

ADMINISTRATIVE POLICY



STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

TITLE: PROCESS PROTOCOL FOR WORK-BASED NUMBER: ES.C.11
LEARNING STUDENT VARIANCE

CHAPTER: [RCW 49.12](#)
[WAC 296-125-030](#)
[WAC 296-131-125](#)

Date issued: 1/14/2009

ADMINISTRATIVE POLICY DISCLAIMER

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

A. Purpose:

Employers who partner with school-based work experience for high school student under the age of 18 may voluntarily submit to the Department of Labor & Industries (L&I) for its review, the feasibility for and approval of a work-based learning student variance for work activities prohibited under the Washington State child labor regulations that do not conflict with the child labor regulations administered by the U.S. Department of Labor under the Fair Labor Standards Act (FLSA), Part 570 of Title 29 of the Code of Federal Regulations .

This protocol establishes a process for submitting requests for review and evaluation that will provide positive learning experiences for students without jeopardizing their safety and ensuring that the employer is in compliance with the U.S. Department of Labor child labor regulations, and Washington State child labor and health and safety regulations. L&I can only grant a variance consistent with the student learner and apprentice exemptions to the federal child labor regulations. Subpart E and E-1 of Part 570 of Title 29 of the Code of Federal Regulations.

B. What a company must do to request that L&I evaluate the work-based learning experience:

1. Submit a written request to the department that describes in detail the work activity that students will be performing under the potential variance. Include the following: the number of students to be placed at the work site; the type of training for the tasks involved; safety and health training appropriate for the job; specific school(s) involved and the responsible teacher or work-based learning coordinator.
2. Send the letter to:
Program Manager or Teen Worker Supervisor
Employment Standards Program
Department of Labor & Industries
P O Box 44510
Olympia, WA 98504-4510

Or email to: teensafety@Lni.wa.gov
3. L&I will acknowledge receipt of the request for evaluation of the work-based learning activities and, if needed, will request that the company supply additional required information. An employer will also allow a site visit at the workplace to assess the job activities, supervision for the student, and agreements with the responsible school teacher or coordinator. Following a review and evaluation this is satisfactory by the department, the request will be approved in writing.

Note: Any and all documents submitted to L&I for review are subject to public disclosure both during and after completion of L&I's review.

C. General protocol for L&I's review of requests for evaluation of a work-based learning variance:

1. After receiving a request for evaluation of an employer's proposal, L&I will schedule a consultation visit with the Teen Worker Supervisor and the appropriate Division of Safety and Health (DOSH) consultation staff. An evaluation by L&I and DOSH will review the state and federal child labor and safety and health regulations; identify specific safety hazards present in the workplace that the student may potentially be exposed to, and identify that the employer is following the appropriate health and safety requirements.
2. Employers participating in the paid internship and subject to the requested variance will be in compliance with the state and federal child labor regulations and other elements of the state and federal Wage and Hour laws (see enclosed Teen Worker brochure for more details).

3. The employer must:
 - obtain a Master Business License from the Washington State Department of Licensing (cost is \$15 for a new business license, or \$9 upon renewal); when applying for their business license, they must request and obtain a minor work permit endorsement for their Master Business License.
 - post their Master Business License with a current minor work endorsement and renew it annually.
 - obtain a Parent/School Authorization Form signed by the minor's legal guardian and school (during the school year); the signed form is retained in their files and renewed annually.
 - keep proof of a minor's age on file, such as a copy of a birth certificate or driver's license, or a witness statement of the parent or legal guardian.
 - keep employment records, such as employee name, address, occupation, dates of employment and the hours worked, and complete description of job duties, for three years after hiring a minor.
4. Students must be enrolled in a course of study and training in a bona fide cooperative vocational training program or diversified career experience program certified and monitored by the Office of the Superintendent of Public Instruction (OSPI) or the student employee's school district or in a course of study in a substantially similar program by a private school. The students may also be involved in an apprenticeship program registered with the Washington State Apprenticeship and Training Council. Students who are home-schooled can only work as a student-learner for the purposes of an exemption under 29 CFR 570.50(c) if enrolled in a program hosted by a vocational school program, or public or private high school.
5. Students 16 or 17 years of age will be employed under a written agreement during the summer internship positions between their junior and senior years in high school and will be paid an hourly wage. Some students may continue to work part-time during the school year as part of their senior year work-based learning program.
6. Students who are participating as summer interns will have completed a safety module in school (e.g., SP2 course, www.sp2.org).
7. All students, when starting with the employer, will review the employer's safety rules and regulations with the mentor as well as take a tour of the shop and grounds in which potential hazards are pointed out.
8. Students will perform their assigned duties under the supervision of a trained mentor (technician).

