



# TEEN LABOR

## Guide to laws and regulations for restaurant owners

**Anyone under 16 must have a work permit for your place of employment to legally work there.**

Minimum age to work in a restaurant is 14. The only exception is for children working in their parents' or guardians' business. In this case, the Wisconsin rules for a 14-year-old apply. See final FAQ for more details.

(See guide to state vs. federal law)

### **Restaurants subject to Wisconsin and federal law 14- and 15-year-olds:**

- May bus tables, wash dishes, or wait tables provided they do not serve, sell, dispense or give away alcoholic beverages.
- May cook under certain circumstances. (See next page for detailed information.)
- May not bake. May not use a meat slicer, grinder or heavy bakery equipment.

### **Restaurants subject to Wisconsin law only 14- and 15-year-olds:**

- May bus tables, wash dishes or wait tables provided they do not serve, sell, dispense or give away alcoholic beverages.
- May cook or bake under adult supervision. May not use a meat slicer, grinder or heavy bakery equipment.

### **As of 2011 Wisconsin's child labor hours limitations for 14- and 15-year-olds match federal law:**

- After Labor Day through May 31, may not work before 7 a.m. or after 7 p.m.
- Between June 1 and Labor Day, may not work before 7 a.m. or after 9 p.m.
- May not work more than 6 days a week.
- May work up to 3 hours on school days and 8 hours on non-school days.
- May work up to 18 hours during school weeks and 40 hours during non-school weeks.
- Must receive a 30-minute meal break if working more than 6 hours. (Break may be unpaid.)

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## Cooking duties for 14- and 15- year-olds under federal law

The federal teen-labor rules that took effect in 2005, permit 14- and 15-year-olds to perform various food and-beverage prep work, as well as kitchen work, and provide examples of equipment that these employees may use. The Department of Labor (DOL) rules are not too different from the previous regulations, but do a better job of reflecting advances in restaurant kitchens and foodservice equipment.

### Permissible cooking duties for 14- and 15- year-olds as of Feb. 14, 2005:

- **MAY** perform various food-and-beverage preparation work. Examples of permitted machines and devices that 14- and 15- year-olds may work with include:
  - Dishwashers
  - Toasters
  - Dumbwaiters
  - Popcorn poppers
  - Milkshake blenders
  - Coffee machines
  - Devices used to maintain food temperatures (e.g., warmers, heat lamps, etc.)
  - Microwave ovens that do not have the capacity to warm above 140° F
- **MAY** clean, maintain and repair cooking devices such as grills, deep-fat fryers and steam tables if equipment surfaces are below 100° F.\*
- **MAY** change, clean and dispose of oil and grease, or oil and grease filters, if the temperature of the liquid is below 100° F.\*
- **MAY** cook using electric or gas grills that do not have open flames.
- **MAY** cook using deep fryers that are equipped with and utilize devices that automatically lower and raise baskets.
- May **NOT** cook over open flames.
- May **NOT** bake, including any part of the baking process: weighing, mixing, putting products in pans or trays; operating pans of any type; and removing items from ovens or placing on cooling trays.
- May **NOT** use deep fryers that require the operator to manually raise or lower the baskets, or that do not use baskets to contain the food product during frying.
- May **NOT** use rotisseries, broilers, pressurized equipment including fry-o-lators, or cooking devices that operate at extremely high temperatures such as “Neico broilers.”
- May **NOT** clean, maintain or repair cooking equipment such as grills, deepfat fryers and steam tables if the equipment surface exceeds 100° F. (The DOL points out that *simple maintenance* of grills is permissible for 14- and 15-year-olds—i.e., the routine part of the actual cooking process whereby the employee uses water and a spatula to scrape away food particles and grease from the surface of the grill.)
- May **NOT** change, clean or dispose of oil and grease, or oil and grease filters, if the temperature of the liquids exceeds 100° F. This includes a ban on lifting, moving or carrying containers of hot grease or oil 100° F or higher.

