

## **WORK BASED LEARNING**

Work Based Learning (WBL) is learning that results from work experience designed to increase the knowledge and skills of the learner. The work experience is supplemented with instruction and activities that apply, reinforce, refine, or extend the learning that occurs during work, so that learners develop attitudes, knowledge, skills, and habits that might not develop from work experience alone.

This brochure's perspective is that of WBL launched from a school setting and briefly describes some of the legal issues involved. It is intended, however, to be useful to any agency or organization serving youth via WBL.

WBL opportunities range in type and intensity – from gaining career awareness through half-day job shadowing to learning occupational skills in a term-long cooperative education paid work experience. For brief definitions of the variety of types of WBL, see the Glossary of WBL terms at the Work Based Learning section of the state's Career and Technical Education (CTE) section web site, listed at the end of this brochure.

The purpose of this brochure is to give a broad overview of some of the legal issues that exist when engaging in WBL. It is not intended to be legal advice. Resources listed at the end of the brochure can be consulted for a more in-depth explanation of each of the legal areas covered in this brochure. For legal advice, an attorney should be consulted.

## **WAGE AND HOUR AND CHILD LABOR LAWS** **Applicable Laws**

### The Federal Fair Labor Standards Act

The FLSA is a federal law enforced by the U.S. Department of Labor's Wage and Hour Division. It covers employees of most businesses whenever an employment relationship exists. The law and its associated regulations affect work-based learning in two primary areas, (1) wages and hours, and (2) child labor laws.

### Alaska Labor Laws

The State of Alaska also has laws related to wages and hours and child labor. When there are both state and federal laws, the most restrictive generally applies. For the most part, the state and federal laws are aligned. Several areas where they differ will be pointed out in this pamphlet.

## **Employment Status**

The labor laws apply when an employment relationship exists. A vast body of law has developed around whether a person is or is not an employee. In general, if a person is not an independent contractor, and is creating value for an employer through work, they are considered employees and the laws apply.

Three categories of work-based learning are exempt from coverage under the state and FLSA laws covering an employment relationship. These are student-learners, volunteers, and individuals with disabilities.

Student Learners is a term used in both federal and state law that exempts the learners from the laws that apply to employees. Under Alaska statute, an exemption for student-learners applies when

1. the student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school, and
2. the student-learner is employed under a written agreement which provides that
  - A. the work of the student-learner in the occupations declared particularly hazardous will be incidental to the training;
  - B. the work will be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person;
  - C. safety instructions will be given by the school and correlated by the employer with on-the-job training; and
  - D. a schedule of organized and progressive work processes to be performed on the job will have been prepared; and
3. each written agreement contains the name of the student-learner, and is signed by the employer and the school coordinator or principal.

Two other categories of unpaid work experience are true volunteers, for which a number of criteria must be met, and special provisions which exist to provide rehabilitative services to students with disabilities under the Individuals with Disabilities Education Act.

## **Wage and Hour Law Provisions**

When an employment relationship exists, employers covered under the state and/or federal labor laws must comply with the provisions that regulate wages and hours. Alaska's minimum wage is higher than the federal minimum wage. The current minimum wage levels in

Alaska can be accessed at the Labor Standards and Safety Division's web site listed at the end of this brochure.

There are some categories of employment for which a sub-minimum wage can be paid. These are apprenticeships, student-learners (as described above), and persons with disabilities. Also, minors working less than 30 hours per week can be paid at the federal minimum wage rate rather than the Alaskan rate.

Provisions also exist in the wage and hour provisions detailing when overtime must be paid.

## **Child Labor Law Provisions**

Child labor laws regulate the hours of work and types of employment that minors can be engaged in, and they are broken down into several age categories. Once a person reaches 18 years of age, the child labor laws no longer apply. State law applies to any employer doing business in the state. Federal law applies to most employers, but some are exempt. The employer should know or find out whether or not they are covered under the FLSA. Federal child labor laws are stricter than the state laws regarding hours of work. Consequently, an employer conceivably could be in compliance with state law and out of compliance with federal law.

For youths ages 16-17, other than a maximum of 6 work days per week, hours are not regulated; but this age group is prohibited from employment in seventeen specified hazardous occupations. For youth aged 14-15, there are additional occupational and activity restrictions, plus the hours of work are regulated. Hours are restricted by both day and week, and according to whether school is occurring on that day or week. Work is not allowed during the school day.

