

Sections 817.4, 817.21 and 817.23 Child Labor

The following rule amendments will be effective April 22, 1999.

The Texas Workforce Commission (Commission) adopts amendments to §§817.4, 817.21, and 817.23, relating to employment of children in the State of Texas, without changes to the proposed text as published in the February 12, 1999, issue of the *Texas Register* (24 TexReg 931). The rules will not be republished here.

The purpose of amending §817.4 is to clarify the intent of the Commission regarding applicability of federal laws, including any and all amendments. The purpose of amending §§817.21 and 817.23 is to clarify that the Commission will comply with federal regulations to the extent they are consistent with the federal law. If the federal regulations are not consistent with federal law, the Commission will comply with the federal law.

The Texas Child Labor Law, found at Chapter 51 of the Texas Labor Code, addresses the employment of children in Texas and ensures the protection of children from employment in occupations that are detrimental to a child's safety, health, or well being.

Proceeding under the Commission's rulemaking authority, the Commission adopted rules incorporating sections of the Code of Federal Regulations addressing child labor to the extent that they governed the employment of 14 and 15 year old children and 16 and 17 year old children, and to the extent that such regulations were consistent with the Texas Labor Code, Chapter 51. The incorporated federal regulations were based on the Fair Labor Standards Act. By adopting the relevant federal regulations as Texas law, the Commission was able to attain its purpose of consistency with federal law to the extent the Legislature did not address such child labor law issues.

Two amendments to the Fair Labor Standards Act have resulted in an inconsistency between the federal statute and the federal regulations governing child labor. The first amendment, affecting Order 2 at 29 C.F.R. §570.52, establishes a minimum age of 17 years for any on-the-job driving on public roads. The current federal regulations under Order 2 reflect that 16 and 17 year olds may drive if the driving is incidental and occasional to employment, thus failing to follow the FLSA amendment. The second amendment, affecting federal Order 12 at 29 C.F.R. §570.63, allows children age 16 and 17 to load scrap paper balers provided the employer abides by statutory conditions. The present version of the regulations at 29 C.F.R. §570.63 does not yet reflect this FLSA amendment.

Without the foregoing amendments to the child labor law rules, the Commission is compelled to enforce child labor laws that do not reflect the Fair Labor Standards Act amendments, thereby causing confusion and inconsistency with federal child labor laws.

No comments were received on the proposed rules. Subchapter A. General Provisions

The amendments are adopted under Texas Labor Code §51.023 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of child labor laws in Texas.

§817.4. Statement of Commission Intent. In adopting §817.21 of this title (relating to Limitations on the Employment of 14 and 15 Year Old Children) and §817.23 of this title (relating to Limitations on the Employment of 16 and 17 Year Old Children), the Commission intends for the federal child labor laws to govern the employment of children in Texas unless a provision of this chapter or Texas Labor Code, Chapter 51, clearly indicates otherwise. The Commission so intends only to the extent the federal laws are consistent with Texas Labor Code, Chapter 51.

Subchapter B. Limitations on the Employment of Children

The amendments are adopted under Texas Labor Code §51.023 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of child labor laws in Texas.

§817.21. Limitations on the Employment of 14 and 15 Year Old Children. The Commission adopts by reference §§570.31 through 570.34 and §§570.70 through 570.72 of Title 29 of the Code of Federal Regulations, to the extent that they are consistent with the Fair Labor Standards Act (FLSA), 29 United States Code §201, *et seq.* In the event of any inconsistency between federal regulations and the FLSA, the FLSA shall take precedence. The Commission adopts these regulations as state rules governing the employment of 14 and 15 year old children in Texas. These rules will apply to such employment whether or not that employment is subject to the federal Fair Labor Standards Act (FLSA), 29 United States Code §201, *et seq.* The application of this rule is limited to the extent it is consistent with Texas Labor Code, Chapter 51. §817.23. Limitations on the Employment of 16 and 17 Year Old Children. The Commission adopts by reference §§570.50 through 570.68 of Title 29 of the Code of Federal Regulations, to the extent that they are consistent with the Fair Labor Standards Act (FLSA), 29 United States Code §201, *et seq.* In the event of any inconsistency between federal regulations and the FLSA, the FLSA shall take precedence. The Commission adopts these regulations as state rules governing the employment of 16 and 17 year old children in Texas. These rules will apply to such employment whether or not that employment is subject to the federal Fair Labor

Standards Act (FLSA), 29 United States Code §201, *et seq.* The application of this rule is limited to the extent it is consistent with Texas Labor Code, Chapter 51.