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New Child Labor Law Signals Changes for Employers, Attorneys

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On May 26, 2023, Governor Kim Reynolds signed Senate File 542¹, an Act relating to youth employment. For Iowa employers who employ minors, the law could be significant. Iowa employers that choose to take advantage of the new Iowa law when it takes effect on July 1, 2023, should be aware of the potential conflicts and potential legal challenges and make decisions accordingly. Attorneys advising employers should be aware of the potential of the Department of Labor (“DOL”) action to enforce federal child labor standards and understand how federal and state laws differ.

TYPE OF WORK

SF 542 is a major rewrite of Iowa Code Chapter 92 (child labor). Among other items, the bill modifies the status

Continued on page 4

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WHAT’S INSIDE

New Child Labor Law Signals Changes for Employers, Attorneys.....	1
IDCA President’s Letter	2
New Member Profile	5
59 th Annual Meeting and Seminar	6
Case Law Update	8

Continued from Page 1

quo by extending allowable working hours for 14 and 15-year-olds, modifying the scope of permissible occupations for certain aged children, and permitting 16 and 17-year-old employees to serve alcohol in certain establishments.

Some employers and attorneys have raised concerns that certain provisions of SF 542 conflict with federal child labor regulations found in the Fair Labor Standards Act ("FLSA"). Generally, state child labor laws may not be *less* restrictive than federal regulations, but many parts of the new Iowa law are less strict than the provisions of the FLSA. For example, the FLSA prohibits employment of 14 and 15-year-olds unless the employment is specifically listed in federal regulations² (e.g., bagging and carrying groceries, cashiering, or clerical work). But SF 542 modifies the list of allowable employment for 14 and 15-year-olds to include jobs that are expressly *not* listed in the federal regulations (e.g., working in industrial laundries and performing "light assembly work"). The new Iowa law also permits 14 and 15-year-olds to perform "momentary work" in a meat freezer, something expressly prohibited by the FLSA.

WORKING HOURS

Another potential conflict between the FLSA and the Iowa law involves permissible working hours for some minor employees. Federal regulations³ strictly limit how many hours per week a 14 or 15-year-old may work, which is usually no more than 18 hours per week when school is in session, no more than three hours per day on a day when school is in session, and only between 7:00 a.m. and 7:00 p.m. on any day during the traditional school year. SF 542, on the other hand, extends school year working hours to 9:00 p.m. and summer hours to 11:00 p.m. while also allowing 14 and 15-year-olds to work up to six hours on a school day.

These apparent conflicts have already caught the attention of federal regulators. While SF 542 was pending before the Iowa Legislature, the DOL's top enforcement lawyer wrote⁴ to a group of Iowa lawmakers that certain provisions of SF 542 violated the FLSA. To be sure, the Iowa and federal regulations were not perfectly aligned prior to SF 542: the prior version of Iowa Code § 92.7 permits a child under sixteen to work up to 28 hours per week when school is in session, even though federal regulations limit the child to 18 hours per week during the school year. The DOL's early involvement regarding the new child labor law, and the scope of the changes to the law, may suggest that the DOL will be closely monitoring Iowa's new child labor standards.

MANDATORY SEXUAL HARASSMENT TRAINING

SF 542 also contains an amendment to Iowa's alcohol control statute to allow 16 and 17-year-olds to serve alcohol in certain

situations. Previously, an employee had to be 18 years old to serve open-container alcohol in Iowa. Under the new law, 16 or 17-year-olds can serve alcohol under the following conditions:

1. The establishment is a restaurant, and the kitchen is operating,
2. the employer obtains and maintains written permission from the minor's parent or legal guardian allowing them to serve alcohol,
3. at least two employees 18 years old or older are physically present when the minor is serving alcohol,
4. **the employer requires the minor to attend sexual harassment prevention training,**
5. **the employer agrees to notify the minor's guardian and the Iowa Civil Rights Commission if the employer becomes aware of an incident of harassment involving the minor,** and
6. the employer notifies its dram shop insurance provider that it employs a minor prior to the minor beginning employment.

The requirements to provide mandatory sexual harassment training and to report instances of harassment to the Iowa Civil Rights Commission (ICRC) are unique among Iowa's employment laws, which typically do not require mandatory trainings or reports to government agencies.

The text of SF 542 also leaves some questions about an employer's duty to report incidents of harassment: the law provides that if a minor "reports an incident of harassment to the employer or if the employer otherwise *becomes aware of such an incident,*" the employer must notify the minor's guardians and the ICRC. (Emphasis added.) Textually, the law does not limit the reporting requirement to incidents where the minor is the victim of an incident of harassment; SF 542, as written, could also be interpreted to require reporting if the minor witnesses and reports harassment or if the employer becomes aware of the minor engaging in harassing conduct. Despite the reporting requirements, the law is silent on the mechanics of how the ICRC would process a mandatory complaint by an employer.

Attorneys advising employers on potentially hiring minors to serve alcohol should understand the new reporting and training requirements. Employers should think about updating their harassment policies to reflect the mandatory reporting required under SF 542 when a minor employee reports (or otherwise is involved in) an incident of harassment. Employers should also implement age-appropriate sexual harassment training for minor employees serving alcohol that meets the statutory guidelines,

as more "traditional" sexual harassment training may not be appropriate and effective.

Attorneys in both advisory and litigation capacities should keep an eye on any potential legal challenges to SF542 and advise their clients accordingly.

- 1 <https://www.legis.iowa.gov/legislation/BillBook?ga=90&ba=SF542>
- 2 <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-V/subchapter-A/part-570/subpart-C>
- 3 <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-V/subchapter-A/part-570/subpart-C/section-570.35> eCFR :: 29 CFR 570.35 -- Hours of work and conditions of employment permitted for minors 14 and 15 years of age.
- 4 <https://www.senate.iowa.gov/democrats/wp-content/uploads/2023/05/DOL-Child-Labor-Law-Response.pdf>

New Member Profile



Benjamin J. Kenkel

Ben joined the Bradshaw Law Firm in 2019. The majority of Ben's law practice focuses on property, liability and automotive insurance coverage, insurance litigation, commercial litigation, product liability defense, and appellate litigation. In just two full years of practice, Ben has argued before the Iowa Court of Appeals and appeared on numerous appellate briefs before the Iowa Court of Appeals, the Iowa

Supreme Court, and the Eighth U.S. Circuit Court of Appeals. He is originally from Des Moines, Iowa and received his bachelor's degree in Anthropology from Iowa State University in 2010. He then worked in sales and marketing for several years before returning to law school and obtaining his law degree from the Drake University Law School in 2019. Ben spends most of his time outside work hiking and enjoying the outdoors with Warren, his three-year-old Brittany Spaniel.

Host a Webinar!

IDCA is recruiting speakers for its 2023 webinar calendar, and we invite you to participate as a presenter. Webinars are 1 hour long with a few minutes embedded for Q&A. Presentations are typically held on Wednesdays 12-1pm CST. IDCA webinars are a great opportunity for learning and to earn CLE hours.

Please reach out to Jessica at staff@iowadefensecounsel.org if you have a topic you'd like to present to our members!



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