

U.S. DEPARTMENT OF LABOR

WASHINGTON, DC 20210

May 10, 2023

The Honorable Nate Boulton
State of Iowa Ninetieth General Assembly
1007 E Grand Avenue
Des Moines, IA 50319

Dear Senator Boulton:

Thank you for your letter to the U.S. Department of Labor (Department) Solicitor of Labor, Seema Nanda and the Wage and Hour Division (WHD) Principal Deputy Administrator, Jessica Looman asking for technical assistance on the potential relationship between Iowa's proposed child labor legislation and the child labor provisions of the Fair Labor Standards Act (FLSA).

WHD is responsible for administering and enforcing some of our nation's most comprehensive labor laws. These include the minimum wage, overtime, and child labor provisions of the FLSA. Child labor laws ensure the safety and well-being of young workers and prevent work experiences from having a negative effect on a minor's health or education. The federal child labor regulations limit the employment of children in hazardous occupations and the hours worked by children under the age of 16. Children under 14 years of age generally may not be employed in non-agricultural occupations under the FLSA. Employers are responsible for ensuring compliance with all labor laws, including child labor laws.

WHD appreciates the concerns raised in your letter regarding the safety and welfare of children in Iowa, particularly the concern that proposed legislation, if enacted, may lead Iowa employers to violate federal child labor regulations. In your letter, you request that the Department provide the number of ongoing child labor investigations in Iowa. You also request that the Department provide information about whether the proposed legislation contradicts or is inconsistent with federal child labor regulations.

With respect to your first question, the Department does not typically release the number of open child labor investigations on a state level; however, the Department currently has over 600 child labor investigations underway nationwide, including in Iowa, and continues to field complaints and initiate investigations to protect children under the federal child labor laws.

With respect to your second question, the FLSA establishes federal standards with respect to child labor, and states cannot nullify federal requirements by enacting less protective standards. Therefore, if Iowa law were to conflict with the FLSA and the Department's regulations by permitting minors to work in occupations and during or for hours that they are otherwise prohibited from working under federal law, those state law provisions would be inconsistent with FLSA and the Department's regulations when the employer or child is covered by the FLSA.

Based on the information provided in your letter, the proposed Iowa legislation appears to be inconsistent with federal child labor law in several respects. Under federal law, 14- and 15-year-olds may only work in non-agricultural employment in the occupations specifically listed in 29 CFR 570.34. Permitted occupations for 14- and 15-year-olds in non-agricultural employment

include, for example, office and clerical work, bagging and carrying out customers' orders, and cashiering. *See id.* If the occupation is not specifically permitted, i.e., listed in section 570.34, then the occupation may not be performed by 14- and 15-year-olds and is considered oppressive child labor. *See* 29 CFR 570.32. The proposed Iowa bill would expressly permit 14- and 15-year-olds to work in industrial laundries and to "perform light assembly work." Work in any occupation not specifically listed in section 570.34 may not be performed by 14- and 15-year-olds to the extent the FLSA applies. As these work activities in the proposed Iowa bill do not appear to be covered by the permitted occupations in section 570.34, 14- and 15-year-olds are likely prohibited under federal law from performing such work. The bill would also expressly permit 14- and 15-year-olds to perform non-incident work in meat freezers, which is an occupation explicitly prohibited to be performed by 14- and 15-year-olds under federal law. *See* 29 CFR 570.33(i).

Your letter also states that the proposed legislation would permit 14- and 15-year-olds to work six-hour nightly shifts. Allowing children to work in this manner appears to violate the Department's non-agricultural child labor regulations in two ways. First, 14- and 15-year-olds covered by the FLSA may only work between 7 am and 7 pm and only outside of school hours during the school year and may work from 7 am to 9 pm between June 1 and Labor Day. *See* 29 CFR 570.35(a). Second, 14- and 15-year-olds may work no more than 3 hours on a school day, no more than 8 hours on a non-school day, no more than 18 hours/week during a week when school is in session, and for no more than 40 hours/week when school is not in session. *See id.* To the extent that the proposed legislation allows 14- and 15-year-olds covered by the FLSA to work beyond or in excess of these permitted hours, the legislation would be inconsistent with the Department's regulations.

You also state that the proposed legislation would permit employers to recruit 14-18-year-olds for a "work-based learning" program that may require the performance of hazardous job duties. As mentioned above, the Department's regulations generally prohibit the employment of children in hazardous occupations. While the Department's regulations provide limited exceptions to certain hazardous occupations orders in non-agricultural employment for apprentices and student-learners who are at least 16 years old, the child must be enrolled in an approved program. *See* 29 CFR 570.50. The State Educational Agency of a state may be granted approval by the Department to operate a Work Experience and Career Exploration Program (WECEP), which allows 14- and 15-year-olds to work in a career-oriented educational program with modified hours and occupation restrictions. *See* 29 CFR 570.36. Schools may also be granted approval by the Department to supervise and administer Work Study Programs (WSP), which allow 14- and 15-year-olds enrolled in a college preparatory program to work for certain hours during school hours. *See* 29 CFR 570.37. Both programs require Department approval, and each variance must meet specific requirements. Thus, to the extent that the "work-based learning" program in the proposed legislation does not meet the requirements of the Department's regulations as described, the program would be prohibited by federal law for employers or children covered by the FLSA.

The Department is available to provide compliance assistance to Iowa employers, parents, and young workers to help each understand their rights or obligations under the FLSA and the

Department's regulations. The Department will continue to closely monitor the status of child labor laws in Iowa and their potential ramifications for federal child labor law enforcement. We appreciate your concerns on this issue and the opportunity to work with you in ensuring that Iowan children who work do so in a safe and healthy environment.

Sincerely,

Seema Nanda

Seema Nanda
Solicitor of Labor

Jessica Looman

Jessica Looman
Principal Deputy Administrator, WHD