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VIA ELECTRONIC MAIL

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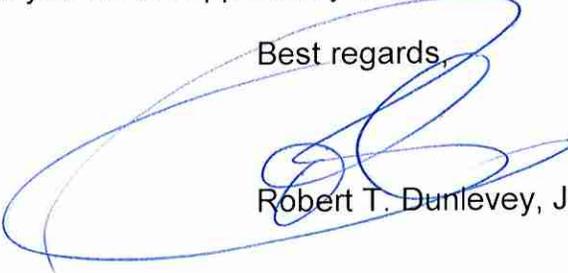
Re: Employment of Young Workers

Dear Rocco:

Last week, we sent to you an article regarding restrictions on the use of child labor. Most employers are interested in this type of information – especially at a time when we are at full employment and looking for additional help. The “development” section at the end of the article is of great interest. When I was in Washington recently, at the AGC Labor Law conference, it was discussed that there is a strong initiative to try to get more young workers into the construction industry. To permit them to perform these hazardous jobs at an earlier age will facilitate such. The attached article also discusses it. Roofing is one such example. I thought you would read this with interest.

As always, thank you for the opportunity to be of service.

Best regards,



Robert T. Dunlevey, Jr.

RTD/kdk

Enc: News article

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Trump Administration Wants to Train Teens in 'Hazardous' Jobs

By Ben Penn

Posted May 8, 2018, 6:00 AM

- Draft documents detail Labor Dept. initiative to relax youth protections, tied to apprenticeship expansion
- Proposal would remove limits on 16- to 17-year-olds trained in dangerous conditions

The Labor Department plans to unwind decades-old youth labor protections by allowing teenagers to work longer hours under some of the nation's most hazardous workplace conditions, sources familiar with the situation told Bloomberg Law.

The DOL will propose relaxing current rules—known as Hazardous Occupations Orders (HOs)—that prohibit 16- and 17-year-old apprentices and student learners from receiving extended, supervised training in certain dangerous jobs, said the two sources. That includes roofing work, as well as operating chainsaws, and various other power-driven machines that federal law recognizes as too dangerous for youth younger than 18.

The sources' accounts were corroborated by a summary of a draft regulation obtained by Bloomberg Law.

"The Department proposes to safely launch more family-sustaining careers by removing current regulatory restrictions on the amount of time that apprentices and student learners may perform HO-governed work," the DOL states in the summary.

One source, who spoke on condition of anonymity to discuss internal agency deliberations, confirmed the details of the summary. A second source—who also requested anonymity—verified that the general outline of the proposed rulemaking language was consistent with the department's intentions.

A DOL spokesman declined to comment for this story.

Currently, 16- to 17-year-old apprentices and high school students in vocational programs can receive limited exemptions to perform work in some of the hazardous occupations. Those exemptions generally don't exceed an hour a day.

The regulatory initiative, which hasn't been previously announced, fits with the Trump administration's broader goal of expanding earn-as-you-learn apprenticeship programs by replacing government red tape with industry-generated standards. It is also likely to have at least some bipartisan support from Democrats eager to create job opportunities for youth who aren't on track to attend a four-year university.

But the effort will receive sharp criticism among child labor advocates and former government officials, who say the rule would erase decades of progress in reducing youth occupational fatalities and injuries. Some also worry it would lead companies to abuse their newfound regulatory leniency by pushing lower-paid, younger workers into hazardous jobs and ignoring the tough-to-enforce supervision terms.

Win Win?

The administration plans to frame this as a rule to facilitate closely supervised training that actually enhances safety by allowing youth more practice on the machinery they can operate full time at 18. Further, Labor Secretary Alexander Acosta’s ability to navigate the politically fraught terrain of easing child labor protections may be smoothed with the support of at least one Senate Democrat.

This issue has hardly been at the top of the business community’s DOL regulatory wish list. But that doesn’t mean employers wouldn’t like to see the department update the rules to reflect modern advances that they say make the equipment safer for minors, said Alfred Robinson, a management-side attorney with Ogletree Deakins in Washington who represents the Associated General Contractors.

“There are a lot of technological and equipment and machinery advances where you can all but eliminate dangers to youth under 18,” Robinson, an acting administrator of the DOL’s Wage and Hour Division in the George W. Bush presidency, told Bloomberg Law. “When we can provide for a safe work environment and youth under 18 can participate in apprenticeship programs—and individuals over 18 can do likewise—I think it’s a win win for everybody.”

DOL Veteran: Rule ‘Stretches Credulity’

The DOL is expecting to propose an update to the hazardous occupations provisions of the Fair Labor Standards Act by October, according to a copy of the administration’s regulatory agenda notice reviewed by Bloomberg Law. The administration plans to unveil the notice as part of a May 9 release of the spring agenda listing all regulatory and deregulatory actions anticipated over the next 12 months.