\* A note on maximum allowable temperatures for clean-up tasks: The new rules reflect a change in the maximum allowable temperatures for clean-up duties. Previously, 14- and 15-year-old employees were permitted to clean equipment and handle oil and grease as long as the temperature was below 140° F. In the new rules, the DOL reduces the maximum allowable temperature to 100° F to “significantly diminish the possibility of young workers suffering burns while cleaning equipment and surfaces or while filtering and disposing of cooking oil and grease.” The new temperature requirement will require vigilance by employers. Managers and supervisors must ensure that equipment and materials are cooled to 100° F or lower before 14- and 15-year-olds are allowed to undertake any clean-up tasks such as washing the machines or removing or filtering the oil or grease. Restaurant managers may need to make greater use of thermometers, cool-down waiting periods and other methods to ensure that the temperature restrictions for young employees are met.

*This information was taken from the National Restaurant Association’s legal report “Federal Teen-Labor Regulations”*

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## Wisconsin law 16- and 17-year-olds

(With the exception of driving regulations, there are currently no federal laws applying to 16- and 17-year-olds. All employers should follow state laws.)

- As of 2011 state and federal laws do not limit the hours that minors 16 years of age or over may work, except that they may not be employed or permitted to work during hours of required school attendance.
- May bus tables, wash dishes, or wait tables provided they do not serve, sell, dispense or give away alcoholic beverages.
- May cook but may not use a meat slicer, grinder, or heavy bakery equipment.\*
- Must have 8 hours of rest between the end of one shift and the start of the next shift if employed after 11:00 p.m.
- May work 7 days a week.
- May work an unlimited number of hours in a day and in a week, but must be paid overtime for any hours over 10 in a day, even if they work less than 40 in the week.
- Must receive a 30-minute meal break if working more than 6 hours. (Break may be unpaid.)
- As of June, 2017 16- and 17- year-olds are no longer required to obtain a work permit. (Other rules regarding scheduling, breaks, equipment restrictions, etc. still apply).

*\*Note: WRA has provided decals to put on your equipment that is off-limits to minors. Find them in the 'Frequently Used Forms' section of your HERO manual.*

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## Teen on-the-job driving for 16- and 17- year olds

### Restaurants subject to Wisconsin and federal law

16-year-olds are forbidden from all on-the-job driving.

17-year-olds may not drive a delivery vehicle unless:

- driving a delivery vehicle is only “occasional and incidental” to the minor’s employment. (Driving for deliveries may not be a regular or frequent part of the employee’s duties. They may only spend one-third of their workday or 20 percent of their work week on the road for their employers.)
- it is during daylight hours
- the minor has a Wisconsin driver’s license and has completed a state-approved driver’s education program
- the teen does not have a record of any moving violations at the time of hire
- the vehicle is equipped with seatbelts and the employer instructs the teen that seatbelts must be used.

Also, the teens may not:

- tow vehicles
- operate vehicles over 6,000 pounds
- perform route sales or deliveries
- perform urgent, time-sensitive deliveries\*
- transport more than three passengers
- drive beyond a 30-mile radius from their place of employment
- perform more than two trips per day from the place of employment to deliver customer goods or transport passengers (other than fellow employees.)

\* The Department of Labor (DOL) explains that urgent, time-sensitive deliveries include trips subject to timelines, schedules or turnaround times in order to satisfy customers or protect the product from temperature changes and other deterioration. The DOL specifically states that prohibited trips would include delivery of pizzas and prepared foods for customers. Therefore, it is highly unlikely that employers may use 17-year olds for normal deliveries of food to outside customers.

### Restaurants subject to Wisconsin law only

Wisconsin law now mirrors the federal law. Follow guidelines listed on the left.

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## Frequently Asked Questions

**Q:** I am hiring an 18-year-old who is still in high school. What hours can he work?

**A:** An 18-year-old who is still in high school is not covered by teen labor laws. He may work during any time of the day and as many hours as you wish.

**Q:** I am hiring a 17-year-old who has already graduated from high school. What are her hour restrictions?

**A:** A 16- or 17-year-old who has graduated from high school may be employed during the same hours, and as many hours, as an adult. However, all other teen labor restrictions for her age group (not serving alcohol, not using a meat slicer, breaks, etc.) still apply. Note: As of June, 2017 16- or 17-year-olds no longer need to obtain work permits.

