

WORK-BASED LEARNING LEGAL ISSUES

DEFINITIONS

Each school/district may use the following terms differently. However, it is important that each coordinator understand his/her school's/district's terms and apply the guides below in determining how to protect the school/district from liability issues.



Work Release

No school credit issued. Work release allows students to leave the school to go to work. Schools should make sure district policy is followed when allowing students to leave the school for work. Most districts require a *Parent Release Form* relieving the school of responsibility for the student during the hours they are released from school for work. Work release is not a Work-Based Learning activity.

Internship

Paid or non-paid work related experiences matching a student's SEOP and related course work. Be sure to follow all child labor laws, liability issues and state requirements before placing students on an internship.

LIABILITY ISSUES

Paid:

These experiences give minimal liability exposure to school districts. Employers are legally obligated to provide worker's compensation insurance for employees. In addition to paying for an employee for work-related injuries on a no-fault basis, employers have immunity from civil claims for an employee's expenses. For paid experiences, it is the employer's responsibility to be sure the work a student is completing meets all child labor law requirements. If you give credit to a student for working in a position that violates child labor laws, both you and the district may be held liable for any injuries or other problems that arise. Never put the district in a position where they are party, by giving credit, to an illegal activity.

Examples of Illegal Activities:

Automotive

Students cannot work underneath an auto that is on a hydraulic lift.

Cabinetmaking/Millwork

Students cannot use saws except if the student is in a work experience program and currently taking a related course such a woods or cabinetmaking.

Driving

Students under the age of 18-years old cannot operate a motor vehicle as a regular part of their job. See Teen Driving Limits in Resources.

Food Service

Students cannot operate meat slicers.

Warehousing/Construction

Student cannot run power equipment, forklifts or work in a warehouse.

Non-Paid:

Under Utah Senate Bill 28, students who are involved in unpaid exploration and training activities in an employment setting are covered by district's worker's compensation. Specific district procedures should be part of an orientation provided to the student prior to placement on the unpaid work site. In addition, work site supervisors should have a copy of district procedures.

Utah Senate Bill 28 and

Utah State Board Rule 277-915 - Work-Based Learning for Interns:

Intern, for the purpose of this rule and bill only, has special meaning. An intern is a student enrolled in a school-sponsored career exploration program under Section 53A-28-102 (or 53B-16-402 for a student sponsored by an institution of higher education) which involves both classroom instruction and work experience for which the student receives no compensation.

Utah Senate Bill 28 states a student will not be subject to an employer's worker's compensation benefits if the student is in fact an intern under the definition of the bill. An intern, as defined in the bill, is considered to be a volunteer government worker of the sponsoring school solely for the purpose of receiving worker's compensation medical benefits.

Rule 277-915 further states that for students to be interns, the district that establishes a Work-Based Learning program shall establish a policy for the program's activities, which provides procedures and criteria for at least the following issues:

- training for student interns, student intern supervisors, and cooperating employers regarding health and safety procedures in the workplace.
- transportation options for students to and from the work site—USOE and Risk Management indicate that school districts should leave transportation to and from any Work-Based Learning experience up to the parents. This information must be noted in your course forms and handbook.
- appropriate supervision by employers at the work site.
- adequate insurance coverage provided either by the student, the program or the school district—non paid Work-Based Learning students are covered under Senate Bill 28—no other insurance should be required.
- appropriate supervision and evaluation of the student by the local education agency.
- involvement and approval by the student's parents in the Work-Based Learning intern program.

EQUAL OPPORUTNITY

As a Work-Based Learning coordinator, you need to be aware of the equal opportunity laws. An equal opportunity statement at the bottom or on the back of your contract/agreement and all related forms can be used to inform students, parents and employers of the law. Neither the school district nor the participating employer can participate in discriminating practices. Employers must sign off on this as part of their responsibilities as outlined on the *Training Agreement*.

_____ District is committed to providing educational and employment opportunities to students without regard to race, color, sex, religion, age, national origin or disability in accordance with Title VI of the Civil Rights Act of 1964, Title XI of the Educational Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Americans with Disabilities Act.

CHILD LABOR LAWS

The child labor provisions of the Fair Labor Standards Act are designed to protect the educational opportunities of youths and prohibit their employment in jobs and under conditions detrimental to their health and well-being. Federal and state child labor provisions address:

- minimum ages for general and specific types of employment
- prohibit work during night hours for 14-year and 15-year old students
- prohibit certain kinds of employment (17 hazardous occupations)
- maximum daily and weekly hours of work permitted for 14-year and 15-year old students

For more information on child labor laws, visit the Department of Labor's Web site at www.dol.gov

Working Hours for Minors:

14-year and 15-year olds when school is in session

- Students may work three hours per school day and eight hours per non-school days, but no more than 18 hours per week
- Students may not work before 7 a.m. or after 7 p.m.
- Students may not work during school hours

14-year and 15-year olds when school is not in session

- Students may work eight hours per day but no more than forty hours per week

- From June 1st through Labor Day, students may work during the time period of 7 a.m. to 9 p.m.