A former WHD senior official who spent 20 years enforcing child labor law didn’t mince words when learning of the agency’s rulemaking intentions.

“When you find 16-year-olds running a meat slicer or a mini grinder or a trash compactor, we know kids are severely injured in those circumstances,” Michael Hancock, who left the WHD in 2015 to represent workers at the plaintiff firm Cohen Milstein in New York, told Bloomberg Law. “That’s why the laws exist in the first place.”

“Now we’re saying, ‘We’re going to open those hazards up to kids; we hope that the employer is going to follow the law to a T and make sure the kid is being closely supervised,’” added Hancock, who worked in both Republican and Democratic administrations. “I think that stretches credulity to think that’s how it’s actually going to work.”

Current law grants 16- to 17-year-old apprentices and students limited exemptions in seven of the 17 non-agricultural jobs designated by the labor secretary as “particularly hazardous.” Farming work is much more permissive for teens.

Minnesota Democrat Ally on Expansion

The business community hasn't been publicly advocating for expanded exemptions in non-farm hazardous occupations. Still, when the matter arose at a recent Senate hearing, Acosta telegraphed his interest in revising the law. In a twist, he seemed to reach consensus across the aisle with Sen. Amy Klobuchar (D-Minn.).

Klobuchar asked Acosta at a March 14 infrastructure hearing if he would consider lifting the hours restrictions on youth under 18. Relaying concerns from the manufacturing industry, she questioned how a one-hour time limit could be truly about safety concerns when teens can work a full day on this machinery once they turn 18.

"We certainly are looking into it," Acosta responded, in reference to extending the hours. "We're also looking into whether it makes sense to create exemptions if they're using the equipment as part of some training program, some educational program, an apprenticeship program, on the theory that we'd rather that they learn to use equipment the right way when they're 17 than use it for the first time when they're 18."

President Donald Trump tasked Acosta, through a June executive order, to improve industry flexibility and scale up the apprenticeship job training program by allowing companies to tailor the guidelines to their own workforce needs. The secretary frequently trumpets this push as a pathway to ensure that more Americans have the skills employers are demanding.

Separate from the HOs initiative, the department is currently writing rules to implement that executive order. Freeing up more opportunities to train youth on heavy machinery may lend itself to the overall apprenticeship push.

Major industry stakeholders with members affected by the hazardous occupations rule change—including the U.S. Chamber of Commerce, the National Association of Manufacturers, and the National Restaurant Association—did not provide a comment for this article.

Job-Training Versus Child-Safety

The tension between the child safety and workforce development communities on youth labor protections underscores the complex, nuanced debate that the rulemaking is poised to set off.

"When I started doing this kind of work 20 years ago, we were losing 70 kids a year at work, and now we are losing usually 20 or less," Reid Maki, coordinator of the Child Labor Coalition, told Bloomberg Law. "We've made substantial progress, and I think that the tightened hazardous occupations rules have played a role in the lowered death tolls for teenage workers. So I would not be in favor of relaxing any of these standards; I think it would be a tragic mistake and would lead to the death of teenage workers."

The Child Labor Coalition advocates for policies that protect children and youth from exploitative workplace conditions, including occupational hazards.

Eric Seleznow, a senior adviser at Jobs For the Future, oversaw the Obama administration's own effort to expand apprenticeships. He told Bloomberg Law that school systems, industry groups, and other bipartisan stakeholders are increasingly interested in creating more opportunities to safely teach high school juniors and seniors the skills to work in the so-called hazardous jobs.

"I hate to use the word hazardous because 18-year-olds are allowed to do it; a 17-and-a-half-year old is not," said Seleznow, who was a senior politically appointed employment and training official under then-Labor Secretary Thomas Perez. "An apprenticeship provides that close supervision on the job, which can help prevent it from being hazardous."

Seleznow wasn't aware of the new regulatory plans at DOL.

Hancock, the former WHD official, questioned the feasibility of tasking the agency's 900 field investigators with ensuring that teen apprentices and student learners are truly being kept out of harm's way.

"If you're saying you can do this because there's going to be close and constant supervision, how do you enforce that? Are you going to have cameras in the workplace?" Hancock asked.

Some of his concerns could be alleviated depending on the details included in the agency's eventual proposal. Regardless, though, an attempt to roll back these protections will inherently create controversy.

"There's always risk of backlash when you mess with the youth employment provisions," Alex Passantino, an acting WHD chief under President George W. Bush, told Bloomberg Law. "If it's thoughtful and it makes good sense for other goals they're trying to achieve, while still maintaining the ability of youth to be safe while they're performing work, that's the case you have to make."

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