

STATEMENT OF SCOPE

Department of Workforce Development

Rule No.

DWD 270 and 271

Relating to

Child Labor and Street Trades

Rule Type

Permanent

Detailed Description of the Objective of the Proposed Rule

Ch. DWD 270 is currently titled "child labor." As directed by 2017 Wisconsin Act 11 (Act 11), the proposed rule will repeal and recreate the title of ch. DWD 270 as "employment of minors." The proposed rule will repeal ch. DWD 271 relating to "street trades" and consolidate relevant provisions under ch. DWD 270. In addition, the proposed rule will update ch. DWD 270 to implement statutory changes under Act 11 and 2011 Wisconsin Act 32 (Act 32), and revise language to conform to federal regulations and state statutes.

Description of Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Chapter DWD 270 was last revised in 2004 before Act 32 was enacted and contains all hours of labor and time of day restrictions related to child labor. Act 32 placed many of these restrictions into the statutes. The proposed rule will modify and replace outdated provisions related to the employment of minors.

Under s. DWD 270.05, a minor obtaining a child labor permit is required to provide a social security card or proof that the minor has voluntarily opted out of the social security system. The proposed rule will repeal this requirement to make the process of obtaining a child labor permit less of a security risk for permit offices.

Chapter DWD 271 regulates a small segment of the employment of minors relating to street trades, identifies hours of labor and time of day restrictions, and imposes requirements for identification cards and street trade permits. Chapter DWD 271 will be repealed and relevant provisions will be updated and consolidated into ch. DWD 270.

Chapter DWD 270 contains language based on pre-Act 11 law that requires most minors to obtain work permits before beginning work with an employer. Under current law as affected by Act 11, minors 16 and 17 years of age are no longer required to obtain work permits.

Act 11 also replaces the term "child labor" with "employment of minors." The proposed rule will change the title of ch. DWD 270 to "employment of minors" and remove references to "child labor."

Certain sections of ch. DWD 270 that refer to pre-Act 11 law need to be modified to comport with current law. In particular, the proposed rule will eliminate unnecessary definitions and will update sections pertaining to age certificates and evidence of age.

The proposed rule will clarify what is meant by "incidental" work under the student learner exemption.

The proposed rule will repeal s. DWD 270.16, which restricts the number of hours minors 16 and 17 years of age are allowed to work for first processing of perishable fruits and vegetables. Since the enactment of Act 11, the section is no longer needed as there is no limit on the hours minors in that age group may work.

The proposed rule will also modify ch. DWD 270 to remove or modify outdated references, update terminology, and make other minor revisions necessary to conform to federal regulations and state statutes.

Current language in ch. DWD 270 identifying prohibited employment is out of step with federal law. To conform to federal regulations under the Fair Labor Standards Act (FLSA) the proposed rule will:

- Expand prohibitions related to logging and sawmills to include forest fire fighting.
 - Incorporate provisions of FLSA that allow minors, under specified conditions, to use power-driven equipment to process wood products.
 - Clarify that the prohibition on use of power-driven hoisting equipment includes tending, riding upon, working from, repairing, servicing, or disassembling an elevator, crane, derrick, manlift, hoist, or high-lift truck. The proposed rule will also expand the definition of "high-lift truck" to include backhoes, front-end loaders, and similar pieces of equipment.
 - Clarify that the meat processing prohibitions include work in poultry slaughtering establishments.
 - Allow minors to operate portable countertop mixers similar to those used in private homes.
 - Allow minors to operate certain pizza-dough rollers under certain conditions.
 - Clarify that use of all balers and compactors is prohibited, including those not designed or used to process paper. The proposed rule will also clarify the exemption that allows minors to load only certain scrap paper balers and paper box compactors.
 - Clarify that chain saws, reciprocating saws, woodchippers, and abrasive cutting discs are prohibited to all minors.
 - Clarify that minors as young as age 15 may work as lifeguards, swimming instructors, and aides if they successfully complete a life saving course as required under 2017 Wis. Act 153, which became effective March 29, 2018.
 - Clarify that minors aged 16 and 17 may operate skid-steers and similar lifts in agricultural employment.
- Permit minors to operate a key-cutting machine if it has a properly equipped and functioning key saw guard.

The alternative to proceeding with this rule is to do nothing, which would retain provisions that are out-of-date and in conflict with state statutes and federal regulations.

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

Section 103.66(1) and (2) provide, in part, as follows:

"Powers and duties of the department relating to employment of minors. (1) The department may investigate, determine and fix reasonable classifications of employments, places of employment and minimum ages for hazardous employment for minors, and may issue general or special orders prohibiting the employment of minors in employments or places of employment prejudicial to the life, health, safety or welfare of minors, and may carry out the purposes of ss. 103.64 to 103.82.

(2) The department may investigate and fix reasonable classifications of employments and hours of employment for minors under 16 years of age and may issue general or special orders fixing for those minors maximum hours of employment per day and per week, maximum days of employment per week, hours at which employment may begin and end, and the duration of lunch and other rest periods as are necessary to protect the life, health, safety, and welfare of those minors."

Sections 103.22 provides as follows:

"General standards and powers of the department. The general standards for the employment of minors set forth in s. 103.65 apply to the employment of minors in street trades, and in relation to that employment

the department has the powers and duties specified in s. 103.66. Except as the department exercises those powers, the employment of minors in street trades shall be in accordance with ss. 103.23 to 103.31."

Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

The estimated time is 100 hours.

List with Description of All Entities that May Be Affected by the Proposed Rule

The proposed permanent rule would affect employers or organizations that employ minors, school districts, parents, and guardians, and volunteer child labor work permit offices.

Summary and Preliminary Comparison with Any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Proposed Rule

FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments. The provisions under FLSA are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being. 29 CFR. part 570 regulates the child labor provisions under FLSA. The proposed rule will modify and update ch. DWD 270 to conform to standards contained in FLSA and 29 CFR part 570.

Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

The proposed rule will make regulatory compliance easier. The rule will not have a significant economic impact on a substantial number of small businesses.

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