

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SEVENTEEN

—
S.P. 548 - L.D. 1564

**An Act To Conform State Law to Federal Law While Promoting Safe
Working Environments for Minors**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation needs to take effect before the expiration of the 90-day period in order for it to apply to this summer's seasonal employment; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 26 MRSA §771, as amended by PL 1991, c. 544, §4, is further amended to read:

§771. Minors under 14 years of age

A minor under 14 years of age may not be employed, permitted or suffered to work in, ~~about or in connection with agriculture~~ nonagricultural or agricultural employment, except for agricultural employment in the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances, ~~any eating place, automatic laundries, retail establishment where frozen dairy products are manufactured on the premises, sporting or overnight camp, mercantile establishment or in outdoor occupations on the grounds of a hotel, and a minor between the ages of 14 and 16 years may not be so employed when the distance between the work place and the home of the minor, or any other factor, necessitates the minor's remaining away from home overnight~~ as long as the employment is in accordance with rules adopted pursuant to section 772 and in accordance with 29 Code of Federal Regulations, Part 570. This section does not apply to any ~~such~~ minor ~~who is employed directly by, with or under the supervision of either or both of the minor's parents; or to~~

any such minor under 14 years of age employed in school lunch programs, if limited to serving food and cleaning up dining rooms, or in a business solely owned by the minor's parents. A parent is prohibited from employing the parent's minor child in occupations declared hazardous by the director pursuant to section 772 and in accordance with 29 Code of Federal Regulations, Part 570.

Sec. 2. 26 MRSA §772, sub-§2, as amended by PL 2009, c. 631, §47 and affected by §51, is further amended to read:

2. Rules; list of employment and occupations. The director shall adopt rules to develop and maintain a list of employment and occupations not suitable for employment of for a minor. The rules must conform as far as practicable to the child labor provisions of the federal Fair Labor Standards Act of 1938, 29 United States Code, Section 212 and any associated regulations. The rules must also contain provisions prohibiting the employment of minors in places having nude entertainment and in registered dispensaries of marijuana for medical use authorized under Title 22, chapter 558-C and in establishments that cultivate, produce or sell marijuana or products in which marijuana is an ingredient or in recreational marijuana social clubs authorized under Title 7, chapter 417.

Sec. 3. 26 MRSA §773, as amended by PL 2009, c. 487, Pt. B, §12, is repealed.

Sec. 4. 26 MRSA §773-A is enacted to read:

§773-A. Occupations

1. Minors under 16 years of age. A minor under 16 years of age may not be employed, permitted or suffered to work in, about or in connection with any manufacturing or mechanical establishment, hotel, rooming house, laundry, except a laundry commonly known as an automatic laundry, dry cleaning establishment, bakery, poolroom or commercial place of amusement, including a traveling show or circus, or in conjunction with an amusement, game or show that allows or conducts betting.

2. Minors 14 and 15 years of age. The provisions of subsection 1 pertaining to manufacturing establishments do not apply to minors 14 years of age or older and under 16 years of age who are employed in retail establishments where any frozen dairy product or frozen dairy product mix or related food product is produced on the premises for retail sale locally, regardless of trade name or brand or coined name.

The provisions of subsection 1 pertaining to hotels or rooming houses do not apply to minors 14 years of age or older and under 16 years of age who are employed in outdoor occupations on the grounds of a hotel or who are employed in kitchens, dining rooms, recreational areas, lobbies and offices of a hotel. Minors 14 years of age or older and under 16 years of age are expressly prohibited from performing room service, housekeeping and making deliveries to guest rooms.

The provisions of subsection 1 pertaining to bakeries do not apply to minors 14 years of age or older and under 16 years of age who are employed in retail sales, product decorating, customer service operations or office work for these establishments, as long

as the retail, decorating, customer service or office areas are in a room separate from any baking operation.