16-year and 17-year olds

- No restrictions on work hours

Meals:

Meal periods of at least 30-minutes must be provided no later than five hours and one minute after the minor reports to work. Fourteen and fifteen-year olds must be fully relieved of work duties during this time. Sixteen and seventeen-year old employees may work during a meal period, but must be paid for their time.

Breaks:

Rest periods of a least 15 minutes must be provided during each four hours (or major portion) of work time.

HAZARDOUS OCCUPATIONS

Students under 18 may not be employed in any of the **17 Hazardous Occupations**. Please refer to federal child labor laws for specific information. Coordinators should call the Department of Labor in Salt Lake City to get a complete copy of the child labor laws or check the Department of Labor Web site at www.dol.gov or www.youthrules.dol.gov. You will find that there are no age exceptions for eleven of the occupations. However, six of the occupations allow students under the age of 18 if they are on a registered apprenticeship or are involved in a state approved cooperative education program.

Seventeen Hazardous Occupations:

1. Manufacturing and Storing Explosives
2. Moto Vehicle Driving and Outside Helper
3. Coal Mining
4. Logging and Saw Milling
5. Power-Driven Wood-Working Machines
6. Exposure to Radioactive Substances and to Ionizing Radiations
7. Power-Driven Hoisting Equipment
8. Power-Driven Metal-Forming, Punching and Shearing Machines
9. Mining, Other Than Coal Mining
10. Meat-Packing or Processing
11. Power-Driven Bakery Machines
12. Power-Driven Paper-Products Machines
13. Manufacturing of Brick, Tile and Kindred Products
14. Power-Driven Circular Saws, Band Saws and Guillotine S hears
15. Wrecking, Demolition and Ship-Breaking Operations
16. Roofing Operations
17. Excavation Operations

Hazardous Occupations Exceptions:

Under strict guidelines there can be exceptions to the following hazardous occupations:

- #5 Power-Driven Wood-Working Machines
- #8 Power-Driven Metal-Forming, Punching and Shearing Machines
- #10 Meat Packing or Processing (Including Power Driven Meat Slicing Machines)
- #12 Power-Driven Paper-Products Machines
- #14 Power-Driven Circular Saws, Band Saws and Guillotine Shears
- #16 Roofing Operations
- #17 Excavation Operations

Student apprentices and some cooperative education students can be exempted from the above hazardous occupations. Read the child labor requirements carefully before placing students in these areas. The balances of the 17 hazardous occupations have no exemptions.

Hazardous Occupation #7 is listed as "Power-Driven Hoisting Equipment." It is not listed as one of the exemptions possible for cooperative education student learners. However, the quote below comes directly from the *Field Operations Handbook* for the Wage and Hour Division of the U.S. Department of Labor. Therefore, students enrolled in auto programs at the high school and registered through a state-approved cooperative education program at the high school can be on a paid or non-paid Work-Based Learning experience in a service station or a mechanics garage. Care should be taken by the school coordinator to ensure the safety of student learners. As with all Work-Based Learning experiences, a school coordinator should visit the site monthly.

U.S. DOL Wage and Hour

Rev. 599

Field Operations Handbook - 12/28/93

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"HO #7 does not apply to "grease rack" lifts used in gasoline service stations, tire stores and other establishments servicing automobiles, since such lifts were not included in the investigation which led to HO #7. Similarly, service jack, hand jacks, and air compressors are outside the scope of HO #7 and the other HO's, as are tire changers, truck tire changers and wheel balancers. The hoists commonly used on tow trucks and other hoists (if over a ton capacity) and cranes used in such establishments are subject to HO #7."

FLSA - FAIR LABOR STANDARDS ACT

When is a Work-Based Learning student considered to be an employee?

- Any student working in a business (including a Work-Based Learning program through the school) must be paid if they are clearly providing benefit to the business. See *Employers Instructions* in Resources.

When is a Work-Based Learning student considered not to be an employee? A student will not be considered an employee if all the following criteria are met:

- The student receives ongoing instruction at the employer's work site and receives close on-site supervision throughout the learning experience, with the result that any productive work the student would perform would be offset by the burden to the employer for the training and supervision provided.
- The placement of the student at the work site during the learning experience does not result in the displacement of any regular employee. The student is not entitled to a job at the conclusion of the learning experience although employers should not be discouraged from offering employment to successful graduates.
- The employer, student and parent or guardian understand that the student is not entitled to wages or other compensation for the time spent in the learning experience although a student may receive a stipend for expenses such as books or tools.

Note:

Any student on a non-paid Work-Based Learning experience must be assigned an on-site mentor by the business. Student apprentices and cooperative education students working in any of the approved 17 Hazardous Occupations must also be assigned an on-site business mentor. If students are running hazardous equipment, the mentor must be standing next to the student monitoring that all safety measures are being observed. See Fair Labor Standards Act at www.dol.gov.

