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Hiring Teen Workers for the Summer? Legal Restrictions Employers Must Consider

For many employers, summer often means an increase in the number of teen workers. While teen workers can be a great asset to an organization, employers must remain aware of applicable local, state and federal laws. Both Ohio law and the federal Fair Labor Standards Act (FLSA) contain work restrictions that are intended to protect minors. The restrictions vary based on the age of the minor, whether or not the minor is in school and the type of work in which the minor is involved.

Prohibited or Substantially Restricted Occupations & Activities

- Under both state and federal law, employees under the age of 18 are generally prohibited from working in extremely hazardous occupations, such as chemical manufacturing or roofing. These types of restrictions could apply to nonprofit employers involved in constructing or rehabilitating homes.
- Employees under the age of 16 are prohibited from all manufacturing jobs, working in freezers and meat coolers, working in boiler or engine rooms, loading and unloading delivery trucks and from all warehouse work except for clerical jobs. The loading restrictions could, for example, apply to nonprofit employers managing large quantities of donated items.
- All minors are generally prohibited from operating motor vehicles on public roads and highways or from serving as outside helpers on motor vehicles on public roads. An employer can permit a 17-year-old employee to drive on public roads or highways in the course of work only through the "incidental and occasional" driving exemption incorporated under FLSA. But even this exemption is subject to the additional restrictions under the Drive for Teen Employment Act of 1988 (*e.g.*, driving must be limited to daylight hours and the teen must have a record clear of driving violations).
- Federal and state laws prohibit minors under the age of 16 from engaging in door-to-door sales or solicitation, unless certain very specific conditions are met.
- Federal regulations restrict the type of cooking activities that minors can perform, particularly younger employees. For example, minors under the age of 16 may not cook on a grill that has an open flame, may not use cooking devices that operate at extremely high temperatures and may not clean equipment when the surface is hotter than 100º F. These types of restrictions could apply to meal centers operated by nonprofit organizations.
- Federal law prohibits the employment of minors under the age of 14, with very limited exceptions (*i.e.*, newspaper delivery, certain agricultural enterprises, actors and performers).

Wage, Hour and Break Requirements for Minors

- When not in school, employees under 16 are permitted to work until 9:00 p.m., but they cannot work more than eight hours a day or 40 hours a week 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. Such programs must also meet standards established by the state Board of Education.

- For teen workers age 16 or 17, there are no limitations on the starting and ending time for work and no limitation in hours worked per day or week when school is not in session.
- All employees under the age of 18 are required to have a 30-minute break every five hours.

Records

- Under Ohio law, all employers must keep written records that track hours worked, meal periods and wages paid for minors. Employers must keep these records for a period of at least two years.

Conclusion

While local, state, and federal laws related to the hiring of minors tend to be similar, employers should check all three levels of law (*i.e.*, federal, state, and local). In the case of any discrepancy between the laws, employers should follow the most restrictive law.

If you have any questions about this article or any other employment matter, please contact Lisa Kathumbi at 614.227.2326 or lkathumbi@bricker.com, or any other member of The Human Resources Law Group.

Quick Hits

Supporting Organization Payout Requirement Rules Expected

The IRS has announced that it expects to publish new proposed rules by June 30 for mandatory payout requirements of supporting organizations, stating that the Type III functionally integrated supporting organization guidance project is a priority for 2009. The Pension Protection Act of 2006 (Pub. L. No. 109-280) amended the requirements that a tax-exempt organization must meet to qualify as a Type III supporting organization under Code Section 509(a)(3). The IRS published an advance notice of proposed rulemaking last August requiring Type III supporting organizations that are not functionally integrated to meet a payout requirement that is equal to the qualified distributions requirement of private non-operating foundations. Private non-operating foundations, in order to avoid an excise tax, are required to make certain qualifying distributions each year equal to their maximum investment return. The advance notice would call for these foundations to annually distribute to or for the use of its supported organizations at least 5 percent of the aggregate fair market value of all of its assets, other than assets that are used, or held for use, directly in supporting the charitable programs of its supported organizations.

New Information on Regional Health Information Organizations Released by IRS

On April 6, the IRS published new frequently asked questions on its website (www.irs.gov) relating to regional health information organizations (RHIOs). RHIOs are organizations formed and operated to facilitate the exchange of electronic health records among hospitals, physicians and others in the health care system. RHIOs, which can qualify for tax exemption, recently received a boost from the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5). The ARRA included provisions related to the promotion of health information technology development and information exchange. According to the IRS, Congress has recognized that facilitating health information exchange and technology is important to improving the delivery of health care and reducing the costs of health care delivery and administration.

Comments Welcome on Exempt Organization Academic Institution Initiative Implementation

IRS Announcement 2009-26, published April 6, requests comments on the implementation and content of the Exempt Organization Academic Institute Initiative, which is a new academic program that will reach out directly to academic institutions offering degrees related to the nonprofit sector. With hopes of promoting the education of exempt organization tax law, collaboration is sought between the Exempt Organization Division's Customer Education and Outreach function and the institutions. The IRS would like general comments to the initiative as well as volunteers willing to be involved more extensively in commenting on the initiative. According to the IRS, students at academic institutions offering

programs that develop, cultivate and promote professionals involved in the exempt organization sector may one day be the leaders of such sector. Therefore, the IRS is attempting to reach these students with education and outreach programs.

Payouts Not Expected to Work for Underwater University Endowment Funds

In an economy in which many university endowment funds are underwater, the National Association of College and University Business Officers does not believe that a mandatory spending rate for these funds will work. According to John Walda, president of the Association, it is likely that Sen. Charles Grassley (R-Iowa), a proponent of required spending, will back off his plan for now in order to give universities a chance to show they can prudently invest their funds. The average value of university endowments from July through December was down 20 percent. Mandatory spending would run contrary to an endowment's mission of keeping donors' principal intact while spending income and appreciation. The new Uniform Prudent Management of Institutional Funds Act, although not yet adopted by all states, was approved in 2006 and gives charities and foundations much more flexibility with regard to investments. States that have adopted the Act are now able to continue to spend from underwater endowments, so they can support the operating revenue needs of their institutions. According to the Council on Foundations, one disturbing trend is that some community foundations with endowed advised funds are looking at net asset reallocation.

Legislation Introduced on Conversion of Newspapers to Nonprofits in Attempt to Help the Industry

In an attempt to help the newspaper industry, Sen. Benjamin Cardin (D-Md.) on March 24 introduced Senate Bill 673, which would permit newspapers to become nonprofit organizations. The Newspaper Revitalization Act would give qualified newspaper corporations the option of operating as nonprofits under Code Section 501(c)(3) for educational purposes similar to public broadcasting. If a newspaper were to become tax exempt, although it would be permitted to report freely on all issues, it would not be permitted to make political endorsements. Contributions to the paper's operations could be tax deductible, and advertising and subscription revenue would be tax exempt. According to a news release from Cardin's office, S.B. 673 is geared toward local newspapers rather than big conglomerates, and because newspaper profits have been falling in recent years, no substantial loss of federal revenue is expected.

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