**Q:** My 16-year-old dishwasher is attending technical college to get his general equivalency diploma. How does this affect the hours he can work?

**A:** A 16- or 17-year-old who is emancipated, living independently, head of the household, or enrolled in a GED program at vocational or technical college may now work unlimited hours (but be mindful of overtime, break and hours of rest guidelines) since state and federal laws do not limit the hours as of July, 2011. The time of day restrictions that would prohibit minors 16 years of age or over from working during hours of required school attendance do not apply in these cases.

If you have an employee in one of these situations, WRA highly recommends you get a letter from the minor's school district saying the teen has been given official permission not to attend school. Keep the letter in the employee's file -- if you are ever audited by the labor department, it will be your protection from getting fined.

**Q:** My 16-year-old server is home schooled. How many hours a week may she work?

**A:** A 16- or 17-year-old who is enrolled in home school may now work unlimited hours (but again, be mindful of overtime, break and hours of rest guidelines) since state and federal laws do not limit the hours as of July, 2011. The time of day restrictions that would prohibit minors 16 years of age or over from working during hours of required school attendance would not apply if the teen is home schooled.

As with a GED student or any other minor not attending regular school, WRA recommends employers get written confirmation from the school district regarding the teen's circumstances.

**Q:** My 16-year-old server who is home schooled has a 14-year-old brother who would like to be a busboy. May he work the same hours as his sister?

**A:** No. A 14- or 15-year-old who is homeschooled is governed by the same daily and weekly restrictions as a student in regular school. This goes for 14- and 15-year-olds in any "non-standard" educational circumstance.

**Q:** A 17-year-old applied at my restaurant to be a cook's helper. He has dropped out of high school. May he work extra hours?

**A:** Only if he has a letter from his school stating he is not expected to be there. In that case, he can work any number of hours in a day, and during any time of the day. If he doesn't have such a letter, you must follow all the restrictions for his age group and you cannot schedule him to work during hours that school is in session.

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**Q.** Our school district has a school-to-work program for the foodservice field. These students leave school early to work in their restaurant co-op jobs. Are the hour restrictions different for these students?

**A.** Yes. If the student is 14- or 15- years old and enrolled in an approved Work Experience and Career Exploration Program (WECEP) that is supervised and administered by a school then that student would have more relaxed restrictions on their working hours than other workers under age 16. Employees in approved WECEP programs can work during school hours, for as many as three hours on school days, and for as many as 23 hours in a school week.

If the student is a 16 - or 17- year old, then there are no longer restrictions on the number of hours worked on a day, or weekly limits and there would be flexibility with scheduling them during regular school hours if it is an approved program.

**Q.** A 15-year old applied for a job at our restaurant. We want to hire him but have a question about scheduling him because he is enrolled in summer school. Does that impact the hours he can work for us?

**A.** Yes. If a 14- or 15- year old is attending summer school, they can't work more than 3 hours per day or 18 hours per week, even though other teens in that age group can work expanded hours during the summer months. They ARE able to work as late as 9 pm, though because the time of day rules get a bit looser in the summer for this age group (between June 1<sup>st</sup> and Labor Day – after Labor Day it is back to 7 pm end time for shifts). *This answer reflects updated guidance provided by the Department of Workforce Development.*

**Q.** My 16-year-old hostess also has a job at our local grocery store. Does this affect the hours I can schedule her to work?

**A.** No. Since state and federal laws no longer limits the hours that minors 16 years of age or over may work, you don't have to be concerned about exceeding those previous limits. However, if this hostess was under 16 years of age, she would be limited to the maximum hours and time of day restrictions even though she may work for more than one employer during the same week. If that was situation with a teen under 16 years of

age, it would be essential to keep the lines of communication open. Discuss the situation with your employee and come up with a plan so the teen, the other employer, and you can be sure the law is not being inadvertently violated.

