

## Barbara Barnes

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**From:** Munoz, Cathy N (DOL) <cathy.munoz@alaska.gov>  
**Sent:** Monday, January 07, 2019 4:30 PM  
**To:** Rep. Tammie Wilson  
**Subject:** FW: FLSA, child labor laws for 14-15 yo

**Follow Up Flag:** Follow up  
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Dear Representative Wilson,

Please find the attached answer to our question on whether the State of Alaska has a waiver to FLSA for 14-15 year old to account for Alaska's more permissive statute.

Please let me know if you have additional questions.

Cathy Muñoz  
Deputy Commissioner  
Department of Labor and Workforce Development  
465-2702

**From:** McIntyre, Siobhan (LAW) <siobhan.mcintyre@alaska.gov>  
**Sent:** Monday, January 7, 2019 11:23 AM  
**To:** Munoz, Cathy N (DOL) <cathy.munoz@alaska.gov>  
**Subject:** RE: FLSA, child labor laws for 14-15 yo

No, there is no waiver, to the best of my knowledge and research, from the provisions of the Fair Labor Standards Act. Alaska enacted a law that is less stringent than the federal law – to save time, I did not conduct legislative history research on this provision, so I do not know why the legislature went this route or whether they considered this preemption. But, because Alaska legislated a time period that is less stringent than federal law in this area, the federal law would likely preempt the Alaska statute in most cases (with a possible, narrow exception for businesses that are not engaged in interstate commerce), if challenged. For example, if Peter Pan Seafoods employed 14-15 year olds from 7-9pm in January and a party challenged that this was in violation of the FLSA, it would likely be found that the FLSA applies and preempts AS 23.10.340 and prohibits this employment.

Let me know if you would like me to conduct further research – I can review the legislative history to see if there was a rationale for the legislature's approach.

Thank you,

Siobhan McIntyre  
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From: Munoz, Cathy N (DOL) <[cathy.munoz@alaska.gov](mailto:cathy.munoz@alaska.gov)>  
Sent: Friday, January 04, 2019 4:37 PM  
To: McIntyre, Siobhan (LAW) <[siobhan.mcintyre@alaska.gov](mailto:siobhan.mcintyre@alaska.gov)>  
Subject: RE: FLSA, child labor laws for 14-15 yo

AG McIntyre,

Since Alaska's law is more permissive than federal law, do we have a waiver in place to allow 14-15 year olds to work during the hours 5 a.m. and 9 p.m.? If not, what happens if a person is in violation of federal law (7 am to 7 pm except during summer 7 am to 9pm)? I appreciate the clarification.

Sincerely,

Cathy Muñoz  
Deputy Commissioner  
Department of Labor and Workforce Development  
465-2702

From: McIntyre, Siobhan (LAW) <[siobhan.mcintyre@alaska.gov](mailto:siobhan.mcintyre@alaska.gov)>  
Sent: Friday, January 4, 2019 8:56 AM  
To: Munoz, Cathy N (DOL) <[cathy.munoz@alaska.gov](mailto:cathy.munoz@alaska.gov)>  
Subject: FLSA, child labor laws for 14-15 yo

Deputy Commissioner Munoz,

In regards to Rep. Wilson's question, as you've identified, state law, AS 23.10.340, prohibits 14-15 years olds from working later than 9pm; 8 AAC 05.030(a) permits the Commissioner to except 14-15 years olds from this statute if they are enrolled in "work training, apprenticeship, vocational education, and other programs." There are no cases or attorney general opinions interpreting this language, but I would be hesitant to say "youth sports leagues" squarely fit under this exception, considering the specified list speaks to vocational type programs. You could inquire at DOLWD regarding what types of programs have historically been considered excepted under this regulation. Because AS 23.10.340 only extends the time period to 9pm, a statutory change would be necessary for children aged 14-15 to be able to work until 10pm under Alaska law.

The next question is whether federal law, specifically the Fair Labor Standards Act has applicable prohibitions that would preempt any change to state law permitting 14-15 year olds to work until 10pm. The FLSA, 29 USC s.212, prohibits oppressive child labor. Specifically, 29 USC s.212(c) provides: "No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce." 29 CFR s.570.35(a)(4) provides that 14-15 year olds may only work between 7am and 7pm, except during the summer (June 1-labor day) when they may work until 9pm. There is also an exception for "professional sports," 29 CFR s.570.35(c)(2). I could not find a definition of "professional sports" in statute or regulation or interpretative document from the federal DOL, but I would be hesitant to say it extends to youth sports leagues – this sounds like an exemption for leagues with professionally paid athletes. I have attached a copy of 29 CR s.570.35 here and have highlight these two sections.

Interestingly, our state law is less prohibitive than federal law. Under the legal concept of federal preemption, federal law will control if there is a conflict between state and federal law and the federal law is more stringent. This is likely the case for many industries in Alaska, which is to say, regardless of the more liberal time period provided in AS 23.10.340

(5am to 9pm all year), the time period specified in federal law (7am to 7pm, except from Jun1-labor day, when it extends to 9pm) likely preempts this statute and controls for many industries. Thus, in many (and likely most) contexts, any state law extending the work day, even in the summer, for 14-15 year olds to 10pm will be preempted by federal law, which will control and limit work hours to 7pm in the winter and 9pm in the summer.

However, the FLSA does not apply to *all* employment. Besides specific outlined exceptions to the FLSA (such as the professional sports provision in the child labor regs), the FLSA's prohibition on oppressive child labor only applies as connected to interstate commerce. Thus, if employment is strictly local in nature only applicable state law will apply, not the FLSA. Thus, if youth sports league employment is not connected to interstate commerce, there may be an argument that the prohibitions of the FLSA do not apply and an amendment to AS 23.10.340 permitting work after 9pm in this limited field may not be preempted by federal law. However, I would urge great caution in this approach; any connection to interstate commerce will be broadly defined and highly case specific. *If* this is an option, we would need to know many more facts about the nature of the youth sports league at issue and the nature of the proposed employment. In addition, if an amendment is made in this area and then the nature of the business changes to encompass some form of connection to interstate commerce, the FLSA would then apply, so any such amendment may be very difficult to craft.

I know this is a little down in the weeds, and I would be happy to discuss this further with you over the phone or answer any follow up questions. I will be at my desk today until 4pm and back in the office Monday at 8am.

Thank you,

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