Notwithstanding other provisions of subsection 1, a minor 14 years of age or older and under 16 years of age may be employed at a commercial place of amusement operating at a permanent location, except that the minor may not be employed at games of chance as defined in Title 17, chapter 62 or hazardous occupations as determined by the director.

Subsection 1 does not apply to any minor under 16 years of age employed in a business solely owned by the minor's parents. A parent is prohibited from employing the parent's minor child in occupations declared hazardous by the director pursuant to section 772 and in accordance with 29 Code of Federal Regulations, Part 570.

A minor 14 years of age or older and under 16 years of age may not be employed when the distance between the workplace and the home of the minor, or any other factor, necessitates the minor's remaining away from home overnight.

3. Minors 16 and 17 years of age. A minor who is 16 years of age or older and under 18 years of age:

A. May perform work in both nonagricultural and agricultural employment not in direct contact with hazardous machinery or hazardous substances in accordance with rules adopted pursuant to section 772 and in accordance with 29 Code of Federal Regulations, Part 570;

B. May perform work as a theatrical actor or film actor;

C. May be employed by a parent, but a parent is prohibited from employing the parent's minor child who is 16 years of age or older and under 18 years of age in occupations declared hazardous by the director in accordance with rules adopted pursuant to section 772 and in accordance with 29 Code of Federal Regulations, Part 570;

D. Is exempt from section 774, subsection 1, paragraphs A and C when performing work in the taking or catching of lobsters, fish or other marine organisms; and

E. Who has graduated from a vocational, career and technical or cooperative education program approved by the Department of Education and is hired by an employer to work in an occupation for which the minor has been trained and certified by the vocational program may work for that employer in that occupation.

Sec. 5. 26 MRSA §774, sub-§1, as amended by PL 2011, c. 174, §§1 to 3, is further amended to read:

1. Minors 16 and 17 years of age. A minor 16 years of age or older and under 18 years of age, enrolled in school, may not be employed as follows:

A. More than 50 hours in any week when the minor's school is not in session;

B. More than 24 hours in any week when the minor's school is in session. In addition, the maximum weekly hours a minor may work is 50 hours during any week that the approved school calendar for the minor's school is less than 3 days or during the first or last week of the school calendar, regardless of how many days the minor's

school is in session for the week. If requested, a school must provide verification of its closings to the minor's employer or the Department of Labor;

C. More than 10 hours in any day when the minor's school is not in session;

D. More than 6 hours in any day when the minor's school is in session, except that the minor may work up to 8 hours on the last scheduled day of the school week;

E. More than 6 consecutive days;

F. After 10:15 p.m. on a day preceding a day on which the minor's school is in session or after 12 midnight on a day that does not precede such a school day; or

G. Before 7 a.m. on a day on which the minor's school is in session or before 5 a.m. on any other day.

Sec. 6. 26 MRSA §775, sub-§4, as amended by PL 2001, c. 398, Pt. A, §1, is further amended to read:

4. Conditions for revocation. The superintendent may revoke the work permit issued to a minor by the bureau if the superintendent determines that the minor has not maintained the conditions for issuance of the work permit under subsection 2, paragraph A. The superintendent shall revoke 2nd work permits at the end of the summer vacation in accordance with the limits imposed by subsection 2, paragraph D. The superintendent shall notify the ~~Director of the Bureau of Labor Standards~~ director and the minor's employer in writing upon revoking a minor's work permit. The revocation is effective upon receipt by the employer of the superintendent's notice.

The bureau may revoke the work permit if the director determines the minor has not been employed in accordance with section 771, section 772, section 773-A or section 774 or if the bureau has determined that the permit was improperly signed. The director shall notify the superintendent and the minor's employer in writing upon revoking a minor's work permit.

Sec. 7. 26 MRSA §775, sub-§5, as enacted by PL 1991, c. 544, §5, is further amended to read:

5. Permit on file. The employer shall keep all work permits issued for the employer's minor employees on file and accessible to any attendance officer, ~~factory inspector or other authorized officer~~ or agent of the director charged with the enforcement of this subchapter.

