



May 25, 2005

YR2005-1NA

Dear **Name***,

This is in response to your request that the Wage and Hour Division (WHD) clarify our enforcement position regarding the employment of 15-year-olds as lifeguards at swimming pools owned, operated or managed by your company, a swimming pool management company.

The WHD, part of the U. S. Department of Labor's Employment Standards Administration, is responsible for administering the Fair Labor Standards Act (FLSA). The FLSA is the federal law of most general application concerning wages, hours of work and youth employment. The youth employment provisions were enacted to ensure that when young people work, the work is safe, age-appropriate, and does not jeopardize their health, well-being, or schooling.

In defining "oppressive child labor," FLSA section 3(l) expressly prohibits children under the age of 16 from performing any work other than that which the Secretary of Labor permits, by order or regulation, because it does not interfere with their schooling or health and well-being. See 29 U.S.C. 203(l); see also 29 CFR 570.117-.119. The Secretary's declaration of what forms of labor are not deemed "oppressive" for children between the ages of 14 and 16 appears in Child Labor Regulation No. 3 (Reg. 3) 29 CFR 570.31-.38. Copies of the FLSA and Regulations, 29 CFR Part 570, are enclosed for your convenience.

Reg. 3 identifies a number of occupations or activities which are specifically prohibited for these youth without regard to the industry or the type of business in which their employer is engaged (e.g. "operation of any power-driven machinery other than office machines") (sec. 570.33). This section of Reg. 3 also incorporates by reference all of the prohibitions contained in the Hazardous Occupations Orders (29 CFR 570.50-.68), which identify occupations that are "particularly hazardous" and, therefore, banned for 16- and 17-year-olds (e.g. occupations involved in the operation of power-driven metal forming, punching and shearing machines) (see sec 570.33(e)). Further, Reg. 3 includes special rules for youth engaged in retail, food service, and gasoline service establishments – certain activities are expressly authorized (sec. 570.34(a)) whereas other activities are expressly prohibited (sec. 570.34(b)). For example, clerical work, cashiering and clean-up work are authorized, whereas "all work requiring the use of ladders, scaffolds, or their substitutes" is prohibited. These special rules apply only in the designated types of business.

The occupation of "lifeguard" is not specifically authorized in Reg. 3 as an occupation that 14- and 15-year-olds may perform. Therefore, a strict interpretation of the statute and Reg. 3 could prohibit any employee under age 16 from working as a lifeguard. In fact, the WHD did enforce such an interpretation until August of 2000. At that time, a local chapter of the American Red Cross contacted the WHD to inquire whether 15-year-olds could legally be employed as lifeguards under the youth employment provisions of the FLSA. The WHD responded that, although Reg. 3 does not specifically permit such employment, it would not assert, as a matter of its discretion, a violation of the youth employment provisions with regard to the employment of 15-year-olds in the occupation of lifeguard *provided* that the minor was trained and certified by the American Red Cross in aquatics and water safety. A copy of the letter is enclosed. That letter also detailed certain activities that the young lifeguards could or could not perform and stated that the WHD would enforce all the other applicable provisions of Reg. 3.

In 2003, a city government contacted the WHD to ask whether this limited enforcement position applied to pools operated by state and local governments. The WHD, in a letter dated September 2, 2003 (copy enclosed), clarified the August 2000 enforcement position by expressly including swimming pools owned and operated by state and local governments. In addition, the conditions of the enforcement position – the tasks 15-year-old lifeguards could or could not perform – were also revised and clarified.

Upon further consideration of the points recently raised by you and others, the WHD has decided to further clarify its position by expressly including within this limited enforcement position all employment of



15-year-olds as lifeguards at swimming pools under the conditions described below, regardless of who owns, operates or manages the establishment.

The WHD, relying on the expertise of the American Red Cross in the matter of water safety and, as a matter of discretion, will not assert a violation with regard to the employment of a 15-year-old in the occupation of “lifeguard” *provided that* the minor has been trained and certified by the American Red Cross or a similarly recognized certifying organization and is working under conditions that follow guidelines published by the American Red Cross. In addition to the safety, teaching, and rescue duties normally associated with the occupation of lifeguard, permitted duties for 15-year-olds include the use of a ladder to access and descend from the lifeguard chair; the use of hand tools to clean the pool and pool area; and the testing of water quality for temperature and/or pH. levels, using all of the tools of the testing process including adding chemicals to the test water sample. These youth also are permitted to conduct or officiate at swimming meets. These youth are prohibited, however, from entering or working in any chemical storage areas, including any areas where the filtration and chlorinating systems are housed.

Please note that this limited enforcement position only applies to the employment of 15-year-olds by FLSA-covered entities as lifeguards at traditional swimming pools. The WHD will continue to enforce strictly a minimum age of 16 years for the employment of lifeguards at places other than swimming pools, such as rivers, streams, lakes, reservoirs, wharfs, piers, and oceanside beaches. Fifteen-year-olds cannot work in a water amusement park at facilities other than a traditional swimming pool. Such prohibited facilities would include pools that feature elevated slides, artificial waves, or other amusement-type “rides” or mechanical devices.

The other provisions of Reg. 3 – particularly the restrictions on hours of work – continue to be fully applicable to the employment of such minors and will be enforced. Under Section 570.35, 15-year-olds may only be employed outside of school hours. They may be employed up to three hours on a day school is in session, and up to eight hours on a day when school is not in session. They may be employed up to eighteen hours in a week when school is in session, and up to forty hours in a week when school is not in session. Such youth may not be employed before 7:00 a.m. or after 7:00 p.m., except between June 1 and Labor Day when the evening hour is extended to 9:00 p.m.

Finally, we note that all states have their own youth employment provisions and may not recognize this federal limited enforcement position. When state provisions differ from the federal provisions, employers are held to the more stringent standard. For information about the youth employment provisions established by a specific state, you may wish to contact the office in that state responsible for administering youth employment provisions. The following Web site can help you identify the appropriate state office: www.dol.gov/esa/contacts/state_of.htm.

We trust that this information is responsive to your request. Please note that in addition to the materials we have enclosed with this letter, a wealth of compliance assistance information is available on the Department of Labor’s **YouthRules!** Web site located at www.youthrules.dol.gov.

Sincerely,

Michael Ginley
Director
Office of Enforcement Policy

Enclosures

** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*