9. Work of students in certain *non-agricultural* occupations is declared prohibited due to possible hazards under WAC 296-125-030. The federal hazardous occupations orders also restrict what work activities 16- and 17-year-old minors may perform. If the conditions listed in this policy are met, limited variances may be allowed for the following hazardous activities:
 - a. Power-driven woodworking machines;
 - b. Power-driven metal-forming, punching and shearing machines;
 - c. Meat packing or processing;
 - d. Power-driven paper-product machines;
 - e. Power-driven circular saws, band saws, and guillotine shears;
 - f. Roofing; and
 - g. Excavation.

10. Work of 14- or 15-year-old students in certain *agricultural* occupations is declared prohibited due to possible hazards under WAC 296-131-125. The federal hazardous occupations orders also restrict what work activities 14- and 15-year-old minors may perform. If the conditions listed in this policy are met, limited variances may be allowed for the following hazardous activities:
 - a. Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.
 - b. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
 - i. Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;
 - ii. Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a non-gravity type self-unloading wagon or trailer; or
 - iii. Power post-hole digger, power post driver, or non-walking type rotary tiller.
 - c. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
 - i. Trencher or earthmoving equipment;
 - ii. Fork lift; or
 - iii. Potato combine.
 - d. Working on a farm in a yard, pen, or stall occupied by a:
 - i. Bull, boar, or stud horse maintained for breeding purposes;
 - ii. Sow with suckling pigs, or cow with newborn calf (with umbilical cord present).
 - e. Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than six inches.
 - f. Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over twenty feet.

11. There are additional restricted work activities under Washington State law that may be considered for a variance on a case-by-case basis.
12. Such work will be incidental, intermittent and for short periods of time, for learning purposes only, and under the direct and close supervision of a qualified and experienced technician.
13. The requirement of direct and close supervision is met when there is one journeyman or experienced adult working with the first apprentice/student learner on-site and at least three journeymen or experienced adults working alongside each additional apprentice/student learner. The requirement for direct and close supervision applies only during the periods when the apprentice/student learner is actually performing work that would otherwise be prohibited under state and federal child labor regulations.
14. The defined technical competencies are based on the technical skill sets identified by the school's work-based learning program, including but not limited to a vocational education or pre-apprenticeship course of study.
15. A work-based learning course of study is designed to prepare the student for certification in selected areas identified by the school and the placement employer. Requesting entities should include some specifics pertaining to the course of study. As part of the program of study, upon completion, a student may be required to pass an exit exam or demonstrate passing competency and will receive a certificate at that time.
16. These on-the-job learning (internships) experiences may also lead to a pathway to registered apprenticeship opportunities within various industries.
17. Both the school's instructor and the employer mentor will assess the student's progress on a regular basis.

If a complaint by a parent, student, or customer arises regarding the student enrolled in one of the participating programs, OSPI's work-based learning coordinator, the employer coordinator and the Department of Labor and Industries' Employment Standards' Program Manager or Teen Worker Supervisor or their designees, will investigate the situation according to each organization's protocol. A review of the situation will be conducted and involve the appropriate L&I staff, the school principal and the instructor responsible for the student involved in this complaint.

All other state and federal Wage and Hour laws and health and safety regulations must also be adhered to. The variance and minor work permit for an individual employer will be revoked if the conditions of the variance are not followed. Minor work permit endorsements and variances must be renewed annually.