Sec. 8. 26 MRSA §775, sub-§6, as amended by PL 1993, c. 527, §1, is further amended to read:

6. Exception. This section does not apply to minors engaged in work performed in the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances or to minors engaged in household work. Minors who are participants in summer youth employment and training programs funded by the Department of Labor are exempt from obtaining individual permits as long as the program employing the minor has submitted a ~~master permit as developed by~~ notice to the director ~~under section 777~~.

Sec. 9. 26 MRSA §777, as amended by PL 2001, c. 398, Pt. A, §2, is further amended to read:

§777. Permit formats

The blank work permit required by section 775 must be formulated by the director and furnished by appropriate means by the director to the persons authorized to sign work permits. The forms of the permits must be approved by the Office of the Attorney General. ~~Every work permit must be made out in triplicate. All triplicates, accompanied by the original papers on which the permits were signed, must be forwarded to the bureau by the officer signing the permits, within 24 hours of the time the permit was signed. The bureau shall examine the papers and promptly return them to the officer who sent them after validating the copies and retaining one copy for bureau files. The officer may then return to the minor all papers filed in proof of age. Whenever there is reason to believe that a work permit was improperly signed, the director, deputy director or agent shall notify the local superintendent of schools of the place in which the certificate was signed. The local superintendent shall cancel the permit when directed to do so by the director. The director may develop an electronic transmittal system to fulfill these requirements. Permit forms may be made available by the bureau and submitted in paper or electronic format as long as the parent's or guardian's signature is submitted to the superintendent.~~

~~The director shall develop a master permit system for participants in summer youth employment and training programs funded by the Department of Labor. The master permit eliminates the need for prior approval by the director or the superintendent of schools. A minor on a master permit may be removed from the master permit for the same reasons and in the same manner as applicable to an individual work permit.~~

Sec. 10. 26 MRSA §781, sub-§2, as enacted by PL 1991, c. 544, §10, is amended to read:

2. Intentional or knowing violation of section 771, 772 or 773-A. An employer who intentionally or knowingly employs, permits or suffers any minor to be employed or to work in violation of section 771, 772 or ~~773~~ 773-A is subject to the following ~~forfeiture or civil penalty fines~~, payable to the State and recoverable in a civil action:

- A. For the first violation or a violation not subject to an enhanced sanction under paragraph B or C, a ~~forfeiture or penalty~~ fine of not less than \$500;
- B. For a 2nd violation occurring within 3 years of a prior adjudication, a ~~penalty~~ fine of not less than \$5,000 nor more than \$20,000; or
- C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior adjudications, a ~~penalty~~ fine of not less than \$10,000 nor more than \$50,000.

Sec. 11. 39-A MRSA §408, sub-§§1 and 2, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to read:

1. Legally employed minors. A minor is deemed sui juris for the purpose of this Act if the minor's employer was not in violation of Title 26, section 771, 772 or ~~773~~

773-A at the time of the minor's injury. No other person has any cause of action or right to compensation for an injury to that minor employee except as provided in this section.

2. Illegally employed minors. A minor is not deemed to have waived the minor's right of action at common law and under section 104 if the minor's employer was in violation of Title 26, section 771, 772 or ~~773~~ 773-A at the time of the minor's injury.

A. The minor employee, the minor's parent or guardian or any other person, as permitted by common law or statute, may file a civil action permitted under this subsection.

B. The minor employee is entitled to compensation under this Act in addition to any right of action permitted under this subsection.

C. If the employer is self-insured for liability under this Act, any award received by the minor in an action permitted under this subsection must be reduced by the amount of compensation received under this Act.

D. If the employer is insured for liability under this Act, the employer is considered a 3rd party under section 107, and the employer's insurer is entitled to all rights of subrogation, contribution or other rights granted to an employer under section 107.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.