The Alaska Department of Education and Early Development (EED) has been approved by the USDOL for a Work Experience and Career Exploration Program, under which the restrictions for 14 and 15 year olds can be lessened. A school-based WBL program seeking such an exemption should contact the Career and Technical Education section of EED for more information.

Youth under age 14 generally cannot be employed except in several specifically exempted occupations, such as newspaper delivery or acting, and then under regulated conditions.

Alaskan youth aged 16 and under, and 18 and under in a premise selling alcohol, must obtain a state work permit in

order to be employed. The permits can be obtained from the Labor Standards and Safety Division offices.

### **INSURANCE/LIABILITY**

Insurance issues are a concern for both the school district and the employer in a work-based learning situation. Insurance coverage is affected by whether or not the student is a paid or unpaid employee, and by the type of WBL that is occurring. For example, the situation of a student in a paid work experience and those of a student participating in a half-day job shadowing experience give rise to greatly differing insurance coverage issues.

Insurance concerns generally arise over injuries to student participants at work sites or in transit, injuries to others, and damage to the employer's property or business.

When a student is in a paid work experience, injuries are covered by the state's workers' compensation laws. Alaska statute, however, provides that a high school student engaged in a "course that combines academic instruction with work experience outside the school for a . . . nonprofit employer" is considered an "employee of the state" for workers' compensation purposes. (Italics added).

For unpaid work experience, liability laws and the participant's own health insurance policies apply.

In transit, the party doing the transportation is generally the liable party. For example, if the student is driving his or her own car, he or she is generally the responsible party.

Damage to property and others can be covered by general liability coverage.

In general, the school should discuss all the relevant insurance and liability issues with the district insurance agent. The employer should discuss these matters with the business's insurance carrier to make sure all coverage is in place. The district and the employer should enter into a written agreement that specifies the terms of liability and coverage.

WBL programs may use liability shields to attempt to limit liability. Examples of liability shields are waivers, consent forms, permission slips, and indemnification agreements.

### **HEALTH/SAFETY**

Health and safety issues in WBL are generally the same as those for students in general and employees in general. The child labor laws, and the regulations and policies

derived from them, are the main tools designed to protect the health and safety of youth at work.

It is recommended that a student's written WBL plan include coverage of safety instruction. An employer can obtain assistance from the U.S. Department of Labor's Occupational Safety and Health Administration to set up a safety and health program.

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### **Resources**

The Work Based Learning link at the Career and Technical Education section of the Alaska Department of Education and Early Development provides access to a number of web-based resources:  
<http://www.eed.state.ak.us/tls/CTE/>. Staff contact information can also be accessed at this site.

The web site of the Wage and Hour Administration, Labor Standards and Safety Division, Alaska Department of Labor and Workforce Development provides information for child labor and wage and hour laws:  
<http://www.labor.state.ak.us/lss/whhome.htm>.

Downloadable pamphlets on child labor law and other legal matters are available at this site. The regional offices can be contacted at:

Anchorage: (907) 269-4900      Fairbanks:  
(907) 451-2886  
Juneau: (907) 465-4842

A gateway to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division's Fair Labor Standards information can be found at:  
<http://www.dol.gov/esa/whd/flsa/>. The USDOL regional office is in Seattle at:

1111 Third Avenue, Suite 755  
Seattle, WA 98101-3212  
Phone: (206) 398-8039

*This brochure is intended as a reference only, not as a legal interpretation, and is not a substitute for legal advice. It is not a complete statement or interpretation of any laws, but is instead a simplified guide to WBL issues intended for use by educators, employers, policy makers, and parents as they plan and implement work-based learning opportunities. For more complete information regarding these issues, consult the resources listed above and throughout the brochure. Those needing legal advice should consult an attorney.*

This brochure is modeled on a pamphlet published by the Nebraska Department of Education and generously shared by their Director of Tech Prep/Work Based Learning, Carol Jurgens, at the 2002 National Tech Prep Network annual conference.

# **OVERVIEW**

**of**

# **Work Based Learning**

# **Legal Issues**

Alaska Department of Education & Early  
Development  
&  
Department of Labor

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