

LEGAL SERVICES

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MEMORANDUM

January 2, 2019

SUBJECT: Federal preemption of state child labor law
(Work Order No. 31-LS0271\A)

TO: Representative Tammie Wilson

FROM: Daniel C. Wayne
Legislative Counsel



The draft bill you requested is attached. However, the change you have requested may be preempted by federal law.

A conflict between state and federal law occurs where compliance with both laws is a "physical impossibility," or where "the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives" of the federal law.¹ In this instance, the time period during which current state law permits a minor age 14 or 15 to work each day is between 5:00 a.m. and 9:00 p.m.² However, this conflicts with federal law establishing a shorter time period that is between 7:00 a.m. and 7:00 p.m. Your change in this bill further exacerbates the difference in federal and state law.

The Secretary of the U.S. Department of Labor has established permissible work hours for minors age 14 and 15 as follows:

- (a) Hours standards. Except as provided in paragraph (c) of this section, employment in any of the permissible occupations to which this subpart is applicable shall be confined to the following periods:
- (1) Outside of school hours;
 - (2) Not more than 40 hours in any 1 week when school is not in session;
 - (3) Not more than 18 hours in any 1 week when school is in session;
 - (4) Not more than 8 hours in any 1 day when school is not in session;

¹ *Quinn v. Alaska State Employees Association/American Federation of State, County and Mun. Employees, Local 52*, 944 P.2d 468, 471 (Alaska, 1997) (citing *Webster v. Bechtel, Inc.*, 621 P.2d 890, 900-01 (Alaska 1980) (quoting *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 158, 98 S.Ct. 988, 994, 55 L.Ed.2d 179 (1978)).

² AS 23.10.340(a).

(5) Not more than 3 hours in any 1 day when school is in session, including Fridays;

(6) ***Between 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.***^[3]

Both daily time-period restrictions, state and federal, exist to protect minors age 14 and 15 from working excessively, especially during the school year.⁴ However, the state law provides less protection, and therefore "stands as an obstacle" to the Fair Labor Standards Act (FLSA), which provides in part as follows:

No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. ^[5]

It is possible that current AS 23.10.340(a) is not preempted, if the U.S. Secretary of Labor has given the state an exemption or waiver to the FLSA, allowing the state to provide for a longer work period in the day. You may wish to contact the state's Department of Labor and Workforce Development to find out if an exemption or waiver have been granted to the state. The FLSA, at 29 USC 203(l), reads in part:

The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

³ 29 C.F.R. § 570.35(a) (emphasis added).

⁴ According to one court: "[T]he purposes of the child labor provisions of this chapter were both economical and sociological, and were to protect adult employees against compensation of minors and to protect children against harmful labor. *Lenroot v. Interstate Bakeries Corp.*, D.C.Mo.1944, 55 F.Supp. 234, affirmed in part, reversed in part on other grounds 146 F.2d 325. *See also* AS 23.10.325 (setting out the purpose in establishing protective standards for child labor).

⁵ *See also* 29 USC 218(a).

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However, I was unable to find any information regarding the existence of an exemption or waiver for the state; without one, current AS 23.10.340(a) is preempted by the FLSA. Moreover, because the attached draft bill would further expand the hours of minors age 14 and 15, allowing them to be employed as late as 10:00 p.m., it would also be preempted by the FLSA unless allowed by the Secretary of the U.S. Department of Labor.

If I may be of further assistance, please advise.

DCW:mjt
18-016.mjt

Attachment