**Q.** Where can my 14- or 15- year old employees get a work permit? What information do they need?

**A.** Your employees should be able to obtain a work permit from their school offices or the county clerk. The teenager must provide: proof of age (usually a birth or baptismal certificate); a letter from you, their employer, stating your intention to employ the minor, the expected job duties, hours of work, and time of day the minor will work; a letter from the teenager's parent or guardian consenting to the employment; the teen's social security card; and payment for the permit fee. You, the employer, must pay the work permit fee or reimburse the minor for the fee no later than the first paycheck.

**Q:** Can a 14-year-old use a microwave?

**A.** If you are covered by state law only, yes. But if you are covered by federal law as well, only if the microwave does not have the capacity to warm above 140 ° F.

**Q.** Keeping track of when my teenage employees can and can't work gets so tricky. (Not to mention how much I could use their extra working hours . . . ) How serious does the Labor Department get about violations?

**A.** You don't want to mess around here. For a first offense, you can be fined up to \$10,000 for willfully violating federal teen labor laws. A second offense can be a \$10,000 fine and up to 6 months jail time.

Breaking Wisconsin law, the first time, will cost you up to \$1,000 for each offense and imprisonment up to 30 days. A second violation within 5 years can be punished by up to \$5,000 and 30 days jail time for each offense.

Remember, each day a violation occurs is considered a separate and distinct offense. Teen labor restrictions may make scheduling difficult, but ignoring them could put you out of business.

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**Q.** I heard that the rules about kids working at their family's restaurant changed. What do I need to know?

**A.** In 2018 the Wisconsin rule regarding the employment of a minor in a parent's or guardian's business, trade or profession was changed. If your business is subject ONLY to Wisconsin law, minors of any age may be employed under the *direct supervision* of the minor's parent or guardian in connection with the parent's or guardian's business, trade or profession. The rules for 14 and 15-year olds including the maximum hours and time of day restrictions and allowable job duties still apply. These minors would not be required to obtain a work permit.

You may have noticed that the language quoted above from the state of Wisconsin doesn't limit this to children of owners. Children of employees could be allowed to work if they are under the *direct supervision* of a parent who is your employee. However, WRA is concerned that if restaurants begin to allow children (under the age of 14) of employees to work at the business this could be a serious liability that you may not want to take on. Just because the law may technically allow it doesn't mean that it is a sound business practice!

If your business is covered by *both* Wisconsin law and federal law, the Fair Labor Standard Act (FLSA) also provides some exemptions. Youth younger than 16 years of age may work in a business solely owned by their parents (or persons standing in place of their parents like guardians). This exemption doesn't apply to jobs in mining, manufacturing and occupations declared hazardous by the federal Department of Labor. Be mindful that Wisconsin law regarding time of day and number of hours would still apply. So, even though the federal law is looser on scheduling children of parents/guardians working in the parent or guardian's solely owned business, Wisconsin rules regarding scheduling must be followed.

Confused? Check the HERO manual's state vs.

federal law to determine which laws your business is subject to. The most basic factor is the financial threshold. Does your business bring in less than \$500,000 in annual sales? Another factor is interstate commerce. If you don't meet the \$500,000 mark in sales, but have employees engaged in interstate commerce, those individual employees are covered by FLSA.

**If less than \$500,000 in annual sales (and no individual interstate commerce coverage) = Wisconsin law only**

Employee can be any age, but must be under the *direct supervision* of the parent/guardian/employee working in their profession. Work permits are not required. All other rules related to 14- and 15- year-olds still apply.

**If more than \$500,000 in annual sales = combination of Wisconsin and federal laws**

Must be age 14 to work in the restaurant unless the parent/guardian is the *sole owner* of the business. If that is the case, youth can be any age, but must be under the direct supervision of the parent/guardian. Children of employees are NOT allowed to work at the restaurant if they are under age 14. Work permits aren't required if the minor is the child of parent/guardian who is the sole owner of the business. All other rules related to 14- and 15-year-olds still apply.

Keep in mind that the minimum wage for minors is \$7.25 per hour (with the exception of the opportunity wage – see Minimum Wage chapter for more details).

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