Confidentiality/Privacy:

School records are considered confidential and cannot be released to employers without parental permission. If you feel an employer needs to know about handicaps, learning disabilities, etc. you should obtain a parent signature on your district's approved Release of Information Form, which can be found in Sample Forms.

Sexual Harassment:

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical contact of a sexual nature. Although sexual harassment is usually viewed as an issue for women, it should be noted that men also experience sexual harassment and people can be harassed by members of their own sex. Under Equal Employment Opportunity Commission (EEOC) guidelines, such conduct constitutes sexual harassment when:

1. An employment condition such as favorable treatment, work assignments, pay or promotion is offered by an employer or supervisor to an employee in exchange for sexual favors - quid pro quo.

and/or

2. A hostile work environment exists in which unwelcome conduct of a sexual nature creates an uncomfortable work environment for an employee. Examples of this conduct

include sexually explicit talk or jokes, sexually provocative photographs, foul or hostile language or inappropriate touching.

Use the *Teens in the Workforce* presentation to teach the above material. See Resources.

Transportation:

It is the responsibility of the parent/guardian to provide transportation to and from the Work-Based Learning site. Do not ask for auto insurance information. Let the parents decide how a student will get to his/her Work-Based Learning assignment.

Site Contact:

State and federal laws require interns, work experience and cooperative education students to be monitored at the work site on a monthly basis by school personnel. This procedure holds true any time a school is giving credit for Work-Based Learning experiences.

Work Site Evaluation Form:

Utah state law requires that work sites be assessed for safety before a student is placed on a Work-Based Learning experience. The *Work Site Assessment Form* is an example of what you might use to assess the work site. A copy of this form can be found in Sample Forms.

STUDENT RESPONSIBILITIES

- Sign and abide by specific agreements/forms such as the *Training Agreement*
- Meet employer and discuss organization expectations related to items such as dress, timeliness, maturity and safety
- Complete aptitude, interest and skills inventories as needed
- Develop goals and objectives using a skills/learning grid
- Complete assignments, evaluations, required forms and other activities assigned by the Work-Based Learning coordinator
- Participate actively at the work site and at the school
- Represent the school and program positively and responsibly in the community
- Make satisfactory academic progress
- Inform Work-Based Learning coordinator if any problem occurs

Note:

The Buck Institute in Navato, California produced three handbooks you might consider using as part of your training for students, employers and supervisors. See Resources.

EMPLOYER RESPONSIBILITIES

- Sign and abide by specific agreements/forms such as the *Training Agreement*
- Provide work experience that supports the educational and career goals of the student
- Arrange for a work site supervisor

PARENT RESPONSIBILITIES

- Sign and abide by specific agreements/forms such as the *Training Agreement*
- Encourage the student to have good attendance
- Be involved and informed about your student's progress in the Work-Based Learning experience
- Notify the school of any concerns or problems

SCHOOL RESPONSIBILITIES

- Promote the many facets of Work-Based Learning
- Orient students and employers to their roles and responsibilities
- Conduct orientations and/or seminars that may include pre-employment and work readiness training and job search skills
- Set up, coordinate and/or provide basic safety training as appropriate to the placement
- Review and implement the Work-Based Learning policies and procedures of the district
- Keep accurate and complete data
Student Application, Training Agreement, Student Commitment Form, Time Sheets, Employer Evaluations and Student Evaluations
- Hold advisory council meetings

ADVISORY COUNCILS/COMMITTEES

Input from representatives from all of the stakeholders in the Work-Based Learning system is essential to the success of the endeavor. This committee should be composed of representatives of K-12 + education, business, industry, students, parents, economic development and chamber of commerce. An advisory council comprised of representatives from these groups can assist the supervisor/ coordinator by:

- Identifying program goals and objectives
- Furnishing equipment and supplies
- Assisting with public relations efforts
- Providing community feedback
- Identifying community training needs
- Promoting Work-Based Learning
- Assisting with student placements
- Updating school supervisor/coordinator
- Developing the Work-Based Learning structure
- Evaluating programs and work sites

As a very minimum, advisory councils should meet at least twice per year. Review the *Advisory Council Sample Agenda*. See Sample Forms.

WORK PERMITS

The state of Utah does not require students under the age of 18 to have a "Work Permit" from the school before they can work. Some states do require school issued "Work Permit." Some businesses, especially those who have retail outlets in multiple states, may ask the school for a work permit. **DO NOT ISSUE WORK PERMITS!**

Federal child labor laws indicate that for businesses to protect themselves from hiring underage students the business should ask for either a birth certificate or an age certificate. As a government agency you can provide a "Certificate of Age" to a student. This certificate should be on file with the business as long as the student is employed.

A "Certificate of Age" only verifies a student's age as shown on the school's records. The business is responsible to determine if the work to be done or the hours to be worked is a legal activity for any particular student. Birth date information must come from school records, not from the student.

Information to be included on a "Certificate of Age."

Certificate of Age	
Student Name:	_____
Social Security Number:	_____
This certifies that according to the school records, the above-named student was born on:	
Month, Day, Year:	_____
Issued by	_____ School District
Signed by Issuing